

Hbdnros2

Williams - direct

1 Q. During the proffer did you provide any information about
2 the murder?

3 A. No.

4 Q. At the time of that proffer had you been charged with the
5 murder of Lowell Fletcher yet?

6 A. No.

7 Q. After your initial proffer in the Eastern District of New
8 York, did you take any further steps to cooperate with the
9 prosecutors in the Eastern District?

10 A. No.

11 Q. Directing your attention to April of 2012, did there come a
12 time in April of 2012 when you pleaded guilty in that case?

13 A. Yes.

14 Q. What did you plead guilty to?

15 A. Possession with intent to sell.

16 Q. What?

17 A. Cocaine.

18 Q. What was that charge based on?

19 A. My involvement in the drug organization.

20 Q. Which drug organization?

21 A. Rosemond's.

22 Q. In which courthouse did you plead guilty?

23 A. Eastern District.

24 Q. Before which judge?

25 A. Judge Gleeson.

Hbdnros2

Williams - direct

1 Q. After you pleaded guilty to that drug charge in the Eastern
2 District, did there come a time when you were charged with
3 federal crimes relating to the murder of Lowell Fletcher?

4 A. Yes.

5 Q. Which prosecutor's office filed the murder charges?

6 A. The Southern District of Manhattan.

7 Q. Directing your attention to November of 2013, did there
8 come a time in November of 2013 when you pleaded guilty in the
9 murder case?

10 A. Yeah.

11 Q. In which courthouse?

12 A. The Southern District.

13 Q. Here in Manhattan?

14 A. Uh-huh.

15 Q. This building?

16 A. Yeah.

17 Q. Before which judge?

18 A. Judge McMahon.

19 Q. What did you plead guilty to?

20 A. Murder while -- murder while engaged in a drug conspiracy.

21 Q. Murder of who?

22 A. Lowell Fletcher.

23 Q. And which drug conspiracy?

24 A. Rosemond organization.

25 Q. Directing your attention to July of 2014, did there come a

Hbdnros2

Williams - direct

1 time in or about July of 2014 when you were sentenced in your
2 murder case here in the Southern District of New York?

3 A. Yes.

4 Q. Who sentenced you?

5 A. Judge McMahon.

6 Q. What sentence did you receive?

7 A. 24 years.

8 Q. How many months?

9 A. 292 months.

10 Q. Who decided your sentence?

11 A. Judge McMahon.

12 Q. Directing your attention to August of 2014, did there come
13 a time in or about August of 2014, when you were sentenced in
14 your drug case in the Eastern District of New York?

15 A. Yeah.

16 Q. Who sentenced you there?

17 A. Judge Gleeson.

18 Q. What sentence did you receive in the drug case?

19 A. 108 months.

20 Q. Was that set to run concurrent or consecutive to your
21 Southern District murder sentence?

22 A. Concurrent.

23 Q. For the jury, what does "concurrent" mean?

24 A. Along with.

25 Q. Who decided your sentence in the drug case?

Hbdnros2

Williams - direct

- 1 A. Judge Gleeson.
- 2 Q. Just so we're clear, after being sentenced in the two
3 cases, the federal murder case here and the drug case in
4 Eastern, what was your total sentence?
- 5 A. 292 months.
- 6 Q. And what is that in years?
- 7 A. 24 years.
- 8 Q. While in prison, have you committed any disciplinary
9 infractions?
- 10 A. Yeah.
- 11 Q. What?
- 12 A. Got caught with a cell phone.
- 13 Q. When did that occur?
- 14 A. 2016, August.
- 15 Q. Where were you at the time?
- 16 A. Atlanta USP.
- 17 Q. What is USP.
- 18 A. It's a prison.
- 19 Q. USP is United States penitentiary?
- 20 A. Yeah.
- 21 Q. Why were you at the United States penitentiary in Atlanta?
- 22 A. That's where I was serving my time.
- 23 Q. Was this before or after you began cooperating in this
24 case?
- 25 A. Before.

Hbdnros2

Williams - direct

1 Q. And after that infraction did you personally own any cell
2 phones?

3 A. No.

4 Q. Did you use other inmate's cell phones?

5 A. Yeah.

6 Q. After being sentenced, did there come a time when you
7 decided to cooperate with the government in this case?

8 A. Yeah.

9 Q. When did that occur?

10 A. A few months ago, like around April.

11 Q. Of this year?

12 A. Yeah 2017.

13 Q. After making that decision, did you meet with the
14 government in the Southern District of New York for a proffer?

15 A. Yeah.

16 Q. Which prosecutor's office?

17 A. Southern District.

18 Q. How many proffers did you attend with prosecutors in the
19 Southern District of New York from that point until now?

20 A. A few.

21 Q. After meeting with the government for several proffers, did
22 there come a time where you entered into a cooperation
23 agreement between yourself and the government?

24 A. Yeah.

25 Q. In front of you is a folder with a document labeled

Hbdnros2

Williams - direct

1 Government Exhibit 3542-MM.

2 Please take a look at it.

3 Did you review this document before testifying today?

4 A. Yes.

5 Q. Do you recognize it?

6 A. Yeah.

7 Q. What is it?

8 A. That's my agreement, cooperation agreement.

9 Q. Go ahead and turn to the last page, page 5.

10 Do you see where it says "Agreed and consented to,
11 Jason Williams"?

12 A. Yeah.

13 Q. Whose signature is that above that?

14 A. Mine.

15 MR. ENZER: The government offers Government Exhibit
16 3542-MM.

17 THE COURT: Received.

18 (Government's Exhibit 3542-MM received in evidence)

19 MR. ENZER: Can we please publish the first page for
20 the jury.

21 BY MR. ENZER:

22 Q. In this agreement did you agree to cooperate with the
23 government?

24 A. Yeah.

25 MR. ENZER: I am going to go to page 3.

Hbdnros2

Williams - direct

1 Can you blow up the first paragraph.

2 BY MR. ENZER:

3 Q. In your mind what are your obligations under this
4 agreement?

5 A. To tell the truth, to testify.

6 Q. Do you also have to commit no more crimes?

7 A. Right, and commit no more crimes.

8 Q. Can you testify falsely?

9 A. No.

10 Q. Does this agreement contain all of the promises between
11 yourself and the government? I'm sorry. Does this agreement
12 contain all of the promises that the government has made to
13 you?

14 A. Yeah.

15 Q. Are you testifying today pursuant to this agreement?

16 A. Yeah.

17 Q. What is your understanding of what the government will do
18 if you live up to your obligations?

19 A. Put in a motion to help cut my time.

20 Q. What kind of motion is that?

21 A. Rule 35.

22 Q. Rule 35 of the Federal Rules of Criminal Procedure?

23 A. Yes.

24 Q. Who writes a Rule 35 motion?

25 A. The government.

Hbdnros2

Williams - direct

- 1 Q. Who does that motion get sent to?
- 2 A. Judge Kaplan.
- 3 Q. Will it also be sent to your judge in Eastern?
- 4 A. Yeah.
- 5 Q. What information goes in the motion, the Rule 35 motion?
- 6 A. My testimony and basically how I helped.
- 7 Q. Does it have information about crimes that you committed?
- 8 A. Yeah.
- 9 Q. Let's go to page 2 of the agreement. Can we blow up the
- 10 last paragraph and the one after that. This agreement
- 11 summarizes some of the crimes that you have told the government
- 12 about, is that right?
- 13 A. Right.
- 14 Q. Is it your understanding that your crimes will be brought
- 15 to the judge's attention before he sentences you under the Rule
- 16 35?
- 17 A. Yes.
- 18 Q. In the Rule 35 motion that the government would file for
- 19 you, does the government recommend any specific sentence to
- 20 your judges?
- 21 A. No.
- 22 Q. Have you been resentenced yet?
- 23 A. No.
- 24 Q. You said that the motion goes to Judge Kaplan and a judge
- 25 in Eastern.

Hbdnros2

Williams - direct

1 Who decides what sentence you get if you get
2 resentenced?

3 A. Both those judges.

4 Q. Will anyone else decide your sentence?

5 A. No.

6 Q. Does the government get to decide your sentence?

7 A. No.

8 Q. If the government files a Rule 35 motion for you, Judge
9 Kaplan and the judge in Eastern, do they have to reduce your
10 sentence?

11 A. No.

12 Q. Has the government promised you what sentence you'll get
13 for cooperating?

14 A. No.

15 Q. Has anyone else promised you what sentence you will get?

16 A. No.

17 Q. Do you hope to get a lower sentence because you have
18 cooperated?

19 A. Yeah.

20 Q. What sentence are you hoping for?

21 A. Time served.

22 Q. How much time have you served up to today?

23 A. Almost six years.

24 Q. What will happen to your agreement if you do not tell the
25 truth today?

Hbdnros2

Williams - direct

- 1 A. It's going to be voided.
- 2 Q. Will you get a sentencing reduction?
- 3 A. No.
- 4 Q. What will your sentence be?
- 5 A. The same as it is now.
- 6 Q. 24 years?
- 7 A. Yeah.
- 8 Q. Could you face additional consequences?
- 9 A. Yeah.
- 10 Q. What?
- 11 A. Perjury.
- 12 Q. And if you were charged with perjury and convicted, what
- 13 would happen to your sentence?
- 14 A. I would probably get more time.
- 15 Q. If you did have to serve the 24 years and an additional
- 16 term for perjury, where would you serve that sentence?
- 17 A. In prison.
- 18 Q. After having testified publicly?
- 19 A. Right.
- 20 MR. ENZER: Can we publish Government Exhibit 10.
- 21 Q. Do you recognize this person?
- 22 A. Yeah.
- 23 Q. Who is that?
- 24 A. Tef.
- 25 Q. When's the last time you saw Tef?

Hbdnros2

Williams - direct

1 A. 2009 or '10.

2 Q. Before you were arrested on federal charges?

3 A. Yeah.

4 Q. When was the last time you spoke to Tef?

5 A. The same time.

6 Q. Before you were arrested on federal charges?

7 A. Yeah.

8 MR. ENZER: Can we publish Government Exhibit 4.

9 Q. Who is that?

10 A. Khalil.

11 Q. When was the last time you saw Khalil?

12 A. 2010.

13 Q. Before you were arrested on federal charges?

14 A. Yeah.

15 Q. When was the last time you spoke with Khalil?

16 A. 2010.

17 Q. Again, before you were arrested on federal charges?

18 A. Yeah.

19 MR. ENZER: Let me publish Government Exhibit 9.

20 Q. Who is that?

21 A. Slim.

22 Q. When was the last time you saw Slim?

23 A. 2010.

24 Q. Before you were arrested on federal charges?

25 A. Yeah.

Hbdnros2

Williams - cross

1 Q. When was the last time you spoke with Slim?

2 A. The same time.

3 MR. ENZER: Can we publish Government Exhibit 54.

4 Q. Do you know the name of this person?

5 A. No.

6 Q. Have you ever met this person?

7 A. No.

8 Q. Have you ever spoken to this person?

9 A. No.

10 MR. ENZER: No further questions.

11 THE COURT: All right. Thank you.

12 Mr. Touger.

13 MR. TOUGER: Thank you, your Honor.

14 CROSS EXAMINATION

15 BY MR. TOUGER:

16 Q. Good afternoon, sir.

17 A. Good afternoon.

18 Q. If at any time you don't understand any of my questions,
19 just ask me to rephrase it and I will. OK.

20 Now, you went and spoke with the government when you
21 first got arrested, correct?

22 A. When I first got arrested?

23 Q. Yes.

24 A. Yeah.

25 Q. And you went to one proffer session I believe you

Hbdnros2

Williams - cross

1 testified?

2 A. Right.

3 Q. And that was it?

4 A. Uh-huh.

5 Q. And at that proffer session the government asked you
6 questions and you answered them?

7 A. Yeah.

8 Q. And they asked you questions about your drug involvement?

9 A. Right.

10 MR. ENZER: Objection, your Honor. It's not clear
11 which office he's talking about proffering with.

12 THE COURT: Clarify it, please.

13 BY MR. TOUGER:

14 Q. We are talking about the one in March when you got
15 arrested. That's with the Eastern District of New York,
16 correct?

17 A. Yeah.

18 Q. That's clear to you, right?

19 A. Yeah.

20 Q. OK. And they asked you questions about your activity in
21 drug dealing, right?

22 A. Yeah.

23 Q. And did you answer those questions?

24 A. Yeah.

25 Q. Did they ask you questions about the incident in this case?

Hbdnros2

Williams - cross

1 A. No.

2 Q. Now, at some point you made a decision on your own not to
3 cooperate any further, correct?

4 A. Right.

5 Q. Because you just decided it is something that you didn't
6 want to do?

7 A. Right.

8 Q. And as a matter of fact you decided it's something that you
9 couldn't do, right?

10 A. Right.

11 Q. It violated what you thought were your morals and your
12 beliefs, right?

13 A. Pretty much, yeah.

14 Q. And so ultimately you -- did your lawyer advise you to
15 cooperate or not to cooperate?

16 MR. ENZER: Objection.

17 THE COURT: Sustained.

18 Q. Ultimately you decided to plead guilty though, correct?

19 A. Yeah.

20 Q. Again, just so the record is clear, so there's no
21 confusion, you pled guilty with no cooperation whatsoever?

22 A. Right.

23 Q. You didn't get any credit for that proffer session you had?

24 A. No.

25 Q. Because you had stopped cooperating?

Hbdnros2

Williams - cross

1 A. Right.

2 Q. And no cooperation agreement was ever signed?

3 A. Right.

4 Q. None was ever even discussed, right?

5 A. Right.

6 Q. And so in the Eastern District case I believe you testified
7 you were sentenced to nine years?

8 A. Yeah.

9 Q. And then you got arrested in the Southern District of New
10 York?

11 A. Yeah, they superseded.

12 Q. And superseding means you just got rearrested on new
13 charges, right?

14 A. Yeah.

15 Q. That was here in the Southern District of New York?

16 A. Yes.

17 Q. And that was for the incident that you have been talking
18 about today and last week?

19 A. Right.

20 Q. And you decided not to at that point, right?

21 A. Right.

22 Q. Even though the government wanted you to cooperate, right?

23 MR. ENZER: Objection.

24 THE COURT: Sustained.

25 Q. Did you know that the government wanted you to cooperate?

Hbdnros2

Williams - cross

1 THE COURT: Sustained.

2 Q. Did your lawyer tell you that the government wanted you to
3 cooperate?

4 MR. ENZER: Objection.

5 THE COURT: Sustained.

6 Q. And you were ultimately sentenced in that case?

7 A. Right.

8 Q. I believe you said you were sentenced to 24 years?

9 A. Right.

10 Q. That's a long time, right?

11 A. Yeah.

12 Q. No matter how you slice it, 24 years is an extremely long
13 prison sentence.

14 A. Right.

15 Q. But you didn't stop fighting your case at that point,
16 right?

17 A. No.

18 Q. You filed other motions and appeals to try to get that
19 sentence reduced or thrown out, correct?

20 A. Right.

21 Q. And one of the things you decided to file was called a 2255
22 motion, right?

23 A. Yeah.

24 Q. Could you describe for the jury what a 2255 motion is.

25 A. It's a motion to try to either reduce my time or throw out

Hbdnros2

Williams - cross

1 my sentence all together.

2 Q. And you filed that when?

3 A. 2015 I believe it was.

4 Q. And the basis of that motion was that the shooting of
5 Lowell Fletcher was unrelated to the drug conspiracy that you
6 were involved in, correct?

7 A. Right.

8 Q. And you had a lawyer help you with that motion?

9 A. Yeah.

10 Q. So, during this time when you were in jail, did you keep
11 track of the people you had associated with while you were
12 working with Jimmy?

13 A. What do you mean keep track?

14 Q. Did you keep up to date where these people were and what
15 they were doing?

16 A. No. I mean, I kept in contact with some of them, yeah.

17 Q. By the way, you knew that Jimmy had gotten arrested,
18 correct?

19 A. Yeah.

20 Q. And you knew that there were various proceedings going on
21 in Jimmy's case, correct?

22 A. Yeah.

23 Q. And, for instance, you knew that Mohammed Stewart had
24 decided to cooperate against Jimmy, right?

25 A. Yeah.

Hbdnros2

Williams - cross

1 Q. And you knew that he had never spent a day in jail because
2 of that cooperation, right?

3 A. No, I didn't know that.

4 Q. You didn't know Mr. Stewart was out of jail?

5 A. I didn't know he never got arrested.

6 Q. Well, did you know he was out of jail?

7 A. Yeah.

8 Q. You knew he wasn't in custody at any time, right?

9 A. Not -- I wasn't sure, no.

10 Q. In your mind, had Mr. Stewart committed more crimes than
11 you had?

12 A. Yeah.

13 Q. And you also found out that Khalil Abdullah had decided to
14 cooperate, didn't you?

15 A. Yeah.

16 Q. In your mind, Khalil Abdullah I believe you testified to
17 was the head of the drug organization, right?

18 MR. ENZER: Objection.

19 Mischaracterizes the testimony.

20 THE COURT: Give me a moment.

21 Sustained.

22 BY MR. TOUGER:

23 Q. Was Mr. Abdullah the head of the drug organization?

24 A. No.

25 Q. Was he higher in the drug organization than you were?

Hbdnros2

Williams - cross

1 A. Yeah.

2 Q. And did he have a position of authority?

3 A. Somewhat.

4 Q. Now, you also found out that Slim, Brian McCleod, had
5 decided to cooperate, correct?

6 A. Yeah.

7 Q. You knew obviously that Slim was involved in the shooting
8 of Lowell Fletcher, right?

9 A. Yes.

10 Q. And would I be correct in saying that you found out that
11 Mr. Abdullah, Mr. Stewart and Mr. McCleod had testified in
12 prior proceedings against Jimmy?

13 MR. ENZER: Objection.

14 THE COURT: What is the objection?

15 MR. ENZER: Can we go to sidebar.

16 THE COURT: Yes.

17 (Continued on next page)

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Hbdnros2

Williams - cross

1 (At sidebar)

2 THE COURT: Mr. Enzer.

3 MR. ENZER: We had an agreement before this trial that
4 we would refer to the prior proceedings as prior proceedings.

5 His question was, Did the witnesses testify against
6 Jimmy at prior proceedings?

7 What he's doing is suggesting to the jury that there
8 were prior trials in this case that did not result in a
9 conviction. This should not be allowed. He should not be able
10 to ask the question that way.

11 He doesn't need to get in the fact that the prior
12 proceedings were cases against Jimmy in order to make his
13 point.

14 If he wants to make that point, then we should be
15 permitted to let the jury know that one of the juries found
16 these people credible, that Judge McMahon found these people
17 credible and that is why two of the witnesses walked out of
18 prison.

19 MR. TOUGER: Your Honor, all I did was ask did he
20 testify against Jimmy in prior proceedings.

21 THE COURT: I heard.

22 That is exactly what Mr. Enzer just said.

23 MR. TOUGER: I don't understand how that makes a leap
24 that that means trials.

25 THE COURT: What do you think it was? A tax

Hbdnros2

Williams - cross

1 certiorari or uncontested divorce?

2 MR. TOUGER: There are suppression hearings, your
3 Honor, all kind of different hearings. There are all types of
4 different hearings that could be testified to.

5 (In open court)

6 THE COURT: Members of the jury, time for lunch break
7 for you. We will get this cleared up. So you at 2 o'clock.

8 I should also say with respect to the juror who sent
9 the note about a medical appointment tomorrow afternoon, that
10 we will accommodate you. We will accommodate you. We will
11 break early tomorrow, so you can go to the doctor. You can
12 step back, and we will talk about this.

13 (Jury not present)

14 THE COURT: Be seated, folks.

15 Mr. Enzer, remind me, was this agreement reduced to
16 writing?

17 MR. ENZER: No, it was not.

18 THE COURT: But you put it on the record on the first
19 day, right?

20 MR. ENZER: Correct.

21 Not on the first day of trial, your Honor.

22 MR. TOUGER: It was the week before, that Thursday
23 conference.

24 MR. ENZER: It was the last pretrial conference. The
25 one where we had multiple -- I think it was the Thursday before

Hbdnros2

Williams - cross

1 we began trial.

2 THE COURT: Let me see if we have a transcript.

3 I am not sure we have a transcript of it.

4 I will hear you, counsel.

5 MR. TOUGER: Your Honor, at that conference the
6 agreement was that we would say prior proceeding instead of
7 trial.

8 If you remember, when Mr. When Mr. Abdullah testified
9 and when Mr. Stewart testified, they testified that they
10 testified at these prior proceedings, and after those prior
11 proceedings they got out of jail.

12 So all of this has been testified to already. I
13 continued to refer to it as prior proceedings. There are many
14 different prior proceedings that happen in a case.

15 For Mr. Enzer to make the leap that the jury is
16 automatically going to assume that this is a trial I think is,
17 as I said, a major leap.

18 This has been gone over already with other witnesses,
19 that they testified at a prior proceeding and they got out of
20 jail after testifying in that prior preceding. Mr. Abdullah
21 testified to that. Mr. Stewart testified that he never went to
22 jail but was sentenced after that prior proceeding. I don't
23 see how I'm violating any agreement here.

24 THE COURT: Mr. Enzer?

25 MR. ENZER: Two things.

Hbdnros2

Williams - cross

1 First, with respect to the agreement, the agreement
2 was not we are going to call these prior proceedings against
3 James Rosemond, because that opens a massive can of worms. It
4 was that we would refer to them as prior proceedings.

5 Counsel has referred to the prior testimony as
6 testimony in prior proceedings. He didn't identify who the
7 defendant was at those proceedings because that is a very
8 significant bombshell for this jury.

9 Separate and apart from the agreement, even if we had
10 never reached an agreement, we reached an agreement because we
11 didn't think this was something that needed to be briefed, it
12 is so obvious. But without an agreement they should not be
13 able to suggest to the jury what they have now suggested, that
14 there were prior proceedings where these witnesses testified
15 against Rosemond and we are here having another trial.

16 THE COURT: Didn't that happen with Stewart?

17 MR. ENZER: Your Honor, I would have to check the
18 transcript, but I do not think there was any explicit reference
19 in the transcript that the testimony Stewart gave in the past
20 was against Jimmy.

21 THE COURT: Let me take a look.

22 MR. TOUGER: Your Honor, I think --

23 THE COURT: Just a minute, Mr. Touger.

24 MR. TOUGER: Sure.

25 THE COURT: Unless I missed something, the only

Hbdnros2

Williams - cross

1 references to prior proceedings were first a single reference
2 during the testimony of one of the police officers to
3 testimony -- I think it was a police officer, Masi -- to
4 testimony at a suppression hearing.

5 Then there was an effort to use prior testimony either
6 to impeach or refresh recollection with Stewart where
7 Mr. Touger kept building into his question prior proceeding,
8 but there was no reference to against anybody.

9 MR. TOUGER: The testimony had to do with --

10 THE COURT: Just please wait a minute.

11 Then earlier today I think the government probably
12 elicited that this witness testified in a proceeding in this
13 courthouse, that it had to do with this case, and then got a
14 Rule 35 motion and was resentenced.

15 Am I right about that? I think it was the government.

16 MR. ENZER: Today?

17 THE COURT: Not today. Forgive me. I misspeak. It
18 was last Thursday. Let me look at that.

19 MR. ENZER: Khalil Abdullah?

20 THE COURT: Maybe. It was Abdullah. It was on cross.
21 It is at 576-77, which is close but not right on the money
22 here.

23 MR. TOUGER: Your Honor, if you look at page 332 --

24 THE COURT: You really just have this penchant for
25 interrupting.

Hbdnros2

Williams - cross

1 MR. TOUGER: Right. Because there's more testimony
2 about exactly this --

3 THE COURT: That may be, but I've asked you over and
4 over again not to interrupt.

5 What was the page that you wanted me to look at, and
6 then I'll go back to doing what I was doing.

7 MR. TOUGER: Page 332, your Honor.

8 Lines 5 and 6, your Honor.

9 THE COURT: Yes. That is exactly what I was referring
10 to when I said that you had incorporated into a question when
11 Stewart was on the stand the fact that there was testimony in a
12 prior proceeding. And I think I then --

13 MR. TOUGER: It says in this case though there, your
14 Honor. That's my point.

15 THE COURT: So?

16 MR. TOUGER: That is what they are objecting to now.

17 THE COURT: No. It's not what they're objecting to
18 now.

19 Well, you can make all the faces you want.

20 MR. TOUGER: I thought that was their objection.

21 THE COURT: Against Jimmy. That's what they are
22 objecting to. Pay attention.

23 MR. TOUGER: If you want me to change the question to
24 "in this case," it's perfectly acceptable to do that.

25 THE COURT: Fine.

Hbdnros2

Williams - cross

1 Do you have a problem with that?

2 MR. ENZER: No. We are going to have to live with
3 that.

4 THE COURT: It seems to me that ship sailed when you
5 didn't object the last time.

6 MR. ENZER: Your Honor, the "in this case" doesn't
7 bother us.

8 THE COURT: So that's what you have to live with.

9 MR. ENZER: Right.

10 THE COURT: OK. 2 o'clock.

11 (Luncheon recess)

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Williams - Cross

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AFTERNOON SESSION

2:00 p.m.

(Jury present)

THE COURT: The defendant and jurors all are present.

We did have a note previously and I averted to it before that one of our jurors has a medical appointment tomorrow at one o'clock -- excuse me -- later in the day. So we will sit tomorrow from ten until 12:45 or one o'clock and then resume on Wednesday. I may have more to tell you about the schedule later today or tomorrow morning.

Mr. Touger, the witness is reminded he is still under oath and you may proceed.

MR. TOUGER: Thank you, your Honor.

Q. We left off I was asking you, did you know that each of those individuals had testified multiple times in prior proceedings in this case?

A. Yes.

Q. And even though you knew that, you continued not to cooperate, correct?

A. Yes.

Q. And you continued on in legal proceedings that were going on in your own case, right?

HBCAAROS3

Williams - Cross

1 A. Right.

2 Q. And by the way, did you ever read any of the testimonies of
3 Mr. Abdullah or Mr. Stewart or Mr. McCleod in the prior
4 proceedings in this case?

5 A. No.

6 Q. Did you ever get any information about what they had
7 testified to?

8 A. Yeah. When I was in the initial stages, yeah.

9 Q. And what did you learn that they had testified to about the
10 shooting about Lowell Fletcher?

11 A. Yeah.

12 MR. ENZER: Objection.

13 THE COURT: What's the objection?

14 MR. ENZER: It's not clear whether he is talking about
15 a conversation with Mr. Williams' lawyer which may be what this
16 is about.

17 THE COURT: We're going to strike the answer. The
18 jury will disregard it.

19 And you can try to frame an acceptable question,
20 Mr. Touger.

21 MR. TOUGER: Thank you, your Honor.

22 Q. Did you have conversations with numerous individuals about
23 their testimony?

24 A. No.

25 Q. Did you have a conversation with anybody about their

HBCAAROS3

Williams - Cross

1 testimony besides your lawyer?

2 A. No.

3 Q. So you only had conversations with your lawyer about their
4 testimony?

5 THE COURT: Sustained.

6 Q. Now, did in 2014 I want to bring your attention to the year
7 2014, OK? Did you write a letter to Judge McMahon of this
8 court?

9 A. Yes.

10 Q. Did you inform Judge McMahon that you had heard that the
11 Southern District still wanted you to cooperate?

12 A. Yes.

13 Q. And did you tell Judge McMahon that you did not want to
14 cooperate?

15 A. Yes.

16 Q. And did you tell Judge McMahon pointblank that it would be
17 a waste of taxpayer money to bring you up from Atlanta to New
18 York in an effort to cooperate?

19 A. Yes.

20 Q. Now, am I also correct that you forwarded that same letter
21 to a prosecutor in the Southern District of New York?

22 A. Yes.

23 Q. So, and that was in approximately November of 2014?

24 A. Yeah, around there.

25 Q. Now, and you had found out the reason you wrote that letter

HBCAAROS3

Williams - Cross

1 is you had found out that the government still wanted you to
2 cooperate?

3 A. Right.

4 Q. Now, did you ever find out that Mr. Abdullah got sentenced?

5 A. No.

6 Q. So to this day you still don't know whether Mr. Abdullah
7 got sentence?

8 A. Yeah, I know he did but I don't know what he got sentenced
9 to.

10 Q. Do you know if he is still in jail or not?

11 A. No -- yeah, I do know. He not.

12 Q. Excuse me?

13 A. He's not.

14 Q. When did you find that out?

15 A. Not too long ago. Maybe a year ago or so.

16 Q. So prior to January of 2017?

17 A. Yeah, probably.

18 Q. And did you also find out that Mr. McCleod was out of jail?

19 A. Yeah.

20 Q. When did you find that out?

21 A. Probably the same time.

22 Q. So also prior too January of 2017?

23 A. Um-hmm.

24 Q. And Mr. McCleod, according to your testimony, participated
25 in a shooting of Lowell Fletcher?

HBCAAROS3

Williams - Cross

1 A. Right.

2 Q. According to your testimony, Mr. Abdullah had a higher
3 position in the drug conspiracy than you had?

4 A. Right.

5 Q. Now you know they're both out of jail, right?

6 A. Right.

7 Q. And did you, when you found that out did that make you
8 angry?

9 A. No.

10 Q. What was your feeling when you found that out?

11 A. Just was what it was.

12 Q. Were you happy for them?

13 A. No.

14 Q. And still you decided not to cooperate, right?

15 A. Right.

16 Q. And then at some point you got a decision on your 2255
17 motion, right?

18 A. Um-hmm.

19 THE COURT: Excuse me. Sir, you can't answer by
20 grunting. You have to use words.

21 A. Yes.

22 Q. Could you remind the jury once again what a 2255 motion is?

23 A. Basically an appeal.

24 Q. To get your plea back?

25 A. Right.

HBCAAROS3

Williams - Cross

- 1 Q. To try to reduce the time you were doing in jail, right?
- 2 A. Right.
- 3 Q. And at some point you got a decision on that motion, right?
- 4 A. Right.
- 5 Q. And what was the decision?
- 6 A. It was denied.
- 7 Q. And that meant that you had to do the next 20 years in
- 8 jail, correct?
- 9 A. More than likely.
- 10 Q. And that started you thinking; am I correct?
- 11 A. Yeah.
- 12 Q. Could you say you started thinking of your family?
- 13 A. Yeah.
- 14 Q. And what you were putting them through?
- 15 A. Yeah.
- 16 Q. And you didn't want to be a burden on them any more, did
- 17 you?
- 18 A. No.
- 19 Q. And would I be correct in saying that the government then
- 20 asked you again to cooperate?
- 21 A. Yeah.
- 22 Q. And they brought you up from Brooklyn from Atlanta to
- 23 Brooklyn, correct?
- 24 A. Right.
- 25 Q. You didn't like that because you hadn't given them

HBCAAROS3

Williams - Cross

1 permission yet?

2 A. Right.

3 Q. You were quite angry that they did that?

4 A. Right.

5 Q. That was earlier this spring, right?

6 A. Yep.

7 Q. And but you met with them?

8 A. Um-hmm.

9 Q. And you decided --

10 THE COURT: Sir, words please.

11 A. Yeah.

12 Q. Excuse me?

13 A. Yes.

14 Q. And they told you -- withdraw the last question.

15 And they told you when you met with them that they
16 could have you out by summer or at the end of this year; isn't
17 that true?

18 A. No.

19 Q. You didn't tell people that the government promised you
20 that they'd have you out by the summer or the end of the year?

21 A. Yeah. I probably did tell people that.

22 Q. That's what you are hoping for, right, to get out?

23 A. Yeah.

24 THE COURT: Was it true when you told people that?

25 THE WITNESS: It's just what I was hoping for.

HBCAAROS3

Williams - Cross

- 1 Q. Did the government say that to you?
- 2 A. No.
- 3 Q. You're sure about that?
- 4 A. Yes.
- 5 Q. But you knew Mr. Abdullah hadn't gotten out, right?
- 6 A. Right.
- 7 Q. And at this time you had known that Mr. Abdullah had gotten
- 8 out, right?
- 9 A. Yes.
- 10 Q. You had known that Mr. McCleod had gotten out?
- 11 A. Right.
- 12 Q. You had known at this time that Mr. Stewart wasn't in jail,
- 13 right?
- 14 A. Right.
- 15 Q. And all of them had done more serious crimes than you had
- 16 done, correct?
- 17 A. Right.
- 18 Q. And so you had talked as we said before, talked to the
- 19 government before that, right?
- 20 A. Before what?
- 21 Q. Before April of 2017?
- 22 A. Yeah.
- 23 Q. And I believe you testified that you did it as early as
- 24 2010, right?
- 25 A. Right.

HBCAAROS3

Williams - Cross

1 Q. And in 2010 you were not in custody or under arrest or
2 anything, right?

3 A. Right.

4 Q. And they came to your house?

5 A. Yeah.

6 Q. And they asked you questions?

7 A. Yep.

8 Q. And they asked you if you knew who Slim was, who
9 Mr. McCleod was, right?

10 A. They might have, yeah.

11 Q. And you denied even knowing him, right?

12 A. Yeah, probably.

13 Q. And they asked you if you knew where Lowell Fletcher was
14 and would I be correct in saying that you told hem as far as
15 you know he was still alive and well in jail?

16 A. I don't recall that.

17 Q. Well, let me show you something that maybe will refresh
18 your recollection.

19 THE COURT: Exhibit number.

20 MR. TOUGER: 3542-N, your Honor. Paragraph --

21 THE COURT: You don't have to tell me that.

22 (Pause)

23 Q. You can --

24 THE COURT: You know we've got all these electronics
25 please stay back there.

HBCAAROS3

Williams - Cross

1 MR. TOUGER: OK.

2 THE COURT: It even works sometimes.

3 (Pause)

4 MR. TOUGER: Does the witness have it in front of him?

5 Q. I direct you to the last paragraph. You can read anything
6 you want but it's the last paragraph on that page, paragraph
7 number 6. If you could just read that to yourself.

8 (Pause)

9 THE COURT: What page are you on?

10 MR. TOUGER: Page four of seven, your Honor.

11 THE COURT: Thank you.

12 A. OK.

13 Q. Does that refresh your recollection that you told the
14 agents at that point in time that you thought Lowell Fletcher
15 was in jail?

16 A. Not really but I could have told them that.

17 Q. This was in December of 2010, right?

18 A. Yes.

19 Q. So this after the shooting of Lowell Fletcher?

20 A. Right.

21 Q. And then I believe you testified on direct that you spoke
22 to the government this time after you'd first gotten arrested?

23 A. Right.

24 Q. And again, you decided after that that you didn't want to
25 cooperate; am I correct?

HBCAAROS3

Williams - Cross

1 A. Right.

2 Q. And now you decided that you did want to cooperate?

3 THE COURT: Now, you mean this morning?

4 Q. Now, April of 2017 you decided that you did want to
5 cooperate, right?

6 A. Yeah.

7 Q. And I believe you just stated because you wanted to go home
8 just like Mr. Abdullah, Mr. McCleod and Mr. Stewart, right?

9 A. Yeah.

10 Q. And you knew that the government wanted you to cooperate in
11 this case, right?

12 A. Right.

13 Q. And you knew that they wanted you to cooperate against
14 Jimmy, right?

15 MR. ENZER: Objection.

16 THE COURT: Sustained.

17 Q. Did you know that the government wanted information about
18 the Lowell Fletcher shooting?

19 A. Yeah.

20 Q. And you know that they wanted information about Jimmy's
21 role in that shooting?

22 A. Yeah.

23 Q. And did you know or did you think -- withdraw that.

24 Did you think when you went in to them that you had to
25 tell them that Jimmy was involved in the shooting?

HBCAAROS3

Williams - Cross

1 MR. ENZER: Objection.

2 THE COURT: Sustained. No overruled.

3 Is that what you thought?

4 A. I just thought that they wanted to hear what happened, so.

5 Q. Did you think they wanted to hear what happened relative to
6 Slim's involvement or Jimmy's involvement?

7 THE COURT: Sustained.

8 Q. Now, let's switch back to the time when you'd become
9 Jimmy's driver. OK?

10 A. Yeah.

11 Q. You testified that at some time after that time you went
12 and picked up a bag full of guns from his old driver?

13 A. Right.

14 Q. And in that bag was the .22?

15 A. Right.

16 Q. Was the silencer on it then?

17 A. Yes.

18 Q. And in that bag were two other guns, a .45?

19 A. Right.

20 Q. What was the other gun?

21 A. Both were .45s.

22 Q. Both were .45s. And are you familiar with weapons?

23 A. A little bit not really.

24 Q. OK. And when you were told to pick up -- withdrawn.

25 Who told you to pick up that bag of guns?

HBCAAROS3

Williams - Cross

1 A. Jimmy asked me to go over there and pick something up from
2 him. He never said "guns".

3 Q. Exactly. That was my next question. He never told you to
4 go pick up that bag of guns, right?

5 A. No.

6 Q. He told you to go pick up a bag?

7 A. Right.

8 Q. Or did he tell you just pick up something from the former
9 driver?

10 A. Right.

11 Q. Which was it?

12 A. Just go pick something up.

13 Q. And you had no idea what you were going to pick up at that
14 point; am I correct?

15 A. No.

16 Q. And when you got there --

17 THE COURT: The lawyer is not correct or it is
18 correct?

19 MR. TOUGER: I'll rephrase the question, your Honor.

20 Q. When you went to the former driver to pick something up,
21 did you know what you were going to pick up?

22 A. No.

23 Q. And when you got to that location did you meet with the
24 former driver?

25 A. Yes.

HBCAAROS3

Williams - Cross

1 Q. And did you say, I'm hear to pick something up?

2 A. Yeah.

3 Q. And did that man hesitate in giving you anything?

4 A. No.

5 Q. He just gave you a bag, right?

6 A. Right.

7 Q. There was no discussion about what was in the bag? Did
8 Jimmy really ask me to come or anything like that?

9 A. No.

10 Q. You said I'm here to pick something up and he gave it to
11 you?

12 A. Right.

13 Q. No confusion whatever?

14 A. No.

15 Q. Now, by the way, do you know -- withdraw that question.

16 Did you pick up this bag immediately after Jimmy gave
17 you the instructions or did some time go by?

18 A. That, I don't remember.

19 Q. OK. Now, you also testified on direct that Jimmy told you
20 to hold that bag, right?

21 A. Right.

22 Q. And would I be correct in saying that he told you he didn't
23 say "hold the bag of guns"?

24 A. Right.

25 Q. He just said "hold the bag"?

HBCAAROS3

Williams - Cross

1 A. Right.

2 Q. Did it matter to you -- withdrawn.

3 When he said hold the bag, you knew exactly what you
4 were supposed to do, right?

5 A. Right.

6 Q. Hold the bag?

7 A. Right.

8 Q. He didn't tell to you take the guns out of the bag, did he?

9 A. No.

10 Q. Did he even tell you that he knew you knew there were guns
11 in the bag?

12 A. No.

13 Q. So all he did was say go pick up something. You got
14 something. And he told to you keep whatever you got?

15 A. Right.

16 THE COURT: You know, these compound questions really,
17 not a big help.

18 Q. Now, by the way, because he didn't tell you "hold the bag
19 of guns", was there any confusion in your mind what bag you
20 were supposed to hold on to?

21 A. No.

22 Q. And you just knew you had to hold the bag till you got
23 further instructions?

24 A. Right.

25 Q. Did you open the bag at that time?

HBCAAROS3

Williams - Cross

1 A. Yeah, I did.

2 Q. And so you knew that there were guns in the bag because you
3 opened it?

4 A. Right.

5 Q. That was the first time you had knowledge that there were
6 actually guns in that bag, correct?

7 A. Right.

8 Q. And those were Jimmy's guns, right?

9 A. Right.

10 Q. They weren't yours?

11 A. No.

12 Q. And I believe you also testified on direct that Jimmy had a
13 machine gun?

14 A. I don't know if it was his but I seen him use it, yeah.

15 Q. And it had a silencer on it also?

16 A. Yeah.

17 Q. And you saw him use that weapon?

18 A. Yeah.

19 Q. I want to go talk about the incidents where you say you had
20 secret compartments installed on Jimmy's car; do you remember
21 that?

22 A. Yeah.

23 Q. Would I again correct in saying that Jimmy didn't tell you
24 to go to Robbie to put secret compartments in the cars?

25 A. Yeah, you'd be right.

HBCAAROS3

Williams - Cross

- 1 Q. And he just told you go see Robbie in New Jersey, correct?
- 2 A. Right.
- 3 Q. And no further instructions than that?
- 4 A. No.
- 5 Q. And when you got to see Robbie in New Jersey, Robbie didn't
- 6 ask you, what am I supposed to do with these cars?
- 7 A. No.
- 8 Q. He knew exactly what he was supposed to do, right?
- 9 A. Right.
- 10 Q. And the cars got their secret compartments, right?
- 11 A. Right.
- 12 Q. And when Robbie put the secret compartments in the cars he
- 13 told you how to open them, right?
- 14 A. Right.
- 15 Q. Even though Jimmy didn't tell you anything about secret
- 16 compartments?
- 17 A. Right.
- 18 Q. And that's when you learned that you were there to get
- 19 secret compartments put into Jimmy's car?
- 20 A. Right.
- 21 Q. And at some point you say Jimmy gave you a car?
- 22 A. Yeah.
- 23 Q. What was the car?
- 24 A. A Nissan Altima.
- 25 Q. Was it a used car or a new car?

HBCAAROS3

Williams - Cross

1 A. Used.

2 Q. And it was a Nissan Altima I believe you said?

3 A. Yeah.

4 Q. How old was at car?

5 A. A couple of years old.

6 Q. And you had been arrested in your, prior to this when you
7 got that car from Jimmy for gun possession, right?

8 A. Right.

9 Q. And when you were arrested for those gun possessions did
10 those gun haves anything to do with Jimmy?

11 A. No.

12 Q. Those were all your own personal situations, right?

13 A. Right.

14 Q. Nothing to do with Jimmy whatsoever?

15 A. Right.

16 Q. And would I be correct in saying that you decided, hey, I
17 got this car with my car. I'd like to get a secret compartment
18 in this car so you don't get arrested for a gun again?

19 A. No. You would be wrong.

20 (Continued on next page)

21

22

23

24

25

hbdnros4

Williams - cross

1 Q. I would be wrong. At some point you bring that car, though
2 to Robby to get a secret compartment?

3 A. Right.

4 Q. Now, last week you testified about your relationship with
5 Mohammed Stewart.

6 A. Right.

7 Q. And you knew -- withdrawn. You said that Mohammed Stewart
8 had no job in Mr. Rosemond's music business, correct?

9 A. Right.

10 Q. Mr. Stewart was a drug dealer, right?

11 A. Right.

12 Q. Besides what he may or may have not done for Jimmy, he did
13 sell drugs on his own separate and distinct from Jimmy,
14 correct?

15 A. Right.

16 Q. Would I be correct in saying at times when Jimmy was out of
17 town and you weren't driving him that you did favors for
18 Mr. Stewart's drug business?

19 A. No.

20 Q. Excuse me?

21 A. No, I never did.

22 Q. So you are saying that all the packages you delivered,
23 picked up, whatever you had to do with drug business, all had
24 to do with Jimmy's alleged drug business, correct?

25 A. Right.

hbdnros4

Williams - cross

1 Q. Can we agree though at some point in time you knew
2 personally that Jimmy had a falling-out with Mohammed Stewart?

3 A. Yes.

4 Q. You also testified last week that you knew Khalil Abdullah,
5 right?

6 A. Yeah.

7 Q. And that he had no role in Jimmy's music business, correct?

8 A. Right.

9 Q. Mr. Abdullah was a drug dealer?

10 A. Yeah.

11 Q. And would I be correct in saying again that he had his own
12 independent drug operation?

13 A. Probably. I would -- I guess so.

14 Q. You also testified at times you sent money to people who
15 were in jail because Jimmy told you to, right?

16 A. Yeah.

17 Q. And would I be correct in saying that Jimmy also told you
18 to send your dad some money in jail?

19 A. I don't remember that, no, but he could have.

20 Q. Your dad never worked for Jimmy, did he?

21 A. No.

22 Q. And during the period of 2007 after that when you became
23 his driver, Jimmy was traveling a lot outside of New York City,
24 right?

25 A. Right.

hbdnros4

Williams - cross

- 1 Q. On music business?
- 2 A. Right.
- 3 Q. And movie business?
- 4 A. Right.
- 5 Q. And there would be plenty of time that he wasn't in New
6 York City at all, right?
- 7 A. Right.
- 8 Q. Would I be correct in saying that he still paid you for
9 those weeks that he was not in New York City?
- 10 A. Right.
- 11 Q. During those weeks when he was paying you when he wasn't
12 there, you were doing other things, right?
- 13 A. Other things like what?
- 14 Q. Anything else besides driving Jimmy. You weren't just
15 sitting there doing nothing, right?
- 16 A. Right.
- 17 Q. I believe you testified that when Jimmy was in New York
18 City he would not give you a lot of information about where you
19 were going why you were going there or who he was meeting,
20 right?
- 21 A. Not all the time, no.
- 22 Q. However, you would get an e-mail from Jimmy's assistant
23 with Jimmy's schedule for the day, right?
- 24 A. Yeah.
- 25 Q. And that tell you where you had to drive Jimmy and what

hbdnros4

Williams - cross

1 time you had to drive him there, right?

2 A. Right.

3 Q. And, when you got those e-mails, that is all the
4 information you got, right?

5 A. Sometimes, yeah.

6 Q. Excuse me. And the information was pick Jimmy up -- I am
7 just making things up -- pick Jimmy up at 3 o'clock and drive
8 him to 120th Street, right?

9 A. Pretty much just have some of his meetings in there and
10 stuff, yeah, something like that.

11 Q. Would I be correct in saying that most of the time you did
12 not attend those meetings?

13 A. Right.

14 Q. You stayed in the car?

15 A. Right.

16 Q. And Jimmy did not come in the car and say, Hey, Jason, I
17 just did X, Y, and Z, right?

18 A. Right.

19 Q. He kept the information to himself?

20 A. Right.

21 Q. The fact that Jimmy kept all this information to himself
22 did not stop you from fulfilling your task, right?

23 A. Right.

24 Q. You drove him to the spot he had to drive to?

25 A. Right.

hbdnros4

Williams - cross

1 Q. And that was your task?

2 A. Yes.

3 Q. Would I also be correct in saying that in around 2008 Jimmy
4 started spending a great deal of time in Florida.

5 A. Yes.

6 Q. Basically he would go down on Thursdays and come back on
7 Monday, right?

8 A. Yeah.

9 Q. During the time that you saw Jimmy, did you ever see him
10 kill anybody?

11 A. No.

12 Q. Did you ever see him say to anyone to go kill someone?

13 A. No.

14 Q. Did you ever hear Jimmy tell someone to shoot someone?

15 A. No.

16 Q. Never?

17 A. No.

18 Q. Did you ever did you ever hear him say, Go clap that person
19 up?

20 A. No.

21 Q. Or any other idiom for shooting?

22 A. No.

23 Q. If I am correct, you were with Jimmy when Jimmy did shoot
24 at certain or attempt to shoot at certain individuals or
25 certain cars or certain buildings, correct?

hbdnros4

Williams - cross

- 1 A. Yes.
- 2 Q. And during those shootings did anybody die?
- 3 A. No.
- 4 Q. And all those shootings took place that you were with Jimmy
5 after his son was slapped?
- 6 A. Yeah.
- 7 Q. Each time that one of these shootings occurred, did Jimmy,
8 after the shooting when nobody died, say, Damn, I wish I would
9 have killed somebody with that shooting?
- 10 A. No.
- 11 Q. Did Jimmy ever express any upset about not killing anybody?
- 12 A. No.
- 13 Q. And did you hear Jimmy react to other shootings that were
14 taking place?
- 15 A. Not -- I mean like what?
- 16 Q. Like shootings that Mr. Stewart might have done for Jimmy?
- 17 A. No.
- 18 Q. OK. By the way, do you remember -- withdraw that question.
19 Would I be correct in saying that 50 Cent and Jimmy
20 had a rocky relationship?
- 21 A. Yeah.
- 22 Q. And would I be correct in saying that this rocky
23 relationship began when 50 sued Jimmy back in 2003 over the
24 Tombstone incident?
- 25 A. Right.

hbdnros4

Williams - cross

1 Q. And 50 actually sued Jimmy for that, right?

2 A. Right.

3 Q. And that started, what you thought started the bad blood
4 between Jimmy and 50, right?

5 A. Right.

6 Q. Because 50 had felt that Jimmy embarrassed him in the
7 public, right?

8 MR. ENZER: Objection.

9 THE COURT: Sustained.

10 Q. If you know.

11 Did you know that 50 felt that Jimmy embarrassed him
12 in public?

13 THE COURT: Sustained.

14 MR. TOUGER: OK.

15 Q. You testified on direct, I believe, that you learned that
16 Lowell Fletcher was out of jail from the news, right?

17 A. No.

18 Q. You didn't say that on direct just a couple of hours ago?

19 A. That he got out of jail, that I learned that from the news?

20 Q. Right.

21 A. No.

22 Q. OK. Now, you said that you drove Jimmy to certain meetings
23 with Slim, Mr. McCleod, correct?

24 A. Right.

25 Q. And would it be fair to say that you did not participate in

hbdnros4

Williams - cross

1 those discussions between Mr. McCleod and Jimmy?

2 A. Yeah.

3 Q. You were not present when they were talking?

4 A. Sometimes I might have been.

5 Q. Do you remember any of those conversations?

6 A. No.

7 Q. Now, would it be fair of me to say that, but for the
8 incident when you went up to the Bronx the night before the
9 shooting, you were not involved in any of the planning of the
10 shooting of Lowell Fletcher?

11 A. Besides I guess, unless you count Queens, going to
12 Queensboro and stuff like that.

13 Q. That was an actual something you did, right?

14 A. Right.

15 Q. You were not involved in any of the planning of what you
16 were supposed to do, correct?

17 A. No.

18 Q. And you had no discussions with Jimmy about planning the
19 shooting of Lowell Fletcher?

20 A. No.

21 Q. And I believe you testified on direct that, even going to
22 Queensboro, you don't remember who told you to go to
23 Queensboro?

24 A. No.

25 Q. Now, would I also be correct in saying that the only people

hbdnros4

Williams - cross

1 who showed up in Queensboro were you and Mr. McCleod?

2 A. Right.

3 Q. That Derrick didn't even show up, right?

4 A. Right.

5 Q. And you testified that you were not armed that day,
6 correct?

7 A. Right.

8 Q. Would I also be correct in saying that you knew that
9 Mr. McCleod was not armed that day?

10 A. Right.

11 Q. And would I also be correct in saying that when you got to
12 Queensboro Mr. Fletcher had already left?

13 A. I believe so.

14 Q. And there was no plan for you to get there really early so
15 you could get there before Mr. Fletcher had left the area?

16 A. I don't remember.

17 Q. And by the way, did you tell Jimmy that you were going --
18 withdrawn.

19 Did you tell Jimmy that you missed Lowell in Queens?

20 A. More than likely if -- yeah.

21 Q. Well, do you remember telling him or no?

22 A. No, I don't.

23 Q. Do you remember Jimmy ever being upset by the fact that you
24 missed seeing Mr. Lowell Fletcher in Queens that day?

25 A. No.

hbdnros4

Williams - cross

1 Q. And would it be fair to say that Jimmy had not given you
2 the .22 on that day?

3 A. Yeah.

4 Q. And would it also be fair to say that there had been no
5 discussion about the .22 on that day?

6 A. Yeah.

7 Q. I believe you testified on direct that the first time you
8 found out that Rodney Johnson was present at the scene of the
9 shooting was after the shooting had occurred and you met up in
10 Harlem?

11 A. Right.

12 Q. And so you were not privy to any discussions that made
13 Rodney Johnson go to the shooting?

14 A. Right.

15 Q. And you also do not even know the name of the individual
16 who was with Rodney Johnson that night?

17 A. Right.

18 Q. And you don't remember ever meeting that individual before?

19 A. Right.

20 Q. And obviously you have no idea of why Rodney Johnson was
21 even there?

22 A. Right.

23 Q. Rodney Johnson had not talked to you about the shooting
24 prior to the shooting occurring?

25 A. Right.

hbdnros4

Williams - cross

1 Q. Can we also agree that Jimmy never gave you any
2 instructions to give to Brian McCleod about the shooting?

3 A. Right.

4 Q. All he did was tell you, and correct me if I'm wrong, is
5 give the gun, the .22 to someone that night?

6 A. Right.

7 Q. Did he tell you who to give the gun to?

8 A. No.

9 Q. Can we agree that when you arrived on the scene of the
10 shooting that you asked Slim, Mr. McCleod, to do the shooting
11 that night?

12 A. No.

13 Q. That did not happen?

14 A. That I asked Slim to do it?

15 Q. Right.

16 A. No.

17 Q. That did not happen?

18 A. No.

19 Q. By the way, the night before the shooting you went up to
20 that area to pick a spot, right?

21 A. Right.

22 Q. For the shooting?

23 A. Right.

24 Q. And the spot you picked was where? Would you show that
25 again?

hbdnros4

Williams - cross

- 1 A. Around here.
- 2 Q. I'm sorry. I didn't see that. It didn't reflect.
- 3 What street is that?
- 4 A. Mt. Eden.
- 5 Q. Is there a McDonald's in that area?
- 6 A. Yeah.
- 7 Q. Where?
- 8 A. On Jerome.
- 9 Q. Could you just point to that on the diagram?
- 10 A. There.
- 11 Q. So the McDonald's was a full block and a half away from the
- 12 spot you had picked for the shooting?
- 13 A. Correct.
- 14 Q. Can we also agree that Jimmy never gave you any
- 15 instructions to give to Derrick on the night of the shooting?
- 16 A. Right.
- 17 Q. Or any other time prior to the shooting?
- 18 A. Right.
- 19 Q. Did you have the .22 in your possession or did Jimmy have
- 20 it in his possession prior to the shooting?
- 21 A. I had it.
- 22 Q. So all Jimmy said to you was bring the .22 with you that
- 23 night?
- 24 A. Right.
- 25 Q. Nothing else?

hbdnros4

Williams - cross

- 1 A. Right.
- 2 Q. And who did you give the .22 to?
- 3 A. Derrick.
- 4 Q. When?
- 5 A. That night in the car.
- 6 Q. After you had already parked?
- 7 A. Right.
- 8 Q. And after Slim had already left the vehicle?
- 9 A. Right.
- 10 Q. Can we also agree that Jimmy did not tell you to get rid of
- 11 the gun until after the shooting had occurred?
- 12 A. Right.
- 13 Q. If I remember your testimony correctly, you never saw the
- 14 shooting occur?
- 15 A. Right.
- 16 Q. You were around the corner on a different street, right?
- 17 A. Right.
- 18 Q. And Jimmy never told you anything about shooting Lowell
- 19 Fletcher, right?
- 20 A. No.
- 21 Q. Didn't even say clap him up?
- 22 A. No.
- 23 Q. Didn't say take care of it?
- 24 A. No.
- 25 Q. Now, these prior gun arrests that you had, as you said,

hbdnros4

Williams - cross

- 1 they had nothing to do with Jimmy, right?
- 2 A. Right.
- 3 Q. But Jimmy still paid your bail, right?
- 4 A. Yeah.
- 5 Q. He also paid for your private lawyer, right?
- 6 A. Right.
- 7 Q. I want to go to the time where you decided to cooperate
- 8 with the government. OK?
- 9 A. OK.
- 10 Q. And you met with the government on quite a few occasions,
- 11 am I correct?
- 12 A. Right.
- 13 Q. Would I be correct in saying that you met with them nine
- 14 times in just the last six or seven weeks alone?
- 15 A. Yeah.
- 16 Q. You met with them on 9/27?
- 17 A. Yes.
- 18 Q. On October 11?
- 19 A. Yes.
- 20 Q. October 17?
- 21 October 19?
- 22 THE COURT: I'm not hearing any answers.
- 23 A. Yeah.
- 24 Q. Yes, correct?
- 25 A. Yes.

hbdnros4

Williams - cross

- 1 Q. To all of those dates?
- 2 A. Yes.
- 3 Q. And you met with them on October 24?
- 4 A. Yes.
- 5 Q. October 26?
- 6 A. Yes.
- 7 Q. October 30?
- 8 A. Yes.
- 9 Q. November 1?
- 10 A. Yes.
- 11 Q. And November 7, just a couple of days before you testified,
- 12 right?
- 13 A. Right.
- 14 Q. And some of these meetings would last quite a long time, am
- 15 I correct?
- 16 A. Right.
- 17 Q. Hours?
- 18 A. Right.
- 19 Q. And let me ask you this, did you need all that time with
- 20 the government just to tell the truth?
- 21 A. No.
- 22 Q. But they kept you there anyway?
- 23 A. Yeah.
- 24 Q. Asking you questions after questions and you giving
- 25 answers?

hbdnros4

Williams - cross

1 A. Yeah.

2 Q. And did they ever suggest to you answers to questions that
3 were going to be asked of you?

4 A. No.

5 Q. For instance, did they ever say to you, If I ask you what
6 your job is, tell them your job is to tell the truth?

7 A. No.

8 Q. It is just coincidence that you and Abdullah and Stewart
9 answered that question the same way?

10 A. I mean, they don't tell you to say that. They tell you
11 that's what it is.

12 Q. And how many times do you think you've told them the story
13 of Lowell Fletcher getting shot?

14 A. Quite a few.

15 Q. So the government would I be correct in saying had full
16 knowledge of what you were going to say on this witness stand?

17 A. Yeah.

18 Q. Nothing you have said here today is surprising them?

19 THE COURT: Sustained.

20 Q. There's nothing you said here today that you haven't
21 already told them?

22 A. Right.

23 Q. So the government knew full well your version of the truth
24 of this incident before you ever sat down in this courtroom?

25 A. Right.

hbdnros4

Williams - cross

1 Q. And that's when they agreed to give you your Rule 35
2 motion?

3 A. Right.

4 Q. That motion that you wish gets you out of jail by the end
5 of this year?

6 A. Right.

7 Q. That's just like you were hoping to get when you first
8 decided to cooperate back in the spring of 2017?

9 A. Right.

10 Q. And when you went up to the Bronx that night, isn't it true
11 that you only went up to the Bronx that night to drive those
12 two individuals to the scene?

13 A. Right.

14 Q. You had nothing to do with the shooting of Lowell Fletcher
15 whatsoever?

16 MR. ENZER: Objection.

17 THE COURT: Sustained.

18 Q. You had nothing to do with the actual firing of the gun
19 whatsoever?

20 A. Right.

21 Q. Your job was merely to drive those two individuals to that
22 scene?

23 A. Right.

24 Q. And you had no idea whether they were going to kill Lowell
25 Fletcher that night or shoot him because you had been involved

HBCNR0S4

Williams - redirect

1 in none of the planning of this incident?

2 A. Right.

3 MR. TOUGER: Nothing further, your Honor.

4 THE COURT: All right. Thank you.

5 Redirect.

6 REDIRECT EXAMINATION

7 BY MR. ENZER:

8 Q. Mr. Williams, you were just asked questions on
9 cross-examination regarding your knowledge of whether certain
10 other people were cooperating.

11 Do you remember those questions?

12 A. Yes.

13 Q. Did the government ever tell you who its witnesses are in
14 this case?

15 A. No.

16 Q. Did the government ever tell you what the testimony of
17 those witnesses would be?

18 A. No.

19 Q. Did the government ever provide you with a transcript of
20 the testimony of other witnesses in this case?

21 A. No.

22 Q. Did the government ever give you exhibits it was going to
23 show you -- I'm sorry. Scratch that.

24 Did the government ever tell you what its evidence in
25 this case was apart from whatever information you would tell

HBCNR0S4

Williams - redirect

1 the jury?

2 A. No.

3 Q. How did you come to learn or suspect that other people were
4 cooperating?

5 A. Like I said, I had already knew they cooperated before.

6 Q. OK. Given that the government from your belief had access
7 to other witnesses with information about this case, would you
8 dare to lie on the stand?

9 MR. TOUGER: Objection, your Honor.

10 THE COURT: Rephrase it.

11 BY MR. ENZER:

12 Q. You knew the government had witnesses with information
13 about this case, right?

14 A. Yeah.

15 Q. In other words, you knew that there were people the
16 government could talk to to learn whether or not you're telling
17 the truth, right?

18 A. Yeah.

19 Q. The government has ways of fact checking what you tell the
20 government and the jury, correct?

21 A. Right.

22 Q. Given that, given the government's ability to check what
23 you are saying, would you dare to lie to this jury?

24 MR. TOUGER: Objection, your Honor.

25 THE COURT: Rephrase it.

HBCNR0S4

Williams - redirect

1 Q. Given your awareness that the government can check what you
2 have to say, would you lie to this jury?

3 A. No.

4 Q. Why not?

5 A. It wouldn't make sense.

6 Q. Mr. Touger asked you questions about what instructions the
7 government may have given you when you met with the government
8 during proffers.

9 Do you remember those questions?

10 A. Yeah.

11 Q. Did the government give you a script of what you are
12 supposed to say on the stand?

13 A. No.

14 Q. Did the government tell you how to answer questions?

15 A. No.

16 Q. What were you told to do?

17 A. Tell the truth.

18 Q. And what did the government do in those meetings?

19 A. Just take notes.

20 Q. And asked questions?

21 A. And asked questions.

22 Q. Mr. Touger asked you questions about how long it took you
23 to decide to cooperate.

24 Do you remember those questions?

25 A. Yeah.

HBCNR0S4

Williams - redirect

1 Q. How many years were you in prison before you decided
2 ultimately to cooperate?

3 A. Five years.

4 Q. Why did it take you so long?

5 MR. TOUGER: Objection, your Honor.

6 May we approach? I think it's important.

7 THE COURT: All right.

8 (Continued on next page)

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HBCNR0S4

Williams - redirect

1 (At sidebar)

2 THE COURT: What is it, Mr. Touger.

3 MR. TOUGER: Your Honor, I had specifically stayed
4 away from this question because we had agreed prior to trial
5 that part of the reason that all of these people cooperated was
6 that they thought or had heard of or had some inkling that
7 Jimmy had tried to cooperate. I just didn't want this sort of
8 open-ended question. I didn't want that. That's why we had
9 agreed when Elizabeth was cross-examining Mr. Abdullah, direct
10 examining Mr. Abdullah that she would lead him on that spot. I
11 didn't want to have that come out at this point. I didn't know
12 what the answer was going to be, but I don't want it to come
13 out that he thought that Jimmy was cooperating, because that is
14 one of the reasons he may have cooperated.

15 THE COURT: That is maybe your view of it. I don't
16 know that.

17 MR. TOUGER: He says that in a letter to his family.

18 THE COURT: Who knows whether that's true.

19 MR. ENZER: I don't think that is what he would say
20 given that he pleaded guilty. His first action in the case
21 after learning or suspecting that Jimmy had cooperated was to
22 plead guilty. So, without a cooperation agreement. I don't
23 think the decision to cooperate is tied to Jimmy being a
24 suspected cooperator, but I will rephrase the question to limit
25 it. I am not trying to elicit that.

HBCNR0S4

Williams - redirect

1 MR. TOUGER: I know you are not.

2 MR. ENZER: I can ask a more narrow question.

3 That is fine.

4 THE COURT: All right.

5 To avoid another sidebar, I don't know what your
6 question will be exactly, but just to anticipate, you have
7 painted a picture for the jury of what you think is the reason
8 he decided to cooperate. In light of that, it seems to me in
9 principle he's entitled to say why he did.

10 MR. TOUGER: Your Honor, in the letter that he wrote
11 to his friend, he points out the reason he decided to
12 cooperate, he lists a few reasons. That's why, if you
13 remember, my question was "one of the reasons" not "the
14 reason."

15 THE COURT: So let me just rephrase it.

16 To include also why he didn't cooperate earlier,
17 another focus of your cross.

18 MR. TOUGER: He said that why. It went against his
19 morals and his values. That is how he answered that question.

20 THE COURT: I remember that phrase. I am not sure
21 that is exactly what the question was. I think you asked him a
22 leading question, and he accepted your premise.

23 MR. TOUGER: Yes.

24 THE COURT: It doesn't mean it's the only reason.
25 Maybe he was afraid of a shiv in the back.

HBCNR0S4

Williams - redirect

1 MR. TOUGER: He never says that anywhere, your Honor.

2 THE COURT: Let's find out if that's what we are about
3 here.

4 (Continued on next page)

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HBCNR0S4

Williams - redirect

1 (In open court)

2 THE COURT: Rephrase the question, Mr. Enzer.

3 BY MR. ENZER:

4 Q. Mr. Williams, you waited a number of years before deciding
5 to cooperate in this case, is that right?

6 A. Yes.

7 Q. Was it easy for you to decide to cooperate against
8 Rosemond?

9 A. No.

10 Q. Why is that?

11 A. He's like family to me.

12 Q. Did you take steps to try to exhaust every way you could to
13 get out of doing 24 years before you decided to cooperate?

14 A. Maybe not.

15 Q. Well, Mr. Touger asked you about filing a 2255, correct?

16 A. Yes.

17 Q. That was denied?

18 A. Yeah.

19 Q. You were out of options, right?

20 A. Right.

21 Q. But, as you mentioned, Jimmy is somebody who was close to
22 you, is that right?

23 A. Right.

24 Q. You don't have an ax to grind against him, right?

25 A. No.

HBCNR0S4

Williams - redirect

1 Q. Mr. Touger, the defense lawyer, asked you questions on
2 cross-examination about what, if any, promises were made to you
3 for your cooperation.

4 MR. TOUGER: Your Honor, could I have that question
5 read back, please.

6 THE COURT: Sure.

7 (Record read)

8 BY MR. ENZER:

9 Q. Do you remember those questions?

10 A. Yeah.

11 Q. He asked you specifically on cross-examination about
12 whether you had told somebody that the government promised you
13 you would be home this summer or later this year.

14 Do you remember those questions?

15 A. Yeah.

16 Q. Did the government ever promise you when you would get
17 home?

18 A. No.

19 Q. What promises were made to you by the government?

20 A. It was just that they could put in a motion to help reduce
21 my time.

22 Q. Does the motion guarantee you get a reduction?

23 A. No.

24 Q. Who decides whether you get a reduction?

25 A. The judge.

HBCNR0S4

Williams - redirect

1 Q. Mr. Touger asked you questions about the discussion, the
2 interview you had with agents from the DEA in 2010.

3 Do you remember those questions?

4 A. Yeah.

5 Q. Is it fair to say you lied to the agents in 2010?

6 A. Yeah.

7 Q. Was that before or after you were arrested on federal
8 charges?

9 A. Before.

10 Q. Why did you lie to the agents?

11 A. Because, you know, I wasn't going to tell them the truth at
12 the time.

13 Q. What would happen if you told them, Hey, I was part of a
14 murder team?

15 A. They probably would have arrested me then.

16 Q. Was that meeting before or after you entered into a
17 cooperation agreement with the government?

18 A. Before.

19 Q. Did you lie in any of your testimony before this jury?

20 A. No.

21 Q. Do you believe it would be in your interest to lie to this
22 jury?

23 A. No.

24 Q. Why not?

25 A. Because it would all be for nothing.

HBCNR0S4

Williams - redirect

1 Q. What would all be for nothing?

2 A. I wouldn't get a time reduction.

3 Q. Would you face additional charges?

4 A. Yeah.

5 Q. And you would have to serve out your sentence plus whatever
6 time you get for the additional charges, is that right?

7 A. Right.

8 Q. How do you think you would fare if you had to go back to
9 prison as somebody who had testified in a public trial?

10 A. Not good.

11 Q. Would it be worse than just doing the time you already
12 have?

13 A. Probably.

14 Q. Mr. Touger asked you questions on cross about the incident
15 you described where you picked up a bag with guns from Mega,
16 for Jimmy. Do you remember those questions?

17 A. Yes.

18 Q. After you picked up the bag, what did you tell Jimmy?

19 A. That I got them, that I got it.

20 Q. Mr. Touger asked, he asked you whether you told Jimmy you
21 were holding the bag.

22 Is that what you said to Jimmy?

23 A. No.

24 Q. What did you say to Jimmy?

25 A. I probably just told him that, that I'm like, I'm like home

HBCNR0S4

Williams - redirect

1 or I got it, just let him know basically that I did what he
2 asked me to do.

3 Q. Mr. Touger asked you questions on cross-examination about
4 why you had stash compartments installed in your Nissan Altima.
5 Do you remember those questions?

6 A. Yeah.

7 Q. Whose idea was it is to install those compartments?

8 A. Jimmy's.

9 Q. Who paid for it?

10 A. Jimmy.

11 Q. Mr. Touger asked you questions on cross-examination about
12 whether Jimmy kept information to himself after attending
13 meetings.

14 Do you remember those questions?

15 A. Yeah.

16 Q. Were you saying that Jimmy always, in every single
17 situation never told you what happened in a meeting, or are you
18 saying that's generally what happened?

19 A. That's generally what happened.

20 Q. You were asked questions on cross-examination about whether
21 you had any discussions with Rosemond regarding the planning of
22 the murder of Fletcher.

23 Do you remember those questions?

24 A. Yes.

25 Q. Did you have a conversation with Jimmy before you went to

HBCNR0S4

Williams - redirect

1 the Bronx to find a spot for the murder?

2 A. No.

3 Q. Well, who asked you to go?

4 A. He did. He just asked me to go. It wasn't much of a
5 conversation.

6 Q. But he spoke to you, right?

7 He said words to you?

8 A. No, it was on e-mail.

9 Q. So he wrote words to you?

10 A. Right.

11 Q. That is a conversation, right?

12 A. Right.

13 Q. So what did Jimmy say to you before you went to find a spot
14 for the murder?

15 A. To pick out a spot somewhere with, you know, no cameras.

16 Q. That was an example of a conversation or a communication
17 regarding a murder with Jimmy before the murder, right?

18 A. Right.

19 Q. Is it fair to say that is a conversation regarding the
20 planning of the murder, right?

21 A. Yeah.

22 Q. Picking a spot is relevant to the planning of the homicide,
23 true?

24 A. Yeah.

25 Q. Mr. Touger asked you questions about whether or not you

HBCNR0S4

Williams - redirect

1 knew why Rodney Johnson, Toree, was present for the murder of
2 Lowell Fletcher.

3 Do you remember those questions?

4 A. Yeah.

5 Q. Did Rodney Johnson have any beef with Lowell Fletcher?

6 MR. TOUGER: Objection, your Honor.

7 THE COURT: Ground?

8 MR. TOUGER: There's no way he knows the full thinking
9 of Rodney Johnson about anything.

10 THE COURT: Rephrase.

11 Q. To your knowledge, did Rodney Johnson have any beef with
12 Lowell Fletcher?

13 MR. TOUGER: Objection.

14 THE COURT: Rephrase it.

15 Q. Did you have conversations with Rodney Johnson before the
16 murder of Lowell Fletcher?

17 A. No.

18 Q. You never spoke to Rodney Johnson before the murder?

19 A. No.

20 Q. How about when you met him at the studio?

21 MR. TOUGER: Objection your Honor.

22 MR. ENZER: I think the witness is confused.

23 THE COURT: Overruled.

24 MR. TOUGER: He would like to challenge his own
25 witness.

HBCNR0S4

Williams - redirect

1 THE COURT: Mr. Touger, the ruling was made.
2 Everything you said afterward should not have been
3 uttered.

4 Let's go on.

5 BY MR. ENZER:

6 Q. You met Rodney years before the murder, right?

7 A. Right.

8 Q. You didn't meet him for the first time on the night of the
9 murder, right?

10 A. Right.

11 Q. He's somebody you knew beforehand, right?

12 A. Yeah.

13 Q. You testified on direct examination Rodney was somebody who
14 was part of Jimmy's drug organization, is that right?

15 A. Yeah.

16 Q. He was a distributor for Jimmy, right?

17 A. Yeah.

18 Q. So you had conversations with Rodney Johnson maybe not
19 about the murder, but conversations before the murder, right?

20 A. Yeah.

21 Q. Now, from your dealings with Rodney before the murder of
22 Lowell Fletcher, did you ever have any conversation with Rodney
23 where he mentioned having a problem with Lowell Fletcher?

24 A. No.

25 MR. TOUGER: Objection, your Honor.

HBCNR0S4

Williams - redirect

1 THE COURT: Overruled.

2 Q. You can answer the question.

3 A. No.

4 Q. To your knowledge, did Rodney have a problem with Lowell
5 Fletcher?

6 MR. TOUGER: Objection, your Honor.

7 THE COURT: Sustained.

8 Q. Did Rodney have a relationship with Jimmy?

9 A. Yeah.

10 Q. Was the murder of Lowell Fletcher Rodney Johnson's idea?

11 MR. TOUGER: Objection, your Honor.

12 How would he know that?

13 MR. ENZER: He is a participant in the murder.

14 THE COURT: Sustained as to form.

15 BY MR. ENZER:

16 Q. To your knowledge, was the murder of Lowell Fletcher the
17 brainchild of Rodney Johnson?

18 MR. TOUGER: Objection.

19 THE COURT: It's not getting better, Mr. Enzer.

20 MR. ENZER: OK.

21 BY MR. ENZER:

22 Q. You were asked questions about whether Rosemond
23 specifically told you give the gun to Grant, tell Grant to
24 shoot Fletcher and details like that.

25 Do you remember those questions?

HBCNR0S4

Williams - redirect

1 A. Yeah.

2 Q. When you drove Jimmy did he say put the car in gear?

3 A. No.

4 Q. Did he say press the accelerator?

5 A. No.

6 Q. Did he say stop at lights?

7 A. No.

8 Q. What would he say to you if he wanted you to drive
9 someplace?

10 A. He would tell me where to go.

11 Q. You were asked questions on cross about whether the
12 government agreed to file a motion to reduce your sentence
13 after hearing what you had to say in proffers.

14 Do you remember those questions?

15 A. Yeah.

16 Q. After hearing your account of the facts in proffers, did
17 the government say you are a definitely getting a Rule 35?

18 A. No.

19 Q. What did the government agree to do?

20 A. As far as what?

21 Q. As far as what do you get -- what did the government
22 promise you for your cooperation?

23 A. That they would put a motion in to the judge.

24 Q. If you do what?

25 A. If I testify to the truth.

HBCNR0S4

Williams - redirect

1 Q. You were asked questions on cross about whether you ever
2 heard Jimmy say clap somebody up or use words to that effect in
3 connection with the murder of Lowell Fletcher.

4 Do you remember those questions?

5 A. Yeah.

6 MR. TOUGER: Your Honor, that was not my question.

7 Can we approach?

8 THE COURT: No.

9 Answer the question, please.

10 A. Yeah.

11 Q. When you agreed to bring Rosemond's .22 caliber with a
12 silencer to the spot on Mt. Eden Avenue that had been selected
13 for the attack on Fletcher, what was your understanding of why
14 the gun was needed?

15 MR. TOUGER: Objection, your Honor.

16 THE COURT: Sustained.

17 Q. When Rosemond asked you to bring his .22 with a silencer --
18 scratch that.

19 MR. ENZER: Your Honor, can we approach on that last
20 question?

21 THE COURT: No.

22 Q. How many conversations did you have with Rosemond before
23 the murder of Lowell Fletcher?

24 MR. TOUGER: What time period?

25 THE COURT: Probably hundreds of thousands.

HBCNR0S4

Williams - redirect

1 Let's take a break here and come back in 10 or 15
2 minutes.

3 (Recess)

4 THE COURT: The defendants and the jurors all are
5 present.

6 You may continue, Mr. Enzer?

7 BY MR. ENZER:

8 Q. Mr. Williams, we are almost done. I just want to ask you
9 about the very last question Mr. Touger asked you on
10 cross-examination, the very last question, to refresh you, was
11 what I would call a compound question.

12 You were asked whether --

13 THE COURT: Strike that. Just ask him the question.

14 Q. Do you remember being asked whether --

15 MR. TOUGER: Objection, your Honor. What is the basis
16 for asking this?

17 THE COURT: I don't understand you, Mr. Touger, once
18 again.

19 MR. TOUGER: Objection. There is no testimony that is
20 against that question at this point.

21 THE COURT: So far I haven't heard the question.

22 BY MR. ENZER:

23 Q. Do you remember being asked in the very last question on
24 cross whether you had any idea that Fletcher was going to be
25 killed or shot on the day when you went to Mt. Eden Avenue

HBCNR0S4

Williams - redirect

1 because you had no involvement in the planning of this
2 incident?

3 Do you remember being asked that question?

4 A. Yeah.

5 Q. I want to focus first on the second part of the question,
6 the planning. OK?

7 A. OK.

8 Q. Did you go to Queensboro Correctional Facility with McCleod
9 before the murder?

10 A. Yes.

11 Q. Who asked you to go?

12 A. Jimmy.

13 Q. Did you go to Mt. Eden Avenue prior to the murder?

14 A. Yeah.

15 Q. Who did you go with?

16 A. McCleod and Grant.

17 Q. Who asked you to go?

18 A. Jimmy.

19 Q. When he asked you what did you say?

20 A. To pick a spot up out for -- with no cameras.

21 Q. Let me now focus on the day of the murder itself.

22 When you went to Mt. Eden on that day, did you bring
23 anything with you?

24 A. Yes.

25 Q. What did you bring?

HBCNR0S4

Williams - redirect

1 A. A gun.

2 Q. Why did you do that?

3 A. Jimmy asked me to.

4 Q. When you went with the gun to Mt. Eden Avenue on that day,
5 what did you believe was going to happen to Fletcher?

6 MR. TOUGER: Objection, your Honor.

7 THE COURT: Sustained.

8 Q. What was the purpose of going to Mt. Eden Avenue that day
9 with a gun?

10 MR. TOUGER: Objection, your Honor.

11 Same question.

12 MR. ENZER: Your Honor, can we approach.

13 THE COURT: Yes.

14 (Continued on next page)

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HBCNR0S4

Williams - redirect

1 (At sidebar)

2 MR. ENZER: Your Honor, I believe the defense has
3 opened the door to this by their last question on
4 cross-examination. The last question Mr. Touger asked the
5 witness, "You had no idea when you went to Mt. Eden that day
6 that whether Fletcher was going to be shot or killed because
7 you had no involvement in the planning."

8 The witness said, "Correct."

9 I don't think that is actually the substance -- I
10 don't think that is actually what the witness believes, but be
11 that as it may, the point here is they asked him about his
12 state of mind, whether he had any idea.

13 And I don't see how this -- if it is misleading, the
14 answer, I think probably the witness said it because he's tired
15 of cross, he just wanted to get it over with. I think I need
16 to clean it up.

17 THE COURT: What about it, Mr. Touger.

18 MR. TOUGER: I didn't asked him for his state of mind.
19 I asked him a perfectly factual question.

20 THE COURT: What was the factual question?

21 MR. TOUGER: Based on your lack of planning did you
22 have any idea what would was going to happen to Lowell
23 Fletcher.

24 THE COURT: So you think the question did you have any
25 idea does not call for a state of mind, is that correct?

HBCNR0S4

Williams - redirect

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MR. TOUGER: That's correct, your Honor.

THE COURT: Wrong.

(Continued on next page)

Hbdnros4

Williams - recross

1 (In open court)

2 THE COURT: The objection is overruled.

3 BY MR. ENZER:

4 Q. Mr. Williams, when you brought the gun that day, as Jimmy
5 asked you to, and went to Mt. Eden Avenue on the day of the
6 murder, what did you believe was going to happen to Fletcher?

7 A. That he was going to be killed.

8 MR. ENZER: No further questions.

9 THE COURT: Thank you.

10 Any recross?

11 MR. TOUGER: Yes, your Honor.

12 RECROSS EXAMINATION

13 BY MR. TOUGER:

14 Q. Why did you just change your mind?

15 MR. ENZER: Objection.

16 THE COURT: Sustained.

17 Q. Again, also, you testified just now that you went to
18 Queensboro because Jimmy told you to. On direct you said you
19 didn't remember who told you to. On cross you said you didn't
20 remember who told you to.

21 So why did you change your mind?

22 MR. ENZER: Objection.

23 THE COURT: Sustained.

24 Q. Did you not say on direct testimony yesterday that you
25 didn't know who told you, didn't remember who told you to go to

Hbdnros4

Williams - recross

1 Queensboro?

2 MR. ENZER: Objection.

3 THE COURT: Do you remember one way or the other,
4 Mr. Williams?

5 THE WITNESS: I remember that Jimmy asked me to get
6 with Slim. Whether that meant going -- Slim was the one who
7 told me to go to Queensboro. Jimmy put me with Slim.

8 BY MR. TOUGER:

9 Q. So Jimmy told you to get with Slim? That's all?

10 A. Yeah.

11 Q. Would I be correct in saying that Jimmy never told you in
12 any conversations about the Lowell Fletcher shooting who was to
13 do the shooting?

14 MR. ENZER: Objection.

15 Beyond the scope.

16 THE COURT: Sustained.

17 MR. TOUGER: It goes to planning. If we can approach?

18 MR. ENZER: We are on recross here.

19 THE COURT: We are on recross here.

20 MR. TOUGER: Right. And he brought this up on
21 redirect.

22 THE COURT: Sustained.

23 If you have a problem, you know where to take it?

24 MR. TOUGER: Can we go to direct, your Honor -- to the
25 bench, your Honor.

Hbdnros4

Williams - recross

1 THE COURT: You want to go to direct, your Honor.

2 MR. TOUGER: I said can we go to the bench, your
3 Honor?

4 THE COURT: No. Move on.

5 BY MR. TOUGER:

6 Q. Mr. Enzer brought up on redirect that you had to put your
7 car in gear to take Jimmy someplace, correct?

8 A. Right.

9 Q. Do you remember that line of questioning?

10 A. Right.

11 Q. Jimmy told you to take him somewhere, right?

12 A. Yeah.

13 Q. And to do that you obviously would have to drive him there,
14 right?

15 A. Right.

16 Q. You couldn't complete the task without putting your car in
17 drive, right?

18 A. Right.

19 Q. But Jimmy told you enough information for you to complete
20 the task he wanted you to do, correct?

21 A. Correct.

22 Q. He would give you an address and say drive there?

23 A. Right.

24 Q. Because that's the task you were supposed to complete?

25 A. Right.

Hbdnros4

Williams - recross

1 Q. He didn't have to tell you how to complete the task. He
2 just had to tell you the task, am I correct?

3 A. Right.

4 Q. He also asked you questions about the picking up the bag of
5 guns.

6 Do you remember that?

7 A. Yeah.

8 Q. And, again, he gave you a task to do, which is pick
9 something up from his former driver?

10 A. Right.

11 Q. You did that task?

12 A. Yeah.

13 Q. You completed that task?

14 A. Yeah.

15 Q. And you told Jimmy you completed that task?

16 A. Right.

17 Q. So he didn't give you any further information except the
18 information you needed to complete the task?

19 A. Right.

20 Q. You testified about the compartments on redirect.

21 Do you remember that?

22 A. Yeah.

23 Q. The secret compartments?

24 A. Yeah.

25 Q. That Jimmy paid for?

Hbdnros4

Williams - recross

1 A. Yeah.

2 Q. Jimmy also paid for your bail and your private lawyer on
3 the gun case that had nothing to do with him, correct?

4 A. Right.

5 Q. You did that without any connection to him whatsoever?

6 A. Right.

7 Q. You knew Rodney Johnson to be a drug dealer, correct?

8 A. Yeah.

9 Q. And you knew that he had his own independent drug business,
10 correct?

11 A. Yeah.

12 Q. And the conversations you had with Rodney Johnson had to do
13 with the drug business, correct?

14 MR. ENZER: Objection.

15 Which conversations?

16 BY MR. TOUGER:

17 Q. Any of the conversations you had with Rodney Johnson about
18 illegal activity had to do about the drug business, correct?

19 MR. ENZER: Objection.

20 THE COURT: Any in the sense that there if were a
21 hundred and one had to do with something else, then the answer
22 is yes or does it mean that each and every one?

23 Your question is no good as to form.

24 BY MR. TOUGER:

25 Q. Did you have conversations with Rodney Johnson about

Hbdnros4

Williams - recross

1 illegal conduct?

2 A. Yeah.

3 Q. And those conversations about illegal conduct had do with
4 the drug business, correct?

5 A. Yeah.

6 Q. You did not have any conversations with Rodney Johnson
7 about any other illegal activity, did you?

8 A. No.

9 Q. And you never brought up Lowell Fletcher to Rodney Johnson
10 did you?

11 A. No.

12 Q. Either before, during, or after the shooting?

13 A. No.

14 Q. Am I correct in saying that the only planning you did for
15 the shooting of Lowell Fletcher was pick a spot where there's
16 no camera?

17 MR. ENZER: Objection.

18 THE COURT: Sustained.

19 Q. Did you do any other planning for the shooting of Lowell
20 Fletcher besides pick a spot where there's no camera?

21 MR. ENZER: Objection. I think we've covered this
22 extensively.

23 THE COURT: I would say so.

24 Move on.

25 MR. TOUGER: May I approach, your Honor?

Hbdnros4

Williams - redirect

1 THE COURT: No. Move on.

2 BY MR. TOUGER:

3 Q. By the way, the spot that you picked that night for the
4 shooting, the shooting didn't take place in that actual spot,
5 did it?

6 A. I'm not sure.

7 MR. TOUGER: Nothing further, your Honor.

8 THE COURT: All right.

9 Thank you.

10 MR. ENZER: Just one question.

11 THE COURT: I have heard that before.

12 MR. ENZER: It is only one.

13 REDIRECT EXAMINATION

14 BY MR. ENZER:

15 Q. Mr. Touger asked you whether you had any conversations
16 about illegal conduct with Toree.

17 Do you remember that question?

18 A. Yeah.

19 Q. You mentioned a conversation about Fletcher being on the
20 ground with Toree, is that right?

21 A. Right.

22 Q. Was that a conversation about illegal conduct?

23 A. Yeah.

24 MR. ENZER: No further questions.

25 THE COURT: All right.

Hbdnros4

Williams - recross

1 RE CROSS EXAMINATION

2 BY MR. TOUGER:

3 Q. That conversation happened after the shooting, correct?

4 A. Yeah.

5 Q. And Toree said to you he didn't know if Mr. Fletcher was
6 dead or not, correct?

7 MR. ENZER: Objection.

8 THE COURT: Answer the question.

9 A. No. He never said whether he was dead.

10 Q. Could you just expound on that so it's clear.

11 THE COURT: That is not a proper question.

12 Q. Did Mr. Johnson say he couldn't tell whether Mr. Fletcher
13 was dead or not?

14 MR. ENZER: Objection.

15 THE COURT: Overruled.

16 A. He never said if he was dead or not.

17 MR. TOUGER: Nothing further, your Honor.

18 THE COURT: Thank you.

19 MR. ENZER: Nothing further.

20 THE COURT: All right. The witness is excused.

21 (Witness excused)

22 THE COURT: Next witness.

23 MR. JOHNSON-SKINNER: Judge, at this time I will read
24 two stipulations to the jury with the Court's permission.

25 THE COURT: Go ahead.

Hbdnros4

Williams - recross

1 MR. JOHNSON-SKINNER: The first one is marked
2 Government Exhibit 1379.

3 It is hereby stipulated and agreed that, if called to
4 testify Geneva Eleutice would testify that she worked for the
5 New York City Police Department for at least approximately 22
6 years, and a detective with the NYPD for at least approximately
7 seven years.

8 As of March and April 2007 Eleutice was a police
9 officer with the 13th Precinct Detective Squad. The 13th
10 Precinct covers, among other areas, Chelsea and Manhattan.

11 On March 21, 2007 at approximately 9:30 p.m., James
12 Rosemond, Jr., who was approximately 14 years old, arrived at
13 the 13th Precinct wearing a black hooded sweatshirt with white
14 letters that read Czar.

15 Rosemond, Jr. is depicted in Government Exhibit 1008.

16 Rosemond Jr. was accompanied by an attorney and by his
17 mother Cynthia Reed. Eleutice interviewed Rosemond, Jr. for
18 approximately 30 to 45 minutes.

19 During the interview Rosemond, Jr. reported that he
20 had been assaulted by several men at approximately 6 p.m. on
21 March 20, 2007 at a location on 25th street between Sixth
22 Avenue and Broadway in Manhattan.

23 Following the interview, Eleutice wrote a police
24 report based on the assault reported by Rosemond, Jr., and took
25 various steps is to investigate the assault, including speaking

Hbdnros4

Williams - recross

1 with a witness who worked as a garage attendant on 25th Street
2 between Sixth Avenue and Broadway.

3 As part of her investigation of the assault, Eleutice
4 showed a photo ray to Rosemond, Jr. which included a photograph
5 of Marvin Bernard a/k/a Tony Yayo.

6 Rosemond, Jr. identified Bernard as one of the
7 assailants involved in the assault. That's photo array 1 as
8 initialed by Rosemond, Jr. as depicted in Government Exhibit
9 1201.

10 Judge, we will offer that at the end. If we could
11 display it now to the jury.

12 Eleutice also showed another --

13 THE COURT: I'm sorry.

14 You are going to have to exhibit that again.

15 MR. JOHNSON-SKINNER: This is 1201.

16 Eleutice also showed another photo array to Rosemond,
17 Jr., which included a photograph of Lowell Fletcher.

18 Rosemond, Jr. identified Fletcher as another of the
19 assailants involved in the assault by pointing Fletcher's
20 photograph in the upper left corner of photo array 2. Photo
21 array 2 is depicted in Government Exhibit 1202, which you can
22 see now.

23 On March 24, 2007, Bernard was arrested, and he was
24 subsequently charged with endangering the welfare of a child
25 assault in the third degree and harassment.

Hbdnros4

Williams - recross

1 In May 2007, Fletcher turned himself in to New York
2 City Police Department custody, and he was charged with
3 endangering the welfare of a child assault in the third degree
4 and menacing in the second degree.

5 It is further stipulated and agreed that this
6 stipulation, Government Exhibit 1379, and Government Exhibits
7 1201 and 1202 are admissible in evidence as government exhibits
8 at trial. We offer all of those.

9 THE COURT: They are received.

10 (Government's Exhibits 1201, 1202, and 1379 received
11 in evidence)

12 MR. JOHNSON-SKINNER: The second stipulation is
13 Government Exhibit 1300.

14 It's stipulated and agreed that Government Exhibit 150
15 is a compact disk containing true and correct copies of video
16 surveillance footage taken by several cameras in the vicinity
17 of Jerome Avenue and Mt. Eden Avenue, Bronx, New York, on
18 September 27, 2009.

19 Government Exhibits 150A through 150D contained on the
20 disk are copies of this surveillance footage.

21 Government Exhibits 150E through 150M are excerpts of
22 this surveillance footage.

23 It is further stipulated and agreed that Government
24 Exhibit 150, and 150A through M and this stipulation, as
25 Government Exhibit 1300 are admissible in evidence as

Hbdnros4

McCleod - direct

1 Government Exhibits at trial and we would offer all of those.

2 THE COURT: They are received.

3 MR. JOHNSON-SKINNER: Thank you.

4 (Government's Exhibits Exhibit 150, 150A through M,
5 and 1300 received in evidence)

6 THE COURT: Next witness.

7 MR. ENZER: The government calls Brian McCleod.

8 BRIAN McCLEOD,

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: You may proceed.

14 Q. Mr. McCleod, do you have a nickname?

15 A. Yeah, Slim.

16 Q. How old are you, sir?

17 A. 47.

18 Q. Where were you born?

19 A. Baltimore, Maryland.

20 Q. How far did you go in school?

21 A. I went to 12th grade, and then I did a little college.

22 Q. Have you ever pleaded guilty to any federal crimes?

23 A. Yes.

24 Q. What crimes?

25 A. Federal crimes I pleaded guilty to were, excuse me,

Hbdnros4

McCleod - direct

1 conspiracy to commit murder for hire and conspiracy to possess
2 and distribute 500 grams of cocaine or more.

3 Q. Was anyone murdered as a result of the murder for hire
4 conspiracy that you participated in?

5 A. Yes, they were.

6 Q. Who was the murder victim?

7 A. Lowell Fletcher.

8 Q. Do you know whether Fletcher had any nicknames?

9 A. Lodi Mack.

10 Q. Where did the murder occur?

11 A. In the west side of the Bronx, the vicinity of Jerome and,
12 Jerome Avenues and Mt. Eden Avenue, the Mt. Eden Avenue train
13 station.

14 Q. Approximately what month and year?

15 A. September 27, 2009.

16 Q. Did you participate in the murder alone or with others?

17 A. I participated with others.

18 Q. Who else committed the murder with you?

19 A. There was Jason Williams, Derrick Grant, James Rosemond,
20 and Toree Johnson.

21 Q. Anyone else?

22 A. There was another individual by the name of Shawn Williams.

23 Q. In this courtroom today do you see anyone who participated
24 with you in the murder?

25 A. Yes, I do.

Hbdnros4

McCleod - direct

1 Q. Who do you see?

2 A. I see Mr. Rosemond.

3 Q. Does Rosemond go by any other names?

4 A. Jimmy.

5 Q. Any others?

6 A. Jimmy Henchmen.

7 Q. Any others?

8 A. Jimmy Henchmen. For guys who knew him before probably
9 Jimmy Ace.

10 Q. Could you please point to Mr. Rosemond and identify where
11 he is sitting and an article of clothing he's wearing.

12 A. He is directly in front of me with the sweater and striped
13 shirt.

14 Q. First or second table?

15 A. Second table.

16 Q. Can the record please reflect that Mr. McCleod has
17 identified James Rosemond, the defendant?

18 THE COURT: Yes.

19 BY MR. ENZER:

20 Q. Can we publish Government Exhibit 1.

21 Who do you see in this photo?

22 A. I see Jimmy.

23 Q. What was Rosemond's role in the murder?

24 A. Rosemond was the individual I went to to orchestrate the
25 whole thing. He was -- I guess you could say he authorized

Hbdnros4

McCleod - direct

1 this whole thing.

2 MR. ENZER: Can we publish Government Exhibit 5.

3 Q. Who is that?

4 A. That's Derrick Grant.

5 Q. What was Grant's role in the murder?

6 A. He helped me co-plan it, and he was the trigger man.

7 MR. ENZER: Can we go to Government Exhibit 6.

8 Q. Who is that?

9 A. That's Jason Williams.

10 Q. What was Williams' role in the murder?

11 A. He helped me plan it, and he was the de facto driver.

12 MR. ENZER: Can we publish Government Exhibit 9.

13 Q. Do you recognize that individual?

14 A. Yes.

15 Q. Who is that?

16 A. That's me.

17 Q. What was your role in the murder?

18 A. I planned it with others, picked the locations with them,
19 and I guess you could say I was in the logistics of the entire
20 thing.

21 MR. ENZER: Can we take that down.

22 Q. You also mentioned Rodney Johnson -- I'm sorry, Toree did
23 you say?

24 A. Yeah.

25 Q. Toree and Shawn Williams. Were they present for the

Hbdnros4

McCleod - direct

1 murder?

2 A. Yes, they were.

3 Q. Do you know why they were present?

4 A. At the time of the murder, no, I did not know why.

5 Q. Were you paid for your involvement in the murder?

6 A. Yes, I was.

7 Q. Who paid you?

8 A. Toree gave me the payment. I went to see Jimmy, and he
9 told me to see Toree and Toree gave me the payment.

10 Q. What were you given as payment?

11 A. I was given a kilo of cocaine to split between Derrick
12 Grant and another individual.

13 Q. When you say kilo, what do you mean?

14 A. 1,000 grams of cocaine.

15 Q. Before we talk more about Jimmy and the crimes that you
16 committed with him, let's talk a little bit about your
17 background.

18 Where did you grow up?

19 A. I grew up -- I was born in Baltimore. I stayed in
20 Baltimore city until I was about 6, and then I moved to
21 Baltimore County.

22 Q. In Baltimore how far did you go in school?

23 A. Baltimore city to the first grade, Baltimore County I
24 finished high school.

25 Q. While you were in high school did you commit any crimes?

Hbdnros4

McCleod - direct

1 A. In 12th grade I had a little marijuana run, sold about an
2 ounce of marijuana senior year of high school.

3 Q. Were you arrested for that?

4 A. No.

5 Q. Did you complete high school?

6 A. Yes.

7 Q. After high school, what did you do?

8 A. I enlisted in the United States Army Reserves, and I went
9 to Fort Jackson for basic training, Fort Gordon for AIT and
10 then my -- Army Reserve base was 344 general hospital in Fort
11 Totten, Queens.

12 I was living with my aunt in Jamaica, Queens, and
13 going St. John's University.

14 Q. While you were in the Army Reserves, did there come a time
15 when you moved to New York City?

16 A. Yes.

17 Q. What year roughly?

18 A. 1989.

19 Q. And I think you mentioned this. You were living with your
20 aunt?

21 A. Yes.

22 Q. After you moved to New York City, did there come a time
23 when you started selling drugs?

24 A. Yes.

25 Q. Roughly what year did you begin selling drugs?

Hbdnros4

McCleod - direct

1 A. '89, '90.

2 Q. In the beginning what kind of drugs were you selling?

3 A. I was selling crack cocaine.

4 Q. And where were you selling crack?

5 A. Midtown Manhattan, 34th, 42nd.

6 Q. Did there come a time when you left the Army Reserves?

7 A. Yes.

8 Q. What caused you to leave?

9 A. I acquired two arrests in 1989 in the Midtown area selling
10 crack, and so I was kind of in a bad situation with my Army
11 standing. And then I was given a general discharge.

12 Q. Let me direct your attention now to the period from roughly
13 1988 to 1993.

14 During this period, 1988 to 1993, did you commit any
15 crimes?

16 A. Yes.

17 Q. What kind of crimes?

18 A. '88 it was -- I had sold some marijuana in school, and from
19 '89 to '93 it was mostly crack.

20 Q. Where were you selling the crack?

21 A. The crack was in Midtown, and then I sold some powder
22 cocaine mostly in New Jersey.

23 Q. And during this period, roughly 1989 to 1993, were you
24 regularly selling drugs?

25 A. Yes.

Hbdnros4

McCleod - direct

1 Q. Can you estimate the total amount of crack cocaine that you
2 sold during the period from roughly 1989 to 1993?

3 A. I don't know. I guess it would be drug math.

4 I would say roughly two ounces, 50 grams a day, six or
5 seven days a week, that would be about 300 grams a week; 52
6 weeks in a year, 300 times 52, it would be fifteen six.
7 Fifteen six times five is about 78,000 grams I guess. That is
8 roughly off of my head.

9 Q. Can you estimate the total amount of powder cocaine that
10 you sold during the period from 1989 to 1993?

11 A. I would say I would reduce that by about -- take off about
12 two years from the digit I just said, so I guess 40 to 50,000
13 grams, somewhere in that area.

14 Q. During this period from 1989 to 1993, did you make drug
15 sales that you were not arrested or caught for?

16 A. Yes.

17 Q. How many?

18 A. Daily, except for the days I was arrested, I wasn't
19 arrested.

20 Q. And during this period, 1989 to 1993, were you arrested for
21 any drug crimes?

22 A. Yes.

23 Q. One arrest or several?

24 A. It was several.

25 Q. Any of those arrests result in criminal convictions for

Hbdnros4

McCleod - direct

1 drug crimes?

2 A. Yes. Mostly probation.

3 Q. One or several convictions?

4 A. It was several.

5 Q. With respect to your drug convictions, during the period
6 from 1989 to 1993, did you serve any time in jail for any of
7 those drug convictions?

8 A. Small times in between court cases or having probation
9 violation and bailing out. Small amounts of time, yes.

10 Q. Is it fair to say that in general for those cases the
11 sentences you received were probation?

12 A. Yes.

13 Q. Did you continue selling drugs on probation?

14 A. Yes.

15 Q. During the period from 1989 to 1993, did there come a time
16 when you were arrested in Maryland?

17 A. Yes.

18 Q. Roughly when did that happen?

19 A. December of 1990.

20 Q. What happened that caused you to be arrested?

21 A. I had a credit card, and I used it in the mall. And I was
22 arrested purchasing clothes with an illegal credit card.

23 Q. How did you get the illegal credit card?

24 A. There was a group of guys who, they regularly were making,
25 were selling and buying credit cards. I knew how to get one,

Hbdnros4

McCleod - direct

1 so I bought one, too.

2 Q. What was illegal about it?

3 A. It wasn't mine.

4 (Continued on next page)

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HBDAAROS5

McCleod - Direct

1 BY MR. ENZER:

2 Q. What happened to this case?

3 A. That case I received a year's suspended sentence and a
4 year's probation.

5 Q. Let me direct your attention now to the period from 1993 up
6 to 1996. During that period 1993 to 1996, did you commit any
7 crimes?

8 A. Yes, I did.

9 Q. What kind of crimes?

10 A. I sold crack mostly in the vicinity of 42 Street, 41
11 Street, midtown Manhattan.

12 Q. During this period, 1993 to 1996, did you meet anyone
13 relevant to this case?

14 A. Yes, Derrick Grant.

15 Q. Did Grant have any nicknames?

16 A. "D".

17 Q. How did you and Grant meet?

18 A. I was selling crack in the evening on a routine night. It
19 was a very rainy day. I was on 41 Street and I saw an
20 individual who was standing there. I never saw him before and
21 he's getting very wet. And when he began to speak I
22 immediately recognize his accent. I said, You're from
23 Baltimore. He denied it a little. I said, You are. He said,
24 Yeah. We were kind of just together everyday after that.

25 Q. After meeting Grant on that occasion did you and him commit

HBDAAROS5

McCleod - Direct

1 crimes together?

2 A. Yes. We sold crack in the same areas together.

3 Q. What was your arrangement with Grant during this period?

4 A. Basically, I would get the drugs and package them and he
5 would sell them and we'd split the profit.

6 Q. How long did you and Grant sell crack together?

7 A. Off and on for about four years.

8 Q. During the period from 1993 to 1996, did you make drug
9 sales that you were not arrested for?

10 A. Yes.

11 Q. During that period 1993 to 1996, were there any occasions
12 when you were arrested for drug crimes?

13 A. Yes. In June of 1995 -- actually, I think before it was
14 before then. 1994 I was arrested I believe on 42nd and 41st
15 and Broadway. That case was thrown out the next day due to
16 lack of evidence. And then June of '95 maybe February of '95 I
17 was arrested again in the same general location and in June of
18 '95 I was arrested again the same general location.

19 Q. So several drug arrests during that year?

20 A. Yes.

21 Q. Did any of those arrests result in criminal convictions?

22 A. The February case and the June case were combined into one
23 case and I ended up pleading to one year. I did eight months
24 on Rikers Island at that time.

25 Q. What did you plead to; do you remember?

HBDAAROS5

McCleod - Direct

- 1 A. Attempted possession and attempted sale.
- 2 Q. You said you served eight months in jail?
- 3 A. Yeah.
- 4 Q. Where did you serve?
- 5 A. Rikers Island.
- 6 Q. Did there come a time when you were release on parole?
- 7 A. There was no parole. With the city, yeah. And that was
- 8 part of the reason why I took that plea because I had a
- 9 considerable amount of time then and there would be no
- 10 probation and no parole, no supervision.
- 11 Q. In any of the times that you have been arrested in your
- 12 life did you ever provide a fake name to the police?
- 13 A. With the exception of August 2004 and my federal case, I
- 14 always provided a fake name.
- 15 Q. Can you give the jury examples of some of the names that
- 16 you used?
- 17 A. Frederick Jackson, Brian Connelly, Joseph King.
- 18 Q. Why did you use fake names when you were arrested?
- 19 A. I always wanted to give myself the best chance of being
- 20 released on my own recognizance, an ROR, and also give the
- 21 impression to the courts that I had no record so that I would
- 22 get a reduced sentence or come up as a first offender.
- 23 Q. Let me direct your attention now to 1997. Did there come a
- 24 time when you are arrested again for drugs in 1997?
- 25 A. Yes.

HBDAAROS5

McCleod - Direct

1 Q. What were -- when was the arrest?

2 A. September 3, 1997.

3 Q. What happened to the case?

4 A. Well, "D" was incarcerated I believe at the time or just
5 wasn't around and I took it upon myself to go out and actually
6 sell the drugs. And the individual I had helping me out
7 brought someone to me who later we found out was a cop.

8 Q. After your arrest in this case did you plead guilty?

9 A. Yes.

10 Q. What -- did you receive a sentence?

11 A. I received a sentence of two to four years.

12 Q. And where did you serve that time?

13 A. I served some of the time in Manhattan in The Tombs and a
14 very small period of time was in Rikers Island and the rest of
15 the time was in Summit Shot Camp in upstate New York.

16 Q. What is The Tombs?

17 A. Tombs is, it's for detainees pretrial in Manhattan.

18 Q. It's a jail?

19 A. Yes.

20 Q. How far is it from this building?

21 A. It's walking distance.

22 Q. From your, following your drug arrest in 1997, when did you
23 arrive at The Tombs?

24 A. You're brought immediately kind of to their holding area
25 but I guess I would be in the housing unit probably two days

HBDAAROS5

McCleod - Direct

1 later.

2 Q. And how long were you at The Tombs?

3 A. From September till about, I think April.

4 Q. September of what year?

5 A. '97 to April of '98.

6 Q. While you were at The Tombs, did you meet anyone relevant
7 to this case?

8 A. Yes.

9 Q. Who did you meet?

10 A. I met Mr. Rosemond.

11 MR. ENZER: Could we publish Government Exhibit one.

12 Q. Can you tell us about how you first met Rosemond?

13 A. He and I were in the same housing unit. And for the most
14 part I was new there and I'm observing people and he's a loner
15 and carries himself with respect. And one day I had to go to
16 court. Back then I actually had hair and so I asked him could
17 I hold his pick and he said, Sure. Any time you need it, just
18 come and get it. And from that point on we kind of, I kind of
19 sat at the table where he sat at by himself and we struck up a
20 conversation. We developed a friendship from there.

21 Q. When you say "a pick" what do you mean?

22 A. A hair comb, pick for your hair.

23 Q. How would you describe your relationship with Rosemond
24 while you are and him were housed together at The Tombs?

25 A. It's a decent relationship, very intelligent, articulate

HBDAAROS5

McCleod - Direct

1 and I enjoyed talking to him. He's a great chess player and we
2 were around each other everyday.

3 Q. What, if anything, did Rosemond tell you at The Tombs about
4 what he did for a living?

5 A. He told me that he was a producer and he had his own
6 company, his own management company. I had heard the name and
7 some things associated with him but I had never physically
8 talked to him or met him until I was in The Tombs.

9 Q. The Tombs did Rosemond tell you whether he had any
10 nicknames?

11 A. Mentioned his name was "Jimmy Henchman".

12 Q. When you and Rosemond were at the Tombs was anyone else
13 relevant to this case at the Tombs?

14 A. Later on while we were at the Tombs Derrick Grant came to
15 the Tombs, as well.

16 MR. ENZER: Could we public Government Exhibit Five.

17 Q. Remind us, did you know Grant before you were at The Tombs?

18 A. Yes.

19 Q. How did you know Grant?

20 A. I knew Grant from meeting him in midtown Manhattan.

21 Q. Did you socialize with Rosemond and Grant at The Tombs?

22 A. Yes.

23 Q. Did the three of you socialize together?

24 A. Yes.

25 Q. What kinds of things did you guys do together?

HBDAAROS5

McCleod - Direct

1 A. Played chess, talked, watched TV. We ate together.

2 Q. Did you observe Grant interact with Rosemond?

3 A. Yes.

4 Q. How would you describe their relationship?

5 A. Similar to mines, friendly. They conversed. They got
6 along.

7 Q. Did you meet anyone else at The Tombs?

8 A. Yes.

9 Q. Who?

10 A. Jonathan Brown.

11 MR. ENZER: Could we publish Government Exhibit 16.

12 Q. Who is that?

13 A. Jonathan Brown.

14 Q. Did Jonathan Brown know Rosemond?

15 A. He, like me, he probably knew of him or knew, some of the
16 same people but he had a personal relationship with him at The
17 Tombs.

18 Q. At the Tombs did you observe Jonathan Brown interact with
19 Rosemond?

20 A. Yes.

21 Q. How would you describe Brown's relationship with Rosemond?

22 A. It's a good relationship.

23 Q. While you were in jail with Rosemond did you make any plans
24 with him to see him at the jail?

25 A. Yes. He told me to make sure I stopped past the studio

HBDAAROS5

McCleod - Direct

1 when I got out and then if I was serious about doing something
2 as far as music was concerned, that if something opened up he
3 would make sure I was involved in it if he had the opportunity.

4 Q. When were you released from the Tombs?

5 A. I left The Tombs in I believe April maybe May of 1998 to go
6 upstate to finish the rest of my sentence.

7 THE COURT: This seems like a good place to stop so I
8 can talk to you about the schedule.

9 Members of the jury, I know I told you previously that
10 if we weren't finished by the end of this week we would not sit
11 next Monday and Tuesday. Would sitting next Monday, if that
12 turns out to be useful, be a problem for anybody in light of
13 the fact I told you we wouldn't sit Monday? It would be, Juror
14 No. Seven indicating.

15 All right. Thank you, folks. See you tomorrow.

16 (Jury not present)

17 THE COURT: The witness can leave the room.

18 (Witness not present)

19 THE COURT: Be seated, folks.

20 Got another juror note in the day marked Court Exhibit
21 F. The sum and substance of it is that Juror No. 10 has an
22 80th birthday party for her mother on December 1 out on long
23 island that starts at seven o'clock. So if we're sitting here
24 that day, unless somebody has some good reason not to, we'll
25 break early enough for her to get there.

HBDAAROS5

McCleod - Direct

1 Now let's revisit the schedule in light of where we've
2 gotten to today. Seems to me in light of the hours tomorrow
3 we're not going to come close to finishing this witness
4 tomorrow, right?

5 MR. ENZER: That's probably right.

6 THE COURT: So if your previous estimate of a total of
7 five hours all in is holding, we'll finish him late Wednesday
8 morning.

9 MR. ENZER: Correct.

10 THE COURT: So then you have beyond that only Heintz.
11 Now that's still the case, yes?

12 MR. ENZER: Correct.

13 THE COURT: All right. So the chances are we'll
14 finish all the evidence on Wednesday and we're down to what
15 we'll do then. So I'll hear what you have to say and then
16 we'll make a decision.

17 MR. TOUGER: Your Honor, again, I would ask that we do
18 the charge conference on Thursday and sum and charge when we
19 get back from whenever is the next day is the court. I would
20 ask again that we do the charge conference on Thursday. I
21 think it's a little aggressive that we might even finish
22 testimony on Wednesday. But whether or not we do, I would ask
23 that we do the charge conference on Thursday and then sum and
24 charge after the Thanksgiving break when we come back at break.

25 THE COURT: Government.

HBDAAROS5

McCleod - Direct

1 MR. JOHNSON-SKINNER: Judge, we think we might be able
2 to finish on Wednesday or for sure we might be able to finish
3 the charge on Monday afternoon or evening if it's convenient
4 for the Court. We would propose closing on Thursday of this
5 week. That way the jury doesn't have Thursday, Friday, the
6 whole next week without the evidence before starting
7 deliberations the week after Thanksgiving.

8 MR. TOUGER: Your Honor, I never would have -- we
9 didn't really want to stipulate to these witnesses but we did.
10 But I never would have if I thought we were going to force this
11 to a summation. I think that's very -- I think a jury could be
12 rushed to a verdict and I think that's very against my client's
13 interests to sum and charge on Thursday. And it goes against
14 what the Court had told us last week which is why over the
15 weekend I agreed to, even though I would have liked to put in a
16 cross-examination of Detective Eleutice or the witness that has
17 to do with the funds being expanded in state court.

18 THE COURT: It's really kind of surprising to hear you
19 say that testimony that could have been stipulated you would
20 not have stipulated in order to run the clock which is about
21 what you've said.

22 MR. TOUGER: Your Honor, no, that is not what I'm
23 saying. Your Honor, I have no intention of running the clock
24 but the Court told us last week --

25 THE COURT: I know what I said. That's a whole

HBDAAROS5

McCleod - Direct

1 different kettle of fish. That's just surprising. That's all.

2 But look, I did tell you and I guess what pushes me is
3 both the risk that Mr. Touger refers to, that is to say that
4 the jury faced with the week off Thanksgiving, the whole thing
5 might feel unduly pressed to rush to a verdict on Friday and
6 also my concern that if they have been charged and heard
7 closings, the temptation over Thanksgiving to talk about what
8 they're up to might be somewhat enhanced than if they haven't
9 had the case submitted yet and I realize there's a risk either
10 way but --

11 MR. JOHNSON-SKINNER: Judge, one last thing that we
12 ask the Court to consider is perhaps inquiring into Juror No.
13 Seven as to exactly what her issue is on that Monday. It might
14 be that if she knew that was a day likely of deliberation maybe
15 she -- I don't know what her problem is but it might be that
16 the jury therefore has two full days of deliberation before we
17 even get to Thanksgiving.

18 COURTROOM DEPUTY: Judge, a second juror in the jury
19 room indicated that he might also have a problem with the
20 Monday, so.

21 THE COURT: Andy said that a second juror indicated to
22 him in the jury room or on the way out that the second juror
23 would have a problem with Monday perhaps in any case.

24 I don't want to go down that road. Told them -- and
25 I'd check the transcript -- when we thought this case was going

HBDAAROS5

McCleod - Direct

1 considerably longer, that next week would be off in view of the
2 fact that Juror No. 1 is leaving town on Tuesday. I'm going to
3 stick to it. So we'll do the charge conference Thursday, be a
4 down day on Friday. We're off next week. And then summations
5 and charge on the 28th. And I'll so inform them tomorrow.

6 MR. TOUGER: Thank you, your Honor.

7 THE COURT: OK. Anything else this evening?

8 MR. JOHNSON-SKINNER: Nothing from the government.

9 THE COURT: OK. Thanks.

10 (Adjourned to Tuesday, November 14, 2017 at ten a.m.)
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INDEX OF EXAMINATION

Examination of:	Page
JASON WILLIAMS	
Direct By Mr. Enzer	707
Cross By Mr. Touger	793
Redirect By Mr. Enzer	843
Recross By Mr. Touger	866
Redirect By Mr. Enzer	872
Recross By Mr. Touger	873
BRIAN McCLEOD	
Direct By Mr. Enzer	877

GOVERNMENT EXHIBITS

Exhibit No.	Received
16	746
3542-MM	787
1201, 1202, and 1379	876
Exhibit 150, 150A through M, and 1300	877

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HBEAAROSF-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 14, 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)

HBEAAROSF-CORRECTED

Jury Trial

1 (Trial resumed; Jury not present)

2 THE COURT: Good morning, all.

3 We have a note from Alternate Number Four marked Court
4 Exhibit G, who says that she has travel plans scheduled for
5 November 30 to December 3. This is all likely to become highly
6 academic I think but we'll just hold on to it.

7 MR. JOHNSON-SKINNER: Judge, could we just raise
8 something? I just want to point out that Dr. Buckson, one of
9 our witnesses in this case, is in the audience. Of course it's
10 a public trial. She has every right to be here. We just spoke
11 to defense counsel about this and if I'm right -- defense
12 counsel can speak for himself -- but defense can waive any
13 objections that they might have later to the fact that
14 Dr. Buckson was here and heard any of the facts in this case.

15 THE COURT: Mr. Touger.

16 MR. TOUGER: I have no objections to her being in the
17 courtroom, your Honor.

18 THE COURT: All right. Let's bring the jury.

19 (Jury present)

20 THE COURT: OK. Good morning, everybody.

21 The defendant and the jurors all are present.

22 Let me give you an update on the schedule, members of
23 the jury. We anticipate finishing testimony in the trial
24 conceivably tomorrow but in any case Thursday. That's what I'm
25 told up to now. Whenever that is, we're going to break and

HBEEAAROS1

McCleod - Direct

1 resume on Tuesday, the 28th of November at 9:30 at which time
2 you'll hear closing arguments. I will charge the jury and you
3 will deliberate.

4 We had a note from Alternate Number Four.

5 I just want you to know I am aware of it. I suspect
6 it is all going to be academic but if it turns out not to be
7 academic, we'll deal with it closer to the time. OK?

8 Let's get the witness and continue.

9 MR. ENZER: The witness is on the stand, your Honor.

10 THE COURT: Forgive me. I didn't even look.

11 OK. Let's go.

12 Mr. McCleod, you are still under oath.

13 BRIAN MCCLEOD,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ENZER:

18 Q. Mr. McCleod, when we left off yesterday you were talking
19 about your time in The Tombs with Mr. Rosemond; do you remember
20 that?

21 A. Yes.

22 Q. Did there come a time when you were released from The
23 Tombs?

24 A. Yes, I was transferred to Rikers Island route to go upstate
25 to finish my two to four concurrent sentence.

HBEAAROS1

McCleod - Direct

- 1 Q. And did you finish that sentence?
- 2 A. Yes, I did.
- 3 Q. When were you released?
- 4 A. December 10, 1998.
- 5 Q. After being released were you on parole?
- 6 A. Yes.
- 7 Q. Did you commit any crimes on parole?
- 8 A. Yes. I returned to selling narcotics, crack in the midtown
9 Manhattan vicinity and I was arrested subsequently on June 16,
10 1999.
- 11 Q. Following that arrest, what happened?
- 12 A. I was taken to Rikers Island where I received a two to four
13 sentence, ran concurrent with the parole violation.
- 14 Q. Did you serve that sentence?
- 15 A. Yes, I did.
- 16 Q. When did you get out?
- 17 A. I was released on -- I was released to Work Release
18 February second 2001 and I remained at Fulton Work Release
19 facility until April 24, 2001 where I was released on regular
20 parole.
- 21 Q. After being released on parole in April 2001, did there
22 come a time when you got a job?
- 23 A. Yes.
- 24 Q. Where?
- 25 A. While in Work Release that February I worked at Popeye's.

HBEEAAROS1

McCleod - Direct

1 It's a chicken spot on 13th and First. And then in May of 2001
2 I worked as a GED and math coordinator at Fortune Society.

3 Q. What is the Fortune Society?

4 A. It's a not-for-profit that specializes in helping at-risk
5 youth and ex-offenders and people who are HIV/AIDS positive and
6 just, it's like a social advocacy/counseling/educational agency
7 in New York City.

8 Q. When you worked at Fortune Society where did you report to
9 work?

10 A. I think the address is 53 West 23 Street.

11 Q. In Manhattan?

12 A. Yes.

13 Q. So that's 23rd and what's the cross?

14 A. It's closer to Sixth. It wasn't between Broadway and Sixth
15 but it's closer to Sixth.

16 Q. What was your work schedule?

17 A. Monday through Friday, basically, 9:30 to -- nine to 5:30.

18 Q. Were you paid for that?

19 A. Yes, I was.

20 Q. Did there come a time when you worked for James Rosemond,
21 the defendant?

22 A. Yes.

23 Q. When did you start working for Rosemond?

24 A. I would go see Jimmy regularly but in 2002 he expressed a
25 need to have someone be a manager in the evening at the studio.

HBEEAAROS1

McCleod - Direct

1 So I would say around April/May of 2002.

2 Q. What was Rosemond doing at the time?

3 A. Rosemond was managing his artists and running his label.

4 Q. Did he have a company?

5 A. Yes.

6 Q. What was his company called?

7 A. At the time it was "Henchmen Entertainment".

8 Q. Did the name of the company later change?

9 A. Yes.

10 Q. What did it change to?

11 A. "Czar Entertainment".

12 Q. Did what the business change or just the name?

13 A. Seemed the, just the name change.

14 Q. Who did Rosemond manage?

15 A. He managed Mike Tyson, The Game, Mario Wynans, Sharissa,
16 Black Rob, Craig Mack. That's off the top of my head.

17 Q. When you say "The Game" who is "The Game"?

18 A. He's a west coast artist that was signed to Dr. Dre and
19 later worked with 50 Cent.

20 Q. What kind of artists?

21 A. He's a rapper.

22 Q. Where was Jimmy's company, Henchmen Company, located?

23 A. 11 West 25th Street.

24 MR. ENZER: Can we publish Government Exhibit 600Y?

25 Q. Do you recognize the street shown in this photograph?

HBEEAAROS1

McCleod - Direct

1 A. Yes.

2 Q. What street is that?

3 A. It's 25th Street.

4 Q. And can you see in the photo the entrance to the building
5 where Jimmy's company was located?

6 A. Yes.

7 Q. Can you describe for the jury where it is in the photo?

8 A. There's an awning that says "Noir Blanc" and it's a little
9 passed that and there's a 7/Eleven" on the, I guess the
10 partition that comes out.

11 Q. How far was Jimmy's company and his office from Fortune
12 Society?

13 A. Right around the corner, literally. I would go up the
14 block from 23rd Street and cut through. I think it was like
15 some little toy something or on 23rd, let out to 24th and then
16 I would just come around the corner. So a five-minute walk.

17 Q. How did you become involved in working for Rosemond's
18 business?

19 A. Jimmy and I met and he expressed a need to have someone at
20 the studio and I was always there periodically off and on. So
21 I just stepped in to fill the position.

22 Q. What did you do at the company?

23 A. Basically, he was concerned about people abusing phone
24 privileges, computers, damaging property, stealing. There may
25 be something that just needed to be kind of reined in to keep a

HBEEAAROS1

McCleod - Direct

1 check on the bills, the expenses that were accruing as a result
2 of people kind of not doing what they were supposed to be
3 doing. So could you say I was there to do that.

4 Q. And when you say "he" are you talking about Rosemond?

5 A. Yes.

6 Q. How often did you work at the company?

7 A. Pretty regularly, Monday through Friday.

8 Q. What time of day would you work?

9 A. It would be after I left my other job. So six, six-ish to
10 midnight, sometimes later.

11 Q. Did you get paid for what you did?

12 A. No.

13 Q. Did Rosemond give you compensation in any way?

14 A. Well, if I needed something Jimmy would if I asked him for
15 it he would -- know, he would give me something.

16 Q. And how much money would Rosemond give you around this
17 time?

18 A. Well, I was working and a lot of people came to Jimmy for
19 things. So I tried to be as self-sufficient as possible. But
20 it might be a couple hundreds, it might be 50. It might be a
21 haircut. It might be a cab, something of that nature.

22 Q. Did you have any other arrangement with Rosemond relating
23 to music?

24 A. Jimmy always made it known if I had an artist or if I had
25 someone who wanted to record that the studio was there as long

HBEEAROS1

McCleod - Direct

1 as I went through the proper channels that could happen.

2 Q. At the time did anyone else who you were in The Tombs with
3 Rosemond with, work for Rosemond?

4 A. Derrick was always around and when he, and when Jonathan
5 Brown came home from jail in 2002 he was always around.

6 MR. ENZER: OK. Can we publish Government Exhibit 16.

7 Q. Who is that again?

8 A. Jonathan Brown.

9 MR. ENZER: And can we publish Government Exhibit
10 Five.

11 Q. Who is that?

12 A. Derrick Grant.

13 Q. What, if anything, did Grant do for Rosemond?

14 A. Grant would accompany Rosemond to events. There were a
15 couple of times where Grant you could say acted as muscle for
16 him. They might, you could say he was sort of security.

17 Q. Are you familiar with a company called Violator Records?

18 A. I am.

19 Q. What is Violator Records?

20 A. It's a company similar to Rosemond's. It's a management.
21 It was ran by Mona Scott and Chris Lighty.

22 Q. Directing your attention to the period from around 2001 to
23 2002. During that time period, did there come a time when you
24 spoke to Grant about an act of violence relating to Violator
25 Records?

HBEEAAROS1

McCleod - Direct

1 A. Yes. He told me that he had just put a couple of shots
2 into, I guess there was like a glass partition or awning at the
3 Violator office. And we were leaving the office and he
4 explained to me that he just put a couple of shots into that
5 glass.

6 Q. What were you and Grant doing when he told you this?

7 A. We were just talking and I think we were about to both
8 leave. We were both leaving. We were at the studio and we
9 were both leaving the studio. So in the elevator and walking
10 out the door he explained this to me.

11 Q. Did Grant explain why he did that?

12 A. Not actually.

13 MR. TOUGER: Objection, your Honor.

14 THE COURT: Yes or no; just answer "yes" or "no".

15 Q. Yes or no, did Grant explain why he did the shooting?

16 A. No.

17 Q. Did Grant tell you anything about whether he was going to
18 be compensated for the shooting?

19 A. He said Jimmy was going to give --

20 THE COURT: Answer it "yes" or "no".

21 A. Yes.

22 Q. What did he say?

23 A. He said Jimmy was going to give him a half a kilo of
24 cocaine.

25 Q. Before that conversation, did Grant ever say anything about

HBEEAAROS1

McCleod - Direct

1 having a problem with Chris Lighty or Violator?

2 A. No.

3 MR. ENZER: Can we publish Government Exhibit Six.

4 Q. Who is this?

5 A. This is Jason.

6 Q. Do you know his full name?

7 A. Jason Williams.

8 Q. Did Jason Williams work for Rosemond's company when you
9 did?

10 A. Yes.

11 Q. Based on what you observed, what, if anything, did Williams
12 do at the company?

13 A. Jason was an assistant to Rosemond. Initially, when I met
14 him he would store contracts. He would handle e-mails, take
15 care of scheduling, phone calls, messaging, things around the
16 studio. After that he became Jimmy's driver and still acted in
17 the same capacity.

18 Q. And in the early 2000s what kinds of tasks did Jason
19 perform for Rosemond?

20 MR. TOUGER: Objection, your Honor.

21 THE COURT: Time period, remind me.

22 MR. ENZER: Early 2000s.

23 THE COURT: I'll allow it.

24 Q. You could answer the question.

25 A. Early 2000s Jason would be, for lack of a better word, an

HBEEAROS1

McCleod - Direct

1 administrative assistant and sometimes driver.

2 Q. Did you observe Jason interact with Rosemond?

3 A. Yes.

4 Q. How would you describe Jason's relationship with Rosemond?

5 A. He looked up to Jimmy. He respected him. He saw Jimmy as
6 a mentor.

7 MR. TOUGER: Objection to the categorizing things, the
8 characterizations that he is using. I think his testimony
9 should be limited to what he saw.

10 MR. ENZER: He is testifying about what he observed.

11 THE COURT: It's overruled.

12 Q. You can answer.

13 A. They had an, it was a paternal or an avuncular
14 relationship.

15 Q. In this parental relationship who, was the parent?

16 A. Jimmy.

17 Q. Who was the child?

18 A. Jason.

19 Q. Did you observe Jason William interact with Derrick Grant?

20 A. Yes.

21 Q. How would you describe the relationship between Grant and
22 Jason William?

23 A. During the same time period?

24 Q. Yes.

25 A. Initially, Jason and Derrick they had a love of video

HBEEAAROS1

McCleod - Direct

1 games. They liked similar music. I would say like brothers,
2 friends.

3 Q. Did you ever observe them play video games together?

4 A. Yes.

5 Q. Where?

6 A. At the studio.

7 Q. Earlier you described a shooting that Grant did at Violator
8 Records. Did there come a time when you learned of another act
9 of violence against Violator Records?

10 A. From Grant?

11 Q. No. Just another act of violence, not asking about whether
12 Grant did it. Did there come a time when you learned of
13 another act of violence against Violator Records?

14 MR. TOUGER: Objection to form, your Honor.

15 THE COURT: Overruled.

16 Q. You can answer the question.

17 A. Either late 2002 or early 2003, cold outside. I think it
18 was early 2003. It was a Friday night and we were en route to
19 a function at Cypriani's and it was Jonathan Brown, myself and
20 Rosemond. And Rosemond had been trying to get in contact with
21 Chris Lighty to discuss something to do with a meeting. And
22 apparently Chris was ignoring his attempts to communicate with
23 him and minutes before we all left together Jimmy went
24 downstairs by himself. I'll say about ten minutes later he
25 called us. "Us" meaning Jonathan Brown and myself. And we

HBEEAAROS1

McCleod - Direct

1 came downstairs and when we got in the car, he explained that
2 he had just put a couple of shots into Chris Lighty's car
3 because you know he's ignoring him.

4 And at that very moment his phone rang. It was Chris
5 Lighty and he explained that he wasn't, I'm not ignoring you.
6 I've just been out of town, real busy. And we just all looked
7 at each other. And I said, That's God. And we pulled off.

8 Q. Where were you and Jonathan Brown and Rosemond when you got
9 into the car? Where was this?

10 A. This was on 25th Street.

11 Q. Were you guys at the company, at Jimmy's company's office
12 before you got into the car?

13 A. Yes.

14 Q. Who was it that said they'd put shots into Lighty's car?

15 A. Jimmy said this.

16 Q. Who was it who described to you that he did that because
17 Lighty had not be returning his call?

18 A. Jimmy did.

19 Q. Which car did you guys get in?

20 A. I think it was a black Lexus.

21 Q. Did there come a time when you stopped working at
22 Rosemond's company?

23 A. Yes.

24 Q. Roughly what year?

25 A. The end of 2003.

HBEEAAROS1

McCleod - Direct

1 Q. Why did you stop working at the company?

2 A. Jimmy was cleaning house, getting rid of a lot of riffraff.
3 The studio was getting out of control. And myself and a couple
4 more guys were actually engaging in the same activity we were
5 supposed to be deterring. And that activity was smoking
6 marijuana in the steps of the building where the studio was.

7 Q. How would you describe your relationship with Rosemond
8 after that?

9 A. Nothing changed. It's just that I wasn't at the studio any
10 more.

11 Q. After leaving the studio did there come a time when you
12 were arrested in a drug case?

13 A. Yes.

14 Q. When were you arrested?

15 A. August 29, 2004.

16 Q. Where were you when the arrest took place?

17 A. I was in an apartment in Woodside, Queens.

18 Q. Who did the apartment belong to?

19 A. The apartment belonged to Jonathan Brown.

20 MR. ENZER: Can we publish Government Exhibit 16.

21 Q. Before the arrest had you been to that house?

22 A. Yes.

23 Q. How many times?

24 A. Several. I had a key.

25 Q. During your visits to that house what, if anything, had you

HBEEAAROS1

McCleod - Direct

1 seen in the house?

2 A. There was numerous times where I saw cocaine being packaged
3 or repackaged or money being counted or things, drug activity.

4 Q. Directing your attention to day of your arrest, August 9,
5 2004, why did you go to the house on that date?

6 A. Initially I came to the house on that date because Jonathan
7 called me. He said he needed my help. I left and later on
8 received a phone call. And the person on the phone, on the
9 line dialed me from a 301 number. So I said this is Los
10 Angeles. And I picked up and they were asking had I seen
11 Jonathan that day. I said, Yeah, I saw him earlier. Well, he
12 was supposed to drop something to somebody. He didn't make it.
13 Can you go into the house because there's some paper there and
14 there's some stuff there. I need you to clean it out. I said,
15 I'm on it. And I went.

16 Q. At that time did you recognize the voice?

17 A. I recognized the voice as either Jimmy or his brother.

18 Q. Which brother?

19 A. Kezler.

20 Q. Did you later learned who the person was?

21 A. Yes.

22 Q. How did you learn who the person was?

23 A. I learned who the person was directly because Jimmy told me
24 it was him in 2009 when I came home from jail.

25 Q. So the person who called you was Jimmy?

HBEEAROS1

McCleod - Direct

1 A. Yes.

2 Q. After receiving that call from Jimmy, what did you do?

3 A. After receiving the call from Jimmy, at the time I was in
4 between Harlem and the Bronx. So I had the cab bring me back
5 to Queens. And I went inside the house and told Jonathan
6 Brown's girlfriend, Melissa, Get up. We got to get out of
7 here. And then I went to the closet where I knew the drugs and
8 or money would be and they both were there. And by the time
9 Melissa got up when I was grabbing everything the door flew off
10 the hinges and we were arrested.

11 Q. What were you arrested for?

12 A. Possession of 40 kilos of cocaine and \$450,000 in cash.

13 Q. Were any of those drugs or money in the house?

14 A. There was nine kilos in the house and 31 kilos were in the
15 trunk of the car that I helped load and the money was the house
16 as well.

17 Q. Were you arrested?

18 A. Yes.

19 Q. After you were arrested did you cooperate with law
20 enforcement in that case?

21 A. No.

22 Q. What happened to your case?

23 A. I received a sentence of six to 12 years.

24 Q. What crime did you plead guilty to?

25 A. "B" felony in New York State, possession with intent.

HBEEAAROS1

McCleod - Direct

1 Q. Just going back to the phone call from Rosemond for a
2 minute. You said he told you go to the house, get the paper
3 and the stuff; is that right?

4 A. Well, exactly what was said was, Slim, there's some paper.
5 There's some stuff there. I said, What do you need to do? I
6 need you to go to that house. I said, OK. I'm on it. And
7 "paper" meaning money and "stuff" meaning drugs, I went and
8 attempted to clean it out.

9 Q. Just so we're clear, Rosemond didn't say "drugs", right?

10 A. No.

11 Q. He said "stuff"; is that correct?

12 A. Yes.

13 Q. And Rosemond didn't say "money", right?

14 A. Right.

15 Q. He said "paper"?

16 A. Yes.

17 Q. You said you got a sentence of six to 12 years?

18 A. Yes.

19 Q. Where did you serve your time?

20 A. I served about four months in Rikers Island and the rest of
21 the time was served in upstate New York.

22 Q. Where upstate New York?

23 A. Most of that time was served in Mohawk Correctional
24 Facility in Rome, New York.

25 Q. What is a Mohawk Correctional Facility?

HBEEAAROS1

McCleod - Direct

1 A. It's a state prison.

2 Q. When did you get to Mohawk?

3 A. January 25 or 26, 2005.

4 Q. At Mohawk did you receive money from anybody?

5 A. Yes. Periodically, I would receive money in the form of a
6 money order from Jason Williams or Jimmy.

7 Q. How much?

8 A. Between 500 and \$1000. These are Postal money orders. So
9 I think a thousand is the max but between 500 and \$1000.

10 Q. How frequently?

11 A. I'd say two or three times a year.

12 Q. What did you do with that money?

13 A. Mostly it was spent on just expenses of jail, commissary
14 and maybe sending something to my family, maybe ordering books.

15 Q. While you were at Mohawk did you meet anyone relevant to
16 this case at Mohawk?

17 A. Did I meet anyone?

18 Q. Did you meet anyone relevant to this case at Mohawk?

19 A. Well, while I was a Mohawk in September Toree came to
20 Mohawk and I already knew him but I did meet, formally meet a
21 guy by the name of "Lover".

22 MR. TOUGER: What was the answer? I missed the
23 answer, your Honor.

24 A. I formally met a guy by the name of "Lover".

25 MR. ENZER: Can we publish Government Exhibit Two.

HBEEAROS1

McCleod - Direct

- 1 Q. Who is that?
- 2 A. That's Toree.
- 3 Q. What's Toree's full name?
- 4 A. "Rodney Johnson".
- 5 Q. Let's talk about Rodney Johnson for a minute. You said you
- 6 knew him before you were at Mohawk with him?
- 7 A. Yes.
- 8 Q. When did you first meet Johnson?
- 9 A. I first officially met Johnson in 2001 at the studio.
- 10 Q. The studio is Rosemond's studio?
- 11 A. Yes.
- 12 Q. Do you know what Johnson's role at the studio was?
- 13 A. Johnson may have had an artist before but he really was
- 14 there with Jimmy. He wasn't really a part of the music stuff.
- 15 Q. How often would you see Rodney Johnson at the studio?
- 16 A. Different times, different frequencies. Sometimes three
- 17 times one week. Sometimes I wouldn't see him for a month.
- 18 Q. After you went to Mohawk when did you first encounter
- 19 Johnson?
- 20 A. I encountered Johnson in September of 2005 in Mohawk.
- 21 Q. From that point forward, how often did you see him?
- 22 A. Everyday.
- 23 Q. At Mohawk did you and Johnson socialize?
- 24 A. Yes. We were actually in the same vocational class in the
- 25 morning. So we spent three hours Monday through Friday in a

HBEEAAROS1

McCleod - Direct

1 general business typing computer course.

2 MR. ENZER: Can we public Government Exhibit Eight.

3 Q. Who is that?

4 A. That's Lover.

5 Q. Do you know his full name?

6 A. I think it's Brian James.

7 Q. How did you meet James?

8 A. I met James in upstate New York. People tend to congregate
9 and socialize with people from their area, their region. So
10 Lover being from Brooklyn and me, spending many years in
11 Brooklyn we naturally we're in the same circles but once Toree
12 got there Toree and Lover were very close. So I would be
13 around Lover a lot more.

14 Q. So that's my next question. Did you see Lover interact
15 with Rodney Johnson?

16 A. Yes, everyday.

17 Q. How would you describe the relationship between Lover and
18 Rodney Johnson?

19 A. Lover looked up to Toree. Toree cared about Lover a lot.
20 Toree you could say protected Lover. Lover has a limp. He's
21 been shot a couple of times but he has a very smart mouth, so
22 he would get himself into all types of things. And Toree
23 basically would smooth things over for him.

24 Q. While you were at Mohawk was anyone else relevant to this
25 case incarcerated at Mohawk?

HBEEAROS1

McCleod - Direct

1 A. Yes. A Maurice Yarborough and a Kevin Chung.

2 Q. Aside from Maurice and Kevin Chung, was anyone else
3 relevant to this case at Mohawk while you were there?

4 A. Toward my last month being in Mohawk, the deceased, Mr.
5 Lowell Fletcher, actually, came to Mohawk.

6 Q. What, if any, interactions did you have with Lowell
7 Fletcher at Mohawk?

8 A. I observed him. Never physically spoke to him. We were
9 right next to each other for the weeks that I was there before
10 I was transferred but I never said anything to him. As a
11 matter of fact, I told people not to bring him to me and not to
12 say anything to him on my behalf.

13 Q. Why did you do that?

14 A. Jail is a very small place. So I knew it would just be a
15 matter of time before he realized there was a connection
16 between me and Jimmy. And meanwhile he is bragging about
17 slapping Jimmy's son and doing all types of nonsense to a kid.
18 So I wanted to make sure that for as long as I could, I could
19 hold him off because there was a possibility that -- I just
20 didn't want him and me to have any communication.

21 Q. How many times did you see Lowell Fletcher at Mohawk?

22 A. I think he got there in May and I left in June so just
23 about everyday for about a month.

24 MR. ENZER: Publish Government Exhibit 17.

25 Q. Who is that?

HBEEAAROS1

McCleod - Direct

1 A. That's Lowell Fletcher.

2 Q. Do you remember after Fletcher arrived at Mohawk, did you
3 speak with anyone about him?

4 A. Yes. There were a couple people who made it known to me
5 that, Hey, Slim, you know that's the guy that slapped Jimmy's
6 son, right? And I would act like I didn't know. Except for
7 there was one guy in the unit with me, Kevin Chung, and he and
8 I were pretty close and he knew Lowell Fletcher intimately.
9 Had the same lawyer. We were in the same circles in Long
10 Island. And he gave me full details about Lowell Fletcher.

11 Q. Did Kevin Chung have a nickname?

12 A. Yes. We called him "Bigs".

13 Q. Was Kevin Chung in a gang?

14 A. Yes. He was a Blood.

15 Q. What about Fletcher?

16 A. He is also a Blood.

17 Q. What, if anything, did Kevin Chung tell you about Fletcher?

18 A. He told me, Slim, Yayo didn't put his hands on Jimmy's son.
19 It was actually him. And he also has a drug charge I believe.
20 And we had the same lawyer, Bob Macedonio, in Long Island and I
21 used to always see him around Yayo. And there was something
22 about a robbery and he knew that Fletcher had something to do
23 with that robbery of one of his friends and he just kind of
24 made it known to me without actually saying it he said that
25 something could happen to Fletcher if I wanted it to.

HBEEAAROS1

McCleod - Direct

1 Q. Did you want something so happen to Fletcher while you were
2 at Mohawk?

3 A. Absolutely, not.

4 Q. Why not?

5 A. I had received an open date of parole. And because of the
6 amount of the quantity of drugs I had in my case I was already
7 a CMC status which is Central Monitoring Case. So my mail
8 takes maybe an extra day to reach me because security, the
9 lieutenant of security in the jail would probably read it
10 looking for certain things or my phone calls were -- well, I
11 always assume my phone calls are monitored, but my phone calls
12 were being knowingly monitored. And so in my opinion it was no
13 coincidence that Fletcher was there. I'm just paranoid like
14 that. And in my mind it was a setup. He was purposely sent
15 there. So I don't want any interaction with them at all,
16 anything that's going to disturb my day or give me a charge
17 before I leave to go home.

18 Q. Did there come that time when you are released from Mohawk?

19 A. I left Mohawk in May and went to -- I mean June -- and went
20 to Fishkill Correctional Facility.

21 Q. June of what year?

22 A. 2009.

23 Q. Were you released from Fishkill?

24 A. Yes.

25 Q. When were you released?

HBEEAAROS1

McCleod - Direct

1 A. August 10, 2009.

2 Q. How do you remember that date?

3 A. I got arrested on Monday. I got released on Monday and it
4 was exactly a year and a day, five years and one day from the
5 day I got arrested.

6 Q. After you were released from Fishkill where did you go?

7 A. I went to my ex-girlfriend's house, Pamela Hanna, on
8 Sedgewick Avenue in the Bronx.

9 Q. How long did you stay on Sedgewick?

10 A. About -- I think I left the following Wednesday, about a
11 week and a half.

12 Q. After that where did you go?

13 A. I went to a three-quarter house or transitionally living
14 house on New Lotts Avenue in East New York, Brooklyn.

15 Q. I'm going to show you what's premarked as Government
16 Exhibit 675H. Do you recognize what is shown in this
17 photograph?

18 A. Yes. That's the row of houses, strip of houses that were
19 acting as transitional houses. That's between Warwick and
20 Jerome Avenues.

21 MR. ENZER: The government offers Government Exhibit
22 675H.

23 THE COURT: Received.

24 (Government's Exhibit 675H received in evidence)

25 MR. ENZER: Can we publish please?

HBEEAAROS1

McCleod - Direct

1 THE COURT: Yes.

2 MR. ENZER: I think the jury can now see the photo.

3 Q. Can you describe what they're now looking at.

4 A. What you are looking at is there's, actually, they could
5 see all the way down to the next corner. There's actually
6 those exact houses. And each of those houses has an upstairs
7 and downstairs and it acted as a transitional housing or
8 three-quarter housing, mostly guys that were released from
9 federal and state jails.

10 Q. Do you see the house that you were staying in as a
11 three-quarter house in this photo?

12 A. I think it would be the last one to the right.

13 Q. At the time, Mr. McCleod, were you on parole?

14 A. Yes.

15 Q. Who was your parole officer?

16 A. PO Kilcoyne in the Bronx.

17 Q. Where did you report to parole?

18 A. Lincoln, it's either Lincoln Avenue or Lincoln Road.

19 Q. And that's in the Bronx?

20 A. Yes.

21 Q. Directing your attention to the August 10, 2009 date of
22 your release, did you make any phone calls that day?

23 A. Yes. I called my ex-girlfriend to tell her I was en route
24 and I called the studio to let them know to let Jimmy know that
25 I was released.

HBEEAAROS1

McCleod - Direct

- 1 Q. What phone did you use to call Jimmy's studio?
- 2 A. I think it was either a pay phone or Pamela Hanna's house
3 phone.
- 4 Q. Did there come a time when you actually spoke to James
5 Rosemond, the defendant?
- 6 A. Yes.
- 7 Q. When?
- 8 A. That Wednesday. Well, I had left a cellphone number for
9 Jimmy to get in contact with me. And that Wednesday I was at
10 the DMV on Zerega in the Bronx and when I returned I called the
11 cellphone and the person said Jimmy called here a couple times
12 for you. He left a number. He wants you to get in contact
13 with him. So I used the pay phone at the Castle Hill train
14 station in the Bronx and I called him.
- 15 Q. And when you called Jimmy what happened?
- 16 A. I spoke to him briefly. I spoke to Toree briefly. He told
17 me to come down, meet him downtown.
- 18 Q. Who told you that?
- 19 A. Jimmy.
- 20 Q. Why was Toree involved in this conversation?
- 21 A. I don't know. He is with Jimmy in the car at the time.
- 22 Q. Roughly, what date was this conversation?
- 23 A. If I came home the 10th, that was August 12th.
- 24 Q. Did you have a cell phone at the time?
- 25 A. No.

HBEEAROS1

McCleod - Direct

1 Q. You said Rosemond told you to come downtown?

2 A. Yes.

3 Q. Did you do that?

4 A. I did.

5 Q. Where did you go?

6 A. I went to the studio.

7 Q. What happened when you got there?

8 A. When I got to the studio Jimmy's assistant, Taji, said he
9 wants you to call him immediately. He's not here. When I
10 called Jimmy explained to me he was busy and about to go out of
11 town but that he had wanted me to meet him down, just to come
12 downtown and meet him in a different general location because
13 he doesn't go past the studio too often any more because it's
14 under surveillance. It's just a little too hot there.

15 MR. ENZER: Can we publish Government Exhibit 1004.

16 THE COURT: Yes.

17 Q. Do you recognize anyone in this photograph?

18 A. To the far left is Jimmy. In the middle in the red hoody
19 is Tony Martin. The female is Taji and the guy is Tef.

20 Q. Who is Taji?

21 A. She was Jimmy's assistant.

22 Q. Is that who you were describing in your conversation a
23 minute ago?

24 A. Yes.

25 Q. So when you got to the studio and you spoke with Taji, you

HBEEAROS1

McCleod - Direct

1 said you called Rosemond?

2 A. Yes.

3 Q. Describe that conversation. Did Taji give you anything?

4 A. Yes. Jimmy said Taji has something there for you that
5 should hold you until I see you. And she gave me an envelope
6 containing five thousand dollars.

7 Q. When you were on the phone with Rosemond from the studio,
8 did he tell you to buy anything?

9 A. Told me to get a cellphone and call him with the number
10 immediately.

11 Q. What did you do with the money that you were given by
12 Rosemond via Taji?

13 A. I took a cab home and the next day I did go and buy a
14 cellphone.

15 Q. Where did you go and get the cellphone?

16 A. Metro PCS on Fordham Road in the Bronx.

17 Q. When you got a cellphone did you have to provide a name as
18 the user or subscriber of the phone?

19 A. A name but not ID, yes.

20 Q. What name did you provide as the subscriber name?

21 A. "Iraqius Thibedeaux".

22 Q. Can you spell that for the court reporter?

23 A. I-R-A-Q-I-U-S, Iraqius, Thibedeaux, T-H-I-B-E-D-E-A-U-X.

24 Q. Why did you choose that name?

25 A. When I was in the military there was a buddy of mine from

HBEEAAROS1

McCleod - Direct

1 the Virgin Islands named "Thibedeaux". I always thought he had
2 a really cool last name. I always liked his last name. He was
3 a good soccer player. "Iraqius", I don't know where that comes
4 from. It was just some thing I decided to use as the name for
5 the phone.

6 Q. Did you show any identification documents to the person at
7 the Metro PCS store?

8 A. No.

9 Q. Did you spell the name out to the people at the store?

10 A. No.

11 Q. Why didn't you use your own name "Brian McCleod" when you
12 bought this phone?

13 A. Mostly out of habit. I've always avoided using my name
14 when ever possible for many years and years in dealing with
15 illegal things. And secondly, I don't know what may or may not
16 be said over this phone, so I don't want any connection to my
17 real name.

18 Q. Did there come a time when you spoke to Rosemond again?

19 A. Yes. I got the phone and called him and gave him the
20 number and said This is my number. He said, OK, I'll see you
21 soon when I get back.

22 Q. Did there come a time when you met with Rosemond in person?

23 A. Yes, the following Monday.

24 Q. Approximately, what date that?

25 A. August 17.

HBEEAAROS1

McCleod - Direct

1 Q. How did you get in touch with Rosemond?

2 A. I received a text message saying you know, hey, Slim, meet
3 me like 56 and 50 or something like that, 57th and Fifth,
4 somewhere around there 50s and Fifth Avenue.

5 Q. In what borough?

6 A. Manhattan.

7 Q. Did you go to meet Rosemond then?

8 A. I did.

9 Q. Did you actually meet up with him that day?

10 A. Yes, I did.

11 Q. Government Exhibit to 660A on your screen; do you recognize
12 this photograph?

13 A. Yes. This is the general location where Rosemond and I met
14 at the beginning of Central Park.

15 MR. ENZER: Government offers Government Exhibit 660A.

16 THE COURT: Received.

17 (Government's Exhibit 660A received in evidence)

18 MR. ENZER: Please publish?

19 THE COURT: Yes.

20 Q. Can you remind us where is this?

21 A. This is one of the entrances to Central Park.

22 Q. In Manhattan?

23 A. Yes.

24 Q. Can you see on this photo where you met up with Rosemond
25 that day?

HBEEAAROS1

McCleod - Direct

1 A. I don't actually think I see it. It's where there's like a
2 steel thing with, you can tell cars can come through like a
3 gate. I don't actually see it here.

4 Q. Was it kind of into the park?

5 A. Yeah. It was kind of pushed into the park but right at the
6 beginning.

7 Q. When you arrived that day who did you see?

8 A. I saw Jason and I saw Jimmy.

9 Q. Jason meaning Jason Williams?

10 A. Yes.

11 Q. Do you know how they arrived?

12 A. I assume they arrived in the car because Jason was there
13 with the car.

14 Q. Did you speak to both of them?

15 A. Yes.

16 Q. What did you say to the two of them?

17 A. Spoke to Jason and spoke to Jimmy. Gave Jimmy a hug and we
18 kind of walked off toward the area I was just describing.

19 Q. What car was Jason up against?

20 A. A black Lexus.

21 Q. OK. And you said at that point you and Jimmy went into the
22 park?

23 A. Yes.

24 Q. Did Jason come with you?

25 A. No.

HBEEAAROS1

McCleod - Direct

1 Q. Where did he go?

2 A. I'm assuming Jason drove off.

3 Q. But whatever he did it was you and Rosemond alone who went
4 into the park?

5 A. Yes.

6 Q. What happened when you and Rosemond went into the park?

7 A. We began just kind of, you know, catch up and just speak.
8 It was our first time physically seeing each other in over five
9 years. And he was just commenting on different things that had
10 taken place in my absence.

11 Q. What, if anything, did -- tell us about the conversation.
12 What did Rosemond say and what you say?

13 A. And after we got out of the initial things that somebody
14 would say who hasn't seen each other in a while he said, Slim,
15 watch yourself out here. It's a totally different climate.
16 Don't hustle with these guys. Don't socialize with these guys.
17 Don't do nothing with them. Like for instance, me, this is the
18 hottest I've ever seen it. Every agency is looking at me.

19 And you know I could see that he was definitely on
20 point and very aware. And he was telling me, I've never seen
21 it like this before. And I've been going to war with these
22 clowns and hitting them every turn. And he said in front of
23 the Apollo, we shot the cars up but they were bulletproof. So
24 I blew them up in South Beach and then I had 70 shots sent
25 through Yayo's mother's windows.

HBEEAAROS1

McCleod - Direct

1 And at that moment I said, Well, I have a line on the
2 guy that slapped your son.

3 Q. When you said "I have a line on the guy that slapped your
4 son", what did you mean by "a line"?

5 A. I meant that I had a direct connection, a way to get in
6 contact with him, actually, sort of monitor Lodi Mack.

7 Q. Who was your line?

8 A. Kevin Chung, "Bigs".

9 Q. Did you tell Rosemond Kevin Chung was your line?

10 A. No.

11 Q. What was Rosemond's reaction when you mentioned you had a
12 line on the dude that had slapped his son?

13 A. He was very interested. Got quiet for a second and then he
14 said, I haven't been able to sleep ever since they touched my
15 boy.

16 Q. You mentioned that during this conversation you just
17 described, Rosemond said that every agent was looking at him.
18 Are you talking about talent agents?

19 A. No.

20 Q. What are you talking about?

21 A. Law enforcement agencies.

22 Q. You said Rosemond talked about clowns. He was hitting
23 clowns every where he could. Did he say what he meant by that?

24 A. He was talking about G-Unit.

25 Q. During the meeting what, if anything, did Rosemond say to

HBEEAAROS1

McCleod - Direct

1 you about his intentions regarding Lodi Mack?

2 A. Well, when I said --

3 MR. TOUGER: Objection, your Honor.

4 THE COURT: What's the objection?

5 MR. TOUGER: I'd be happy to say, your Honor, but I
6 don't know if you want me to.

7 THE COURT: Overruled.

8 Q. You can answer the question.

9 A. When I said "I have a line", he said, I wish I would have
10 known that because I had \$10,000 for anybody who would have
11 marked him. And he explained to me he hasn't been able to
12 sleep and he just was very, very interested in the information
13 that I had, that I had a line on Lodi Mack.

14 Q. When with you say he had \$10,000 for anyone to mark him,
15 what does "mark him" refer to?

16 A. In other words, if he would have known that Lodi Mack was
17 in jail and somebody was there who could have been near him, he
18 had \$10,000 for anybody who would have cut him, who would have
19 scarred him.

20 Q. At the time of the meeting did you know where Lowell
21 Fletcher was?

22 A. Yes, I did.

23 Q. Where was Fletcher at the time of this meeting you had with
24 Rosemond in Central Park?

25 A. Well, Fletcher was upstate New York and I believed he was

HBEEAAROS1

McCleod - Direct

1 still it Mohawk.

2 Q. Did you have a sense of how long he would be there?

3 A. Yes. I knew he would be getting out soon because I knew
4 the sentence he had.

5 Q. What, if anything -- did you Rosemond give you anything
6 that day?

7 A. We left there, went to the bank. It was either Chase or
8 Citibank and he gave me five thousand dollars.

9 Q. What, if anything, did Rosemond say to you about the five
10 thousand dollars that he gave you?

11 A. Well, while we were talking he said he was telling me about
12 another individual who was saying negative things about him who
13 was also upstate New York and he said he's just glad that he is
14 out here to be home when good people come home and he is in a
15 position to make sure they're OK. If that had been somebody
16 else who I would have asked to go into that house, this whole
17 thing would have been different. They would have just gave me
18 up. And so basically, he is giving me the five thousand
19 dollars because he said he had \$50,000 for me in total for
20 doing the time for basically going to the house.

21 Q. What house are you talking about?

22 A. The house in Queens.

23 Q. The house you got arrested in?

24 A. Yes.

25 Q. In 2004?

HBEEAAROS1

McCleod - Direct

1 A. Yes.

2 Q. What, if anything, was Rosemond's connection to that house?

3 A. The drugs and the house were Rosemond's drugs, Jonathan
4 Brown was working in concert with him.

5 Q. After that meeting in Central Park did there come a time
6 when had you another meeting with Rosemond?

7 A. Yes. We met up about a week and a half later, Columbus
8 Circle. We ended up going inside of Whole Foods.

9 Q. Columbus Circle in Manhattan?

10 A. Yes.

11 Q. You said that was a week after your initial meeting with
12 Rosemond in Central Park?

13 A. About a week and a half later. It was either a Wednesday
14 or Thursday the following week.

15 Q. And how was this meeting arranged?

16 A. The same way the other meeting was arranged. I received a
17 text message. He told me to meet him at a certain vicinity.
18 We may have had a phone call in between to confirm I was on my
19 way and then we met up.

20 Q. What phone were you using for these communications?

21 A. The phone I bought from Fordham Road.

22 Q. The Iraqious Thibedeaux phone?

23 A. Yes.

24 Q. Did you go to Whole Foods?

25 A. I did.

HBEEAROS1

McCleod - Direct

1 Q. Who was that?

2 A. Rosemond was there.

3 Q. Anyone else?

4 A. Not that I saw.

5 MR. ENZER: Can we show the witness in sequence what
6 has been premarked for identification as Government Exhibit
7 656A, 655L, and 655H.

8 Q. These three photographs, what do they show?

9 A. They show the entrance, escalator and the, I guess,
10 vestibule of Whole Foods at Columbus Circle were Rosemond and I
11 met up.

12 MR. ENZER: The government offers Government Exhibit
13 656A, 655L and 655H.

14 THE COURT: Give me the letters again.

15 MR. ENZER: 656A, 655L and 655H.

16 THE COURT: 656A, 655L and 655H are received.

17 (Government's Exhibits 656A, 655L and 656H received in
18 evidence)

19 MR. ENZER: Thank you, your Honor.

20 We request permission to publish for the Government
21 Exhibit 656A.

22 Q. The jury can now see this. Can you describe for the jury
23 what we're looking at?

24 A. We're looking at the entrance at Columbus Circle to Whole
25 Foods.

HBEEAAROS1

McCleod - Direct

1 Q. Is this where you met up with Rosemond that day?

2 A. Yes.

3 MR. ENZER: Can we take a look, please, publish 655L.

4 Q. What's this?

5 A. This is the escalator right inside that leads down to Whole
6 Foods.

7 Q. When you met with Rosemond that day where did you and him
8 go?

9 A. We went down the escalator into whole foods.

10 Q. This escalator we see in this photo here?

11 A. Yes.

12 MR. ENZER: Can we publish Government Exhibit 655H.

13 Q. What are we looking at in this photo?

14 A. The same, just a different view of the same escalator.

15 Q. In this photo can you see where you and Rosemond met after
16 you went down the escalator?

17 A. Yes. Right where it says "sweet and spice", we were in
18 that general location.

19 Q. OK. During this encounter what happened?

20 A. During this encounter Rosemond wanted to talk further about
21 the line I had on Lodi Mack.

22 Q. What did he say? Tell you about the conversation. What
23 did he say and what did you say?

24 A. When we first stepped inside he said I like to meet here
25 because it doesn't have a signal. It doesn't allow you to have

HBEEAAROS1

McCleod - Direct

1 a signal. And as I looked at my phone going on the escalator I
2 noticed I didn't have a signal on my phone.

3 So now we went off to the side where it's close in the
4 area of Sweet an Spice and he started asking me about the line
5 I had on Lowell Fletcher, Lodi Mack, and described to him that
6 there's an individual who knows him who sort of had an issue
7 with him anyway and they had the same lawyer and they know the
8 same people and he can definitely get us next to him. And he
9 said, "OK. Cause I have \$30,000 for anybody that brings him to
10 me".

11 Q. Did he say anything else?

12 A. He said, "I have \$30,000 for anybody who brings him to me
13 cause I'mma hit him so hard and so fast he's not gonna see it
14 coming.

15 Q. Let's talk about that for a second. When he said, I have
16 30,000 for anybody who could bring him to me, who is "him"?
17 Who does he want brought?

18 A. Lowell Fletcher, Lodi Mack.

19 Q. He says, when Rosemond said, he's gonna hit him -- what was
20 the phrase?

21 A. So hard and so fast he's not gonna see it coming.

22 Q. What did you take that to mean?

23 MR. TOUGER: Objection, your Honor.

24 THE COURT: Sustained.

25 MR. ENZER: Your Honor, if we could go to side bar, I

HBEEAAROS1

McCleod - Direct

1 can explain why. I think we have an appropriate foundation for
2 this and that this is permission under cases your Honor brought
3 to our attention.

4 THE COURT: All right. Let's take our morning break
5 here and I'll talk to the lawyers.

6 (Jury not present)

7 THE COURT: The witness should step down for a moment.

8 (Witness not present)

9 THE COURT: OK. Mr. Enzer.

10 MR. ENZER: Your Honor, during this -- let me tell you
11 what this witness I expect will say about this conversation and
12 then why I think this is permissible lay opinion.

13 Under United States v. Tsekhanovich 507 F.3d 127.

14 The witness I expect will say that during this
15 conversation Rosemond said he had \$30,000 for anyone who would
16 bring Lowell Fletcher to Rosemond because Rosemond wanted to
17 hit Fletcher so hard and so fast.

18 The witness, McCleod, understood this to mean Rosemond
19 wanted to Fletcher brought to Rosemond. He would pay \$30,000
20 to McCleod for the job of luring Fletcher there and that
21 Rosemond would shoot him himself. McCleod thought that was a
22 bad idea. He doesn't say this expressly. He uses code.

23 THE COURT: Who doesn't say what?

24 MR. ENZER: McCleod does not say that's a bad idea.
25 McCleod thinks it's a bad idea for Rosemond to be the shooter

HBEEAAROS1

McCleod - Direct

1 because Rosemond is under surveillance. As we heard, Rosemond
2 as made comments to McCleod that every agency is looking at
3 Rosemond. So McCleod, believing it's a bad idea to have
4 Rosemond be the shooter says to Rosemond in this meeting, I
5 spoke to "D" the other day. "D" is Derrick Grant, somebody who
6 had done a shooting for Rosemond in the past. McCleod will say
7 when he did that he was suggesting Derrick Grant as the
8 shooter. And he says Rosemond --

9 THE COURT: He's going to say that he, the witness,
10 said to Rosemond in one way or another, Derrick Grant should be
11 the shooter?

12 MR. ENZER: Right. But he doesn't say it expressly.
13 He says I spoke to "D" the other day is what he actually
14 verbalizes. What he meant is he's suggesting "D" as the
15 shooter. They're speaking in code according to the witness
16 because they are meeting in a public place in a Whole Foods and
17 they want to make sure anyone who overhears this conversation
18 will not later become a witness. They want to make sure law
19 enforcement isn't listening.

20 According to the witness, McCleod, Rosemond was
21 receptive to that idea and told him "OK". McCleod, go get with
22 "D" and see what he says.

23 THE COURT: Yes. But now tell me what it is that you
24 say he is going to say as opposed to what you say he would say
25 he was thinking at the time.

HBEEAAROS1

McCleod - Direct

1 MR. ENZER: Well, I mean, look, he cannot speak to
2 what Rosemond is thinking. This is all what he understood it
3 to mean but he understood -- what McCleod can talk about is
4 what he understood these statements to mean and he had to have
5 an interpretation of it.

6 THE COURT: You are running a whole bunch of things
7 together here. I'm not sure at all that what the witness says
8 that the witness was thinking himself is relevant. I'm really
9 not sure about that. I'll skeptical about that. You started
10 off saying this was lay opinion. Well, to whatever extent he
11 would testify the witness was thinking "X" that's not opinion
12 at all. That's a historical fact. It's either relevant or it
13 isn't relevant. OK? Now, what's the opinion?

14 MR. ENZER: OK. Your Honor, I think there are -- let
15 me --

16 THE COURT: Back up.

17 MR. ENZER: Yes, let me back up.

18 The interpretation that he offers about these words is
19 relevant. It's two things. It is I think conceivably a lay
20 opinion about what those statements mean based on his
21 interactions with the defendant and the actions that McCleod
22 takes after this meeting.

23 The other thing it is, even if it's not lay opinion,
24 is his statements of historical fact that inform his actions
25 because after this meeting McCleod goes and meets with Derrick

HBEEAAROS1

McCleod - Direct

1 Grant and recruits Grant to be a shooter. And after this
2 meeting with Rosemond, a series of events happen, planning the
3 shooting of Lowell Fletcher, et cetera, that are all informed
4 by this coded conversation.

5 THE COURT: Well, you started out by saying the
6 witness, I expect, will say that during that conversation
7 Rosemond said he had \$30,000 for anyone who would bring
8 Fletcher to Rosemond. All right?

9 MR. ENZER: Yes.

10 THE COURT: So the first thing you want is you want
11 the witness's opinion as to what Rosemond meant by that.

12 MR. ENZER: Correct.

13 THE COURT: All right. Now, work through without
14 going into what follows if we can, why you say that's
15 admissible, what the foundation is and why it's admissible.

16 MR. ENZER: The foundation is two-fold. This witness
17 has had many interactions with Rosemond prior to this
18 conversation. He was in The Tombs with him where they
19 socialized everyday. He worked for him at his studio and he
20 cleaned out a drug stash house for Rosemond which, by the way,
21 he did as a result of coded communications. Rosemond said, Go
22 get the paper.

23 THE COURT: Got it.

24 MR. ENZER: So this is not the first encounter between
25 those two people. It's not the first time they've talked about

HBEEAAROS1

McCleod - Direct

1 criminal matters. It's not the first time they've spoken in
2 code together.

3 They've also had a prior conversation at Central Park
4 about the line on Lodi Mack, Rosemond's obsession, the violence
5 that Rosemond has perpetrated against G-Unit. So he has going
6 into this meeting a lot of context for how Rosemond speaks, et
7 cetera.

8 Also, your Honor, I think it's relevant in the cases
9 I've cited, what happens after is also relevant to the
10 foundation because the rule for lay opinion, a witness can talk
11 about an opinion if it's rationally --

12 THE COURT: -- proceeded --

13 MR. ENZER: -- if he has a basis for it not just based
14 on his interactions with Rosemond in advance but what happens
15 afterwards. If his interpretation of these words was wrong,
16 there would be an event later that would correct his
17 misunderstanding. But what happens later is a sequence of
18 events that are consistent with his understanding.

19 THE COURT: I understand that point. Let's just focus
20 first on this precise statement.

21 MR. ENZER: The first --

22 THE COURT: I'm not done yet.

23 MR. ENZER: OK.

24 THE COURT: You say you expect the witness will say
25 that Rosemond said he had \$30,000 for anyone who would bring

HBEAAROS1

McCleod - Direct

1 Lowell Fletcher. All right. He's already testified to that.

2 MR. ENZER: Right.

3 THE COURT: Now, then you say the witness if permitted
4 would say he understood that to mean that he wanted, he,
5 Rosemond wanted somebody to bring Fletcher to him and he would
6 pay for it. That's a necessary opinion. It's perfectly
7 apparent from the words. It's a literal interpretation of what
8 the witness said Rosemond said. He wants somebody to bring
9 Fletcher to him and he'll pay \$30,000 for it. OK?

10 Now, at that point you then offer to prove what
11 McCleod was thinking. What he was thinking was -- Well, I
12 guess you're effectively offering one more thing that --

13 MR. ENZER: He is gonna hit him so hard.

14 THE COURT: But you've got that already, right?

15 MR. ENZER: But what it means is very important.

16 THE COURT: Well, obviously. I mean, obviously. But
17 you know he's not talking about dealing Blackjack cards. He's
18 not talking about that as what he means by hitting him. So I
19 have some question in my mind as to whether you, put aside
20 need, whether the opinion contributes very much to what you've
21 already got.

22 Now, the next thing that happens if I understand the
23 offer is that McCleod then says to Rosemond he spoke to "D" the
24 other day. And then what is Rosemond's response to the
25 statement, I spoke to "D" the other day?

HBEEAAROS1

McCleod - Direct

1 MR. ENZER: In substance, oh, OK. Get with "D". Let
2 me know what he says.

3 THE COURT: All right. And then what happens?

4 MR. ENZER: That meeting ends. McCleod goes to visit
5 Derrick Grant, recounts to Grant Rosemond wants, he's offering
6 30,000 for me to bring Fletcher to him. I think that's crazy.
7 He's thinking about doing this himself. That's nuts. McCleod
8 and Grant laugh because they think it's funny that the idea
9 that Rosemond would do the shooting himself, it's a bad idea
10 because of all the surveillance on him. McCleod says, but I
11 mentioned you to Rosemond. I suggested you. Derrick has a
12 positive reception, oh, really? I'm with that. And
13 essentially they reach an agreement.

14 THE COURT: And then events unfold.

15 MR. ENZER: Right. I think that is part of why his
16 interpretation of the words in this Whole Foods meeting are
17 rational. It is rational based on his perception.

18 THE COURT: OK. So now that we've worked through
19 that, let me hear from Mr. Touger.

20 MR. TOUGER: Thank you, your Honor.

21 Your Honor, I think the last time we talked about this
22 we established that the lay opinion to come in that there has
23 to be a rational basis for the opinion and has to be
24 established meaning of the words being used. It's important
25 for the Court.

HBEEAAROS1

McCleod - Direct

1 THE COURT: Where did that come from? It has to be
2 rationally based on perceptions of the witness, agreed. Where
3 does this second notion come from, that is that it has to be
4 established meaning of the words being used?

5 And let me put this further question to you. If the
6 established meaning of the words used was clear, then you don't
7 need the opinion in the first place.

8 MR. TOUGER: I think what the Court in Garcia is the
9 one -- I'll give you the cite date later -- is the one that
10 brings out the drug codes case, your Honor, and they
11 established that this has to be an established meaning to those
12 words.

13 THE COURT: Yes. But that isn't a drug code case.

14 MR. TOUGER: That's exactly my point, your Honor.
15 According to this witness, Mr. Rosemond and this witness have
16 had criminal relationships in the past and I'm not going to
17 dispute that or not at this point. None of it has to do with
18 violence with, whatsoever. He has done no violent acts for
19 Mr. Rosemond. Mr. Rosemond has never asked him to do any
20 violent acts. He's never given any coded messages to do any
21 violent acts, nothing of that sort. It all has to do with drug
22 codes.

23 THE COURT: What's that all have to do with drug
24 codes?

25 MR. TOUGER: For instance, the instance that Mr. Enzer

HBEEAAROS1

McCleod - Direct

1 brought up when he spoke in code to go in the house and clean
2 out the house, the paper and stuff --

3 THE COURT: Yes. Right.

4 MR. TOUGER: Those words had an established meaning
5 already. People know the "paper and stuff" meant "money and
6 drugs".

7 THE COURT: My first question to you was, where do you
8 get the idea in the case law that the only time you can have
9 lay opinion as to the meaning of words spoken in the presence
10 of the person who is going to give the opinion is if the words
11 have an established meaning?

12 MR. TOUGER: I think the rational basis comes from --
13 that comes from Garcia, the established meaning comes from
14 Garcia.

15 THE COURT: Which is a drug codes case.

16 MR. TOUGER: Right. But the rational basis here, your
17 Honor, is -- Sorry.

18 THE COURT: But that doesn't seem to me to be this
19 case. This case is that the government is proposing to ask the
20 witness for his opinion as to what Rosemond meant when he
21 uttered these words, some of which are perfectly clear. And
22 the disputed part is, well, what did he mean by "I'm gonna hit
23 him so hard and so fast he'll never see it coming".

24 MR. TOUGER: That's my exact point, your Honor.
25 They're saying that "hit" is code for something. That's my

HBEEAAROS1

McCleod - Direct

1 exact point. There is no doubt he is allowed to testify to
2 these statements but now they want to go further and have him
3 give a lay opinion that "hit" means something beyond what the
4 word means.

5 THE COURT: Well --

6 MR. TOUGER: And there's no --

7 THE COURT: Do you think when orders were given in the
8 Gotti family that "hit" didn't have a meaning?

9 MR. TOUGER: It did, your Honor. But this witness has
10 never heard these words before from James Rosemond. He doesn't
11 know what these words mean.

12 When John Gotti told his killers to go out and hit
13 somebody, they had done it before for him.

14 THE COURT: Doesn't anybody who is alive in the 21st
15 century know that in particular context "hit" means "kill"?

16 MR. TOUGER: No. I don't think that --

17 THE COURT: You don't think that -- nobody would
18 understand that --

19 MR. TOUGER: I think people would understand it but I
20 don't think it's the only opinion you could come to.

21 THE COURT: Right. It's not the only one. And so the
22 question here of whether Rosemond meant it in the organized
23 crime kind of sense is an issue to be determined. And the
24 government's argument is this witness has an opinion of how it
25 was meant.

HBEEAROS1

McCleod - Direct

1 Don't interrupt me again.

2 MR. TOUGER: I'm not.

3 THE COURT: Yes, you were.

4 MR. TOUGER: I exactly wasn't.

5 THE COURT: This witness has an opinion and his
6 opinion is rationally based on what he perceived. And the
7 basis for his opinion is that from that moment forward in time
8 the whole plot unfolds in a manner that is first of all
9 consistent with his opinion that "hit" meant "kill".

10 It might help if you listen to me.

11 MR. TOUGER: I'm listening.

12 THE COURT: But you're really talking to
13 Mr. Edelstein.

14 MR. TOUGER: I'm listening to both, your Honor.

15 THE COURT: First of all, the whole plot unfolds in
16 this witness's, in a manner consistent with the opinion he
17 proposes to give, first point.

18 And second of all, that opinion -- excuse me. The
19 events that then unfold are consistent only or certainly more
20 likely with the accuracy of the opinion. In other words, when
21 Grant goes to Jerome Avenue and Mount Eden he doesn't punch
22 Fletcher. He kills him. If "hit" meant "punch", that's not
23 what would have happened, is it?

24 MR. TOUGER: I'm not alleging that "hit" meant
25 "punch", your Honor.

HBEEAAROS1

McCleod - Direct

1 THE COURT: Well, what do you think it meant?

2 MR. TOUGER: First of all, your Honor, this witness's
3 lay opinion has no greater value or is based on anything
4 greater than what you just said before that any individual in
5 public has an opinion of what that means. He has no history
6 with Mr. Rosemond as far as that.

7 THE COURT: You are not meeting the government's
8 argument which I've just summarized to you.

9 MR. TOUGER: I'm going to get to that, your Honor.
10 So the next thing, your Honor, is they tried to
11 back-strap their argument about what happens in the future.
12 When Mr. McCleod has this conversation with Rosemond he's not
13 seeing in the future. He giving an opinion based on what
14 happens in the future when he doesn't know the future.

15 And, your Honor, the whole basis here is that shooting
16 does not mean killing. Nobody's been killed in this G-Unit war
17 at all.

18 THE COURT: Look, whether it means "punched" or
19 whether it means "shoot to wound" doesn't matter here. The
20 real question is did it mean "shoot to kill", right? Anything
21 short of that and you don't have the kind of problem that you
22 may have. We'll find out. All right? Now, hold on.

23 Mr. Enzer.

24 MR. TOUGER: Your Honor, may I just say one last thing
25 before you go to Mr. Enzer?

HBEEAROS1

McCleod - Direct

1 The idea is that he has already said to this witness,
2 I have \$10,000 to scar Mr. Fletcher. He didn't say \$10,000 to
3 kill Mr. Fletcher or shoot Mr. Fletcher or hit Mr. Fletcher.
4 The idea now is in prison he only wanted him scarred and now he
5 wants to him killed. That's a major jump, your Honor.

6 THE COURT: It does and it undermines your argument.

7 MR. TOUGER: How does it undermine it, your Honor?

8 THE COURT: Because for a wounding he was prepared to
9 pay ten but now he is prepared to pay 30.

10 MR. TOUGER: To bring him to him because he is out in
11 the street. It's much more difficult, your Honor. And things
12 are much more cheaper in jail than they are on the street.

13 THE COURT: I'm sure we are going to have evidence of
14 that, right?

15 Mr. Enzer, the point about the timeframe, address that
16 because as I think about it, there's something to Mr. Touger's
17 argument. The pivotal moment seems to me may be at or just
18 after the statement is made by Rosemond because what then
19 happens is the witness has the meeting with Grant and he tells
20 Grant in substance that Rosemond wants this guy killed.

21 Now, if witness's opinion as of the time of the
22 Rosemond meeting and the Grant meeting is wrong, then the
23 killing may be attributable to a misunderstanding by the
24 fellow, the witness, and not to what Rosemond actually said.
25 And so Mr. Touger effectively argues that the government is

HBEEAAROS1

McCleod - Direct

1 bootstrapping by relying on what happens after the witness,
2 perhaps, wrongly interprets Rosemond's statement to Grant.

3 Now, I suppose you may say, yeah, but then Rosemond
4 gets directly involved in the planning; is that what you would
5 say?

6 MR. ENZER: There are a few things, judge. First, I
7 don't think that the defense has accurately characterized the
8 information that McCleod has going into the meeting. It's not
9 just coded conversations about drugs. They had this meeting at
10 Central Park. And in that conversation Rosemond said, I
11 believe the witness testified, he was hitting these clowns at
12 every turn. And then he describes how he had shot 70 shots put
13 in Yayo's mother's house among other violent incidents.

14 So this witness, I mean, we can have it read back.
15 I'm going off my notes. I don't have a transcript in front of
16 me. But I believe this witness has already about a week
17 earlier heard Rosemond use the word "hit" to describe what is
18 at least a shooting.

19 THE COURT: Well, yeah, but the "at least" doesn't
20 help you very much. Because -- I mean, I see Mr. Touger is
21 delighted with what you just said because he used "hit" earlier
22 to mean something very different.

23 MR. ENZER: Judge, I don't know that this witness is
24 going to say, "I understood 'hit' to mean shoot and 'kill'". I
25 think what he's going to say is "I understood this to mean a

HBEEAAROS1

McCleod - Direct

1 shooting". I don't think he -- I'm not sure -- I don't know
2 what he would say as to the moment in time when he realizes in
3 the planning leading up to the murder that, all right, this is
4 definitely going to be a murder. He definitely realizes -- I
5 am talking about McCleod.

6 THE COURT: What is he going to say if asked, In your
7 opinion what is it that Mr. Rosemond meant?

8 MR. ENZER: I think we should look at what he
9 testified to previously cause he's testified to this twice.

10 MR. TOUGER: Why don't we just bring him in and do it
11 outside the presence of the jury?

12 THE COURT: We may.

13 MR. TOUGER: Can I just add, your Honor, that --

14 THE COURT: Please.

15 MR. TOUGER: I'm sorry.

16 MR. ENZER: That's fine. I think maybe it's a good
17 idea to have the witness come in. Let's have him talk about.
18 You can hear yourself what he'll say.

19 THE COURT: All right. We'll take a few minutes and I
20 think we'll do that. But when the questions are put they're
21 put in the same form we did with the other witness. Ask him,
22 Do you have an opinion on "X", whatever you want the opinion
23 on.

24 MR. ENZER: OK.

25 THE COURT: What's the opinion? What's it based on?

HBEEAAROS1

McCleod - Direct

1 Then we'll see.

2 (Recess)

3 MR. ENZER: Judge, should we bring the witness in?

4 THE COURT: Yes.

5 (Witness is present)

6 THE COURT: Have a seat.

7 We're going to ask you some questions outside of the
8 presence of the jury so that I can rule on an issue of law.

9 Go ahead, Mr. Enzer.

10 BY MR. ENZER:

11 Q. Mr. McCleod, in a meeting that you were just talking about
12 in front of the jury, the meeting at Whole Foods with Rosemond,
13 can you just describe for the judge what statements were made.
14 What did Rosemond say? What did you say? Give us the
15 conversation.

16 A. Jimmy asked me about, basically, do I trust the individual
17 and the information who I said I had a line on Lodi Mack. And
18 when I confirmed that I did and gave him a little history and
19 background on those two, he said, "OK. Cause I have \$30,000
20 for anybody who will bring Lodi Mack to me". And you know, I
21 took that as he said "cause I'mma hit him so hard and so fast
22 he's not gonna know what hit him".

23 Q. What did you say in response?

24 A. I didn't say anything. I just kind of looked at him and
25 then I thought about it and said, Wait. You're gonna do this

HBEEAAROS1

McCleod - Direct

1 yourself? You're thinking about doing this yourself?

2 Q. What did he say?

3 A. He said, Yeah. Well, like you know, what are you thinking?

4 I said, Well, I talked to "D" the other day.

5 Q. What did he say to that?

6 A. He said "D". Wow, I haven't -- What's up with "D". I

7 haven't seen "D" in a while. He said, Like over three years.

8 He said, OK. All right. Yeah. Go talk to "D" and see what's

9 up. Let me know. I said "OK".

10 Q. OK. Now I want to ask you about certain of those

11 statements and your opinion about what they meant.

12 When Rosemond said to you, I have 30,000 for you to

13 bring Lodi Mack to me, do you have an opinion about what that

14 meant?

15 A. Well, he said, "I have 30,000 for anyone who brings him to

16 me". And what he meant was I have \$30,000 for the person that

17 brings Lodi Mack to me to be shot.

18 Q. I'm going to ask you the basis for that in one second.

19 When he said "I'm gonna hit him so hard and so fast" do you

20 have an opinion about what that meant?

21 A. He was going to shoot him quickly by surprise unexpectedly.

22 Q. OK. Now, the opinions you gave interpreting these two

23 statements, what is that based on?

24 A. Based upon the nature of the conversation and how upset he

25 is that someone has assaulted his son.

HBEEAAROS1

McCleod - Direct

1 Q. Was it -- did you have other conversations prior to this
2 with the defendant?

3 A. Well, in front of Central Park there's been kind of a
4 campaign of tit-for-tat, hits and retaliations directed at
5 G-Unit, the cars, the house. This is one more thing.

6 Q. Is that part of your basis for your opinion as to the
7 meaning of that statement?

8 A. Yes.

9 Q. And then you said you said to Rosemond, "you're thinking of
10 doing this yourself"?

11 A. Right.

12 Q. What did you mean by that?

13 A. Like with all the surveillance and as big of a target as
14 you know you are and with all the agencies looking at you and
15 possibly also Lodi Mack seeing you and recognizing you, you're
16 going to do this yourself? You are going to shoot him
17 yourself?

18 Q. And when the defendant said, "Yeah, well, what are you
19 thinking", do you have an opinion about what that meant?

20 A. Yes.

21 MR. ENZER: I'll skip that, judge.

22 THE COURT: It's self-evident.

23 Q. When you said "I talked to "D" the other day", what did you
24 mean by that?

25 A. I'm suggesting that "D" could be the shooter.

HBEEAAROS1

McCleod - Direct

1 Q. Who is "D"?

2 A. Derrick Grant.

3 Q. Why did you suggest that Derrick Grant is the shooter?

4 A. He's an individual who Jimmy would trust and an individual
5 who I introduced to Jimmy and an individual I would trust.

6 Q. Had Grant done any violence for Jimmy in the past?

7 A. Yes.

8 Q. What?

9 A. Namely, the Violator studio thing. And he has acted as a
10 defector security on a couple of occasions.

11 Q. You are talking about the shooting that Grant described to
12 you in the early 2000s?

13 A. Yes.

14 Q. Where he put shots at the Violator Records office?

15 A. Yes.

16 MR. ENZER: Your Honor, do you need an opinion as to
17 what's up with "D" go talk to "D"? I think that's
18 self-evident.

19 THE COURT: I don't think there is an opinion. He
20 either said it or he didn't.

21 MR. ENZER: Unless your Honor has questions, let me
22 just ask one thing.

23 Q. The events that happened after that conversation, are they
24 consistent? Do they confirm your interpretation of what
25 Rosemond said or are they inconsistent?

HBEAAROS1

McCleod - Direct

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A. Which events are you referring to?

(Continued on next page)

Hbenros2

McCleod - direct

1 THE COURT: I think this is no longer helpful.

2 MR. ENZER: OK. Then that is it, your Honor.

3 THE COURT: Yes.

4 I take the objection to be directed to two things, a
5 question as to the witness's opinion as to what the defendant
6 meant with respect to the statements that he had 30,000 for
7 anybody to brings him to me and I'm going to hit him, etc., the
8 first opinion. I guess that really covers both, what he meant
9 by I have 30,000 for someone or anyone and the hard and fast.

10 I am going to sustain those objections. I am not
11 going to allow that, and I don't have to I think say any more
12 than that. The objection is sustained.

13 MR. ENZER: All right.

14 THE COURT: Let's get the jury.

15 (Continued on next page)

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Hbenros2

McCleod - direct

1 (Jury present)

2 THE COURT: OK.

3 The jurors and the defendant all are present.

4 Ladies and gentlemen, I sustained the objection to the
5 last question, so we will continue. I appreciate your patience
6 while we dealt with that issue.

7 MR. ENZER: Can we please publish Government Exhibit
8 655H.

9 BY MR. ENZER:

10 Q. Mr. McCleod, before the break, you were describing a
11 meeting you had with Rosemond here by the "Sweet Spiced" area
12 in the lower level of the Whole Foods by Central Park.

13 Do you remember that?

14 A. Yes.

15 Q. Can you describe for the jury what Rosemond said to you and
16 what you said to him during this meeting.

17 A. He spoke to me about did I trust the individual who I
18 mentioned earlier, that I said I had a line on Lowell Fletcher,
19 or Lodi Mack, and I gave him some background in how they were
20 connected and, yes, I do trust him.

21 Q. What did Rosemond say at that point?

22 A. He said, OK, because I have \$30,000 for anyone who will
23 bring Lowell Fletcher, Lodi Mack to me.

24 Q. Did he say anything else?

25 A. I am going to hit him so hard and so fast he's not going

Hbenros2

McCleod - direct

1 know what hit him.

2 Q. What, if anything, did you say in response?

3 A. Are you thinking about doing this yourself? You are going
4 to do this yourself?

5 Q. What did you mean by that?

6 THE COURT: Sustained.

7 MR. ENZER: Your Honor, I think this is his
8 perception. This is what he means by his own statement.

9 THE COURT: I understand that. But that's not
10 evidence of what Rosemond understood him to mean. It's
11 Mr. Rosemond's intention that is at issue and his knowledge.

12 Let's move on.

13 MR. ENZER: I am asking the witness.

14 THE COURT: I heard it.

15 BY MR. ENZER:

16 Q. All right. So you said to him, You are thinking of doing
17 this yourself?

18 A. Yes.

19 Q. What was Rosemond's response?

20 A. Yeah. What were you thinking?

21 I said, I spoke to D the other day.

22 Q. When you said you spoke to D the other day -- I'm not
23 asking you about Rosemond -- when you said, I spoke to D the
24 other day, what did you mean by that statement?

25 MR. TOUGER: Objection, your Honor.

Hbenros2

McCleod - direct

1 THE COURT: Sustained.

2 BY MR. ENZER:

3 Q. What was Rosemond's response?

4 A. OK. I haven't seen D in quite some time.

5 I said, Yeah.

6 He said, Like over three years.

7 He said, OK, yeah, speak to D. Let me know how that
8 goes.

9 Q. After that meeting, did there come a time when you met with
10 Derrick Grant?

11 A. Yes.

12 Q. Why did you meet with Derrick Grant?

13 A. I met with Derrick Grant at the behest of Jimmy. I
14 mentioned Derrick to Jimmy, and he said, Yeah, get in contact
15 with D. Let me know how that goes.

16 Q. Where did you meet with Grant?

17 A. At his house in the Bronx.

18 Q. Where was his house?

19 A. East 174th Street, I think.

20 Q. Did he live alone?

21 A. No, he lived with his girlfriend and her son in the
22 basement, and her mother and grandmother lived -- they shared
23 the same house. They lived above, the floors above.

24 Q. What is the name of Grant's girlfriend?

25 A. Michelle.

Hbenros2

McCleod - direct

1 Q. Had you been to this apartment -- how many times had you
2 been to the place where Grant was living with his girlfriend
3 Michelle?

4 A. Prior to that time?

5 Q. Sure.

6 A. Maybe once or twice maybe.

7 MR. ENZER: Can we show the witness what have been
8 premarked for identification as Government Exhibits 610A, B,
9 and C.

10 THE COURT: Yes.

11 BY MR. ENZER:

12 Q. Do you recognize these photos?

13 A. Yes.

14 Q. What do they show?

15 A. Right now -- that -- the previous photos were the entire
16 house, and right now this is the entrance to the basement where
17 Derrick and his girlfriend stayed.

18 MR. ENZER: The government offers Government Exhibits
19 610A, B, and C.

20 THE COURT: AB and C?

21 MR. ENZER: Yes, your Honor.

22 THE COURT: Received.

23 (Government's Exhibits 610A, B, and C received in
24 evidence)

25 MR. ENZER: Can we publish for the jury Government

Hbenros2

McCleod - direct

1 Exhibit 610A?

2 THE COURT: Yes.

3 BY MR. ENZER:

4 Q. What do you see in this photo?

5 A. I see the house where Derrick and his girlfriend stayed.

6 Q. Which part of the house did Derrick and his girlfriend
7 Michelle stay in?

8 A. Down the steps in the basement.

9 MR. ENZER: Can we publish Government Exhibit 610C.

10 THE COURT: Yes.

11 Q. What is this?

12 A. This is the entrance -- this is the door to where Derrick
13 and his girlfriend stayed.

14 Q. How long after your meeting with Rosemond in Whole Foods
15 did you meet up with Grant?

16 A. I think the next day.

17 Q. Where did you meet with him?

18 A. I met with Grant right here at this house, where the
19 picture is.

20 Q. What happened during the meeting with Grant?

21 A. I told D, I said, I spoke to Homes yesterday.

22 He said, OK, yeah. How is he doing?

23 I said, Yeah, he's good, he's good.

24 I was telling him that I have a line on the individual
25 that, you know, did that to his son.

Hbenros2

McCleod - direct

1 He said, For real?

2 I said, Yeah.

3 I said, You know this guy was talking about doing this
4 himself?

5 We both kind of looked at each other.

6 He said, For real?

7 I said, Yeah. But I mentioned you.

8 He said, What did he say?

9 I said, He told me to talk to you to see if you was
10 with it.

11 He said, Yeah, definitely. Let him know, yeah.

12 And he asked me a couple of questions about, you know,
13 the line, Kevin Chung.

14 Q. OK. You said you told Grant you spoke to Homes the other
15 day?

16 A. Uh-huh.

17 Q. Who is Holmes?

18 A. Jimmy.

19 Q. You said you mentioned the line on the individual that did
20 that to his son?

21 A. Right.

22 Q. Whose son?

23 A. Jimmy's son.

24 Q. And "did that," what is "that"?

25 A. Assaulted him.

Hbenros2

McCleod - direct

1 Q. You said you mentioned to Grant that Holmes, Jimmy, was
2 talking about doing this himself?

3 A. Right.

4 Q. What did you mean by that?

5 MR. TOUGER: Objection.

6 THE COURT: Sustained.

7 MR. ENZER: Your Honor, can we approach at sidebar.

8 THE COURT: Briefly.

9 (Continued on next page)

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Hbenros2

McCleod - direct

1 (At sidebar).

2 MR. ENZER: Judge, I think the witness should be
3 allowed to talk about what he means by his own statements.

4 THE COURT: That is relevant why?

5 MR. ENZER: Two reasons.

6 One, it explains his actions after this. It is going
7 to be incomprehensible to this jury what is going on after this
8 if he isn't allowed to explain what he means by these
9 statements.

10 They never speak expressly. They never say "shoot,"
11 they never say "murder," they never say "kill."

12 It will be impossible to follow for this jury if they
13 don't know what he means by his coded statements. We are not
14 talking about what Jimmy said or what Jimmy meant by his
15 statements. This is the witness explaining his own words.

16 THE COURT: He is not on trial.

17 MR. ENZER: I think within the *Tsekhanovich* case -- I
18 will give the court reporter the spelling afterwards -- 507
19 F.3d 127, I think the case squarely holds that when -- in that
20 case the cooperator was permitted to testify to the meaning of
21 his own statements.

22 THE COURT: Which part of it are you referring to?

23 MR. ENZER: Let me just find it, your Honor. Sorry.

24 Here, page 130. It is the discussion of the second
25 colloquy the cooperator. "The second colloquy challenged by

Hbenros2

McCleod - direct

1 the defendant appealing does not even pertain to that
2 defendant's state of mind, rather the government asked"--

3 THE COURT: You are reading?

4 MR. ENZER: Yes.

5 THE COURT: Can I just read it.

6 MR. ENZER: Sure.

7 THE COURT: What you are relying is the Court of
8 Appeals' passing reference to the fact that the second colloquy
9 challenged by the appellant didn't pertain to the appellant's
10 state of mind; that instead the government asked the witness
11 about his own understanding of the term "runners."

12 What I draw from that is that the appeal was on the
13 ground that the trial court had erred in allowing testimony by
14 a witness as to the defendant's state of mind, and one of the
15 points that they were claiming was improperly admitted because
16 it improperly went to the defendant's state of mind in fact
17 didn't go to the defendant's state of mind. It went to the
18 witness's state of mind. I take from this that nobody was
19 challenging the propriety of admitting evidence on the
20 witness's state of mind.

21 So it is a passing reference to something. It is not
22 a holding.

23 Mr. Touger?

24 MR. TOUGER: I learned a long time ago if I have
25 nothing important to say don't say anything. I think the Court

Hbenros2

McCleod - direct

1 understands the issue completely, and I think he's trying to
2 bootstrap, again, Jimmy's state of mind into this witness's
3 state of mind.

4 THE COURT: Yes. Look, I think I am not going to
5 alter the ruling. I think, should you prevail in this case,
6 you will be extraordinarily pleased that I didn't, not that
7 that cuts one way or the other, of course.

8 MR. ENZER: We have to prevail to have an appeal. We
9 have to prevail to have an appeal. We have to prove our case
10 beyond a reasonable doubt.

11 THE COURT: That is exactly right.

12 (Continued on next page)

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Hbenros2

McCleod - direct

1 (In open court)

2 THE COURT: All right. Let's continue.

3 Objection sustained.

4 BY MR. ENZER:

5 Q. Mr. McCleod, you mentioned the conversation with Grant.

6 You said you had told Grant you mentioned him to

7 Rosemond is that right?

8 A. Yes.

9 Q. And what did Grant say in response?

10 A. He said, OK. Yeah.

11 He talked about how he hadn't seen Jimmy in a while.

12 He asked me how he was doing.

13 And, as I said, I mentioned to him that he's thinking
14 about doing this himself.

15 He said, Really?

16 Yeah, but I mentioned you. And he told me to talk to
17 you and see what was up. So if you were with it.

18 He said, OK, yeah. Let him know that's a go. Yeah,
19 I'm with that.

20 Q. Just so we're clear, who asked you to speak with D?

21 A. Rosemond asked me to speak to D.

22 Q. To see if he was with it. Who is "he" in that?

23 A. Rosemond asked me to speak to Derrick to see if Derrick was
24 with it.

25 Q. And did Derrick agree?

Hbenros2

McCleod - direct

1 A. Yes.

2 Q. He was with it?

3 A. Yes.

4 Q. Was there any other discussion in this meeting?

5 A. I mentioned to him that he has 30,000 for anybody who will
6 bring, you know, Lodi to him.

7 And D said, OK.

8 And we kind of tossed around that it would have to be
9 at least twice that much, if not more, because now D is
10 involved, and D's a shooter.

11 MR. TOUGER: Objection, your Honor.

12 THE COURT: No. Overruled.

13 BY MR. ENZER:

14 Q. Tell us about the conversation you had with Grant regarding
15 whether more than 30,000 was needed?

16 A. Well, \$30,000 is for me or anyone --

17 MR. TOUGER: Objection, your Honor.

18 Can we approach?

19 THE COURT: We are trying to actually proceed with the
20 trial here, counselor.

21 MR. TOUGER: I understand that, your Honor. But
22 this --

23 THE COURT: Just give me a minute.

24 I will sustain that objection, but simply because the
25 answer is unresponsive. Maybe you want to reframe your

Hbenros2

McCleod - direct

1 question.

2 BY MR. ENZER:

3 Q. Tell us just what was said between you and Derrick, the
4 statements you and Derrick made in your conversation about how
5 much was needed for this shooting now that Grant is involved.

6 A. Now that Grant is involved, it's more than 30,000 because
7 Grant is acting as the shooter. I'm the lurer and he's the
8 shooter, so at the least it's going to be \$60,000.

9 Q. Can you recount, to the best of your memory, the statements
10 you made and the statements Grant made.

11 A. He has 30,000 for anybody who's going to bring him to him.
12 Now that we're doing a lot more, there's more involved, it has
13 to be it's got to be more than 30,000. It's got to be at least
14 twice that amount, if not more, maybe even close to a hundred.

15 Yeah, it's true, because we are more involved now. We
16 are doing more.

17 Q. Why is Grant being involved more than the \$30,000 figure
18 that was originally discussed?

19 MR. TOUGER: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Did you say in this conversation why \$30,000 was -- scratch
22 that.

23 In that conversation, did you say why you believed
24 30,000 didn't cover Grant being a shooter?

25 MR. TOUGER: Objection.

Hbenros2

McCleod - direct

1 Asked and answered twice already.

2 THE COURT: Overruled.

3 A. In this conversation -- Jimmy was acting as the shooter in
4 the original conversation. Derrick is going to be the shooter,
5 so he has to be paid for shooting. My fee, the lurer fee,
6 would be consistent, but now I am actually recruiting a
7 shooter, so I'm more involved and doing more work.

8 Q. After recruiting Grant as a shooter, did you inform
9 Rosemond?

10 A. Yes, I did.

11 Q. What did you tell him?

12 A. I informed him that I spoke to D and D said that's a go.
13 He's cool with that.

14 Q. What did Rosemond say?

15 A. He said OK.

16 Q. After recruiting Grant as a shooter, did there come a time
17 when you received information that Fletcher was going to be
18 released from prison?

19 A. Yes. It was a Saturday. It was a weekend.

20 And I received a phone call, and Kevin Chung was on
21 the line from jail.

22 He said, Slim, son is in Queensboro now.

23 I said, Oh, he left Mohawk.

24 He said, He left Mohawk a little bit after you left.

25 He's going home soon. He's in Queensboro now. He's getting

Hbenros2

McCleod - direct

1 out soon. He's getting out September 11. He is going to be
2 released from Queensboro.

3 Q. What is Queensboro?

4 A. Queensboro is, for lack of a better word, it's a place
5 where inmates who have open dates, who are soon to be released
6 from prison, are warehoused in Long Island City.

7 Q. How far in advance of September 11 was this conversation
8 you had with Kevin Chung?

9 A. I had two conversations with Kevin Chung. One was letting
10 me know Fletcher was no longer in Mohawk, and the second
11 conversation was the day before or two days before, I think it
12 was the day before September 11 saying he was going to be
13 released.

14 Q. After having that conversation with Kevin Chung and
15 learning that Fletcher is about to get out from Queensboro,
16 what did you do with that information?

17 A. I sent a text -- I texted Jimmy. I said, Our friend is in
18 Queensboro. He's getting released. I think either I said
19 tomorrow or the 11th.

20 Q. And approximately what date did you send that text?

21 A. September 10 I think.

22 Q. What year?

23 A. 2009.

24 Q. What phone did you use?

25 A. The phone I got from Metro PCS.

Hbenros2

McCleod - direct

- 1 Q. The Thibedoux phone?
- 2 A. Yes.
- 3 Q. And what was Rosemond's response?
- 4 A. He said: OK. Get with Jason and get with D and let them
- 5 know.
- 6 Q. Remind me, who is Jason?
- 7 A. Jason Williams.
- 8 Q. And remind the jury, who is D?
- 9 A. Derrick Grant.
- 10 Q. What was your reaction to hearing mention of Jason's name?
- 11 A. I said, OK. And I contacted Jason and let him know what
- 12 Jimmy had said to me about us meeting up the next day to go out
- 13 to Queensboro.
- 14 Q. How did you communicate with Jason?
- 15 A. I used the Thibedoux phone.
- 16 Q. Did you make arrangements with Jason?
- 17 A. I did.
- 18 Q. Did you make any arrangements with Grant?
- 19 A. I contacted Grant and he said, OK. I'll meet -- you get
- 20 with Jason and let me know in the morning and we'll meet up.
- 21 Q. So what was the plan for the next morning?
- 22 A. The plan the next morning was for us to go over to
- 23 Queensboro to see if anything could take place that day or, you
- 24 know, also in my opinion to ID Lodi Mack.
- 25 Q. What was the point of identifying him?

Hbenros2

McCleod - direct

1 A. So that all parties would now know how he looked and see
2 him.

3 Q. Why would that matter?

4 A. You have to know who you are going to shoot if you are
5 going to shoot somebody.

6 Q. How were you going to get to Queensboro?

7 A. Jason and I drove out there.

8 Q. So let's talk about -- what day did you go there?

9 A. September 11.

10 Q. Let's talk about what happened that day. Walk us through
11 what happened.

12 A. I called Jason the day before. He said, OK, I'll hit you
13 in the morning.

14 The next morning he texted me and told me he was en
15 route. I think we may have spoken because he wanted to get the
16 exact cross-streets. I told him I was on New Lots between
17 Warwick and Jerome.

18 And when he pulled up, I came out. We got in the car.
19 We drove over to Queensboro, and we found a parking spot. And
20 I immediately looked around and said, you know, this is in fact
21 the jail. So I'm kind of looking for cameras and canvassing
22 the area.

23 And when I walked inside, I immediately noticed a bank
24 of cameras like, almost like a control panel where the
25 correction officer is.

Hbenros2

McCleod - direct

1 So I said, OK, we are going to scratch this. Don't be
2 doing anything here.

3 But I asked the lady, Is Lowell Fletcher here?

4 And she said: No, you just missed him, maybe 15, 20
5 minutes. Who is this guy? He's very popular today. Everybody
6 is looking for him.

7 And she went on to say a group of guys just came and
8 picked him up a little while ago.

9 I said, OK. Thank you.

10 I went back out to the car and told Jason, We just
11 missed him. Some people picked him up.

12 Q. What car did Jason drive -- what car did you and Jason use
13 to get over to Queensboro that day?

14 A. A green Maxima.

15 Q. Whose car was that?

16 A. I think Jason said it was his aunt's car.

17 Q. And where is Queensboro located?

18 A. In Long Island City, Queens.

19 Q. You said that when you arrived you looked and you saw a
20 bank of cameras and decided to scratch this?

21 A. Yes.

22 Q. What was the significance of the cameras?

23 A. Well, the significance of the cameras was that if we did,
24 in fact, run into Lodi Mack or Lowell Fletcher, if in fact we
25 were thinking about doing anything, that would be a terrible

Hbenros2

McCleod - direct

1 idea, because there was four or five views of the entire
2 building, the entrance, the front, and it would just be -- it
3 would not be a good idea.

4 Q. I'm going to show you on your screen what have been
5 premarked for identification as Government Exhibits 685A and
6 685B. Do you recognize these photos?

7 A. Yes.

8 Q. What do they show?

9 A. They show the front entrance and the side of, you know, and
10 a further view of Queensboro.

11 MR. ENZER: The government offers Government Exhibits
12 685A and 685B.

13 THE COURT: Received.

14 (Government's Exhibits 685A and 685B received in
15 evidence)

16 MR. ENZER: Can we please publish Government Exhibit
17 685A.

18 THE COURT: Go ahead.

19 BY MR. ENZER:

20 Q. What do we see here?

21 A. This is the front entrance. This is the door I walked
22 through to speak to the officer and saw the bank of cameras.

23 Q. You said the officer told you that Fletcher had just left?

24 A. Yes.

25 Q. After hearing that, what did you do?

Hbenros2

McCleod - direct

1 A. I thanked her and went back outside and told Jason when I
2 sat in the car.

3 Q. Did you and Jason have a discussion?

4 A. Very briefly, like, wow, we just missed him. We're kind of
5 like sitting there like what now?

6 So, while we're sitting there, I am just saying to
7 myself, I'm thinking, How far away is he? Would I recognize
8 him in the car?

9 And then I said, Wait a minute. He has the same
10 lawyer as Kevin Chung, Bob Macedonio. Let me try that lawyer.

11 Kevin had spoke to me about that lawyer, and the
12 lawyer seemed a little unconventional to me. So I was thinking
13 maybe there's a possibility that Lowell Fletcher or Yayo is
14 with Macedonio.

15 So I called the information and asked for the law
16 offices of Bob Macedonio. I got the number. When I called,
17 the receptionist said, I can give you his cell number. But
18 wait, I'll pass you through.

19 And when she passed me through, Bob Macedonio answered
20 the phone.

21 Q. What happened then?

22 A. He gets on the phone and he says B-O-B. Immediately I'm
23 saying this is a different kind of lawyer.

24 And I said, Hey, Bob, what's up?

25 He said, Hey. Who am I speaking to?

Hbenros2

McCleod - direct

1 I said, This is Slim. Is Lodi with you?

2 He said, Yeah, he's right here. And he passed him the
3 phone.

4 Q. What happened at that point?

5 A. At that point Lodi Mack and I began to have a conversation.
6 And I told him welcome home and basically told him: Hey,
7 what's up. You don't really know me, but Bigs told me you were
8 getting out soon, and he told me to look out for you. So I'm
9 reaching out.

10 Q. Who is Bigs?

11 A. Kevin Chung.

12 Q. Tell us about your conversation with Lodi Mack.

13 A. Well, Lodi Mack, of course, is excited. He's happy he's
14 home.

15 And I'm telling him: What's up? You don't really
16 know me, but Bigs told me you were getting on out soon. He
17 told me to look out for you until he get out, to hold you down.

18 He said, OK, my man Bigs. That's a good look.

19 He said, You Ola? In other words, are you blood?

20 I said, No. A lot of my friends are, a lot of my
21 family are.

22 He said, OK, OK, OK.

23 He asked me a couple of questions like where I was
24 from and stuff like that.

25 Then I said, You're still in Far Rockaway?

Hbenros2

McCleod - direct

1 He said, No, I'm at my sister's house up in the Bronx.

2 I said, OK.

3 He said, I can't be out in Far Rockaway anymore, now
4 that I have been arrested.

5 I said, All right.

6 I said, What's your number?

7 He said, I don't have a cell phone right now. If you
8 need to get in contact with me, just call Bob back. He'll give
9 me the messages.

10 I said, Well, take my number down.

11 He said, Yeah, I am going to do that.

12 So he got a pen and he took the number down.

13 He said, I'll be getting a phone any day now, real
14 soon. As soon as I get a phone I am a going to call you.

15 And we agreed -- I said, Well, I'm not rich or
16 anything, but down the road, you know, we'll get together.
17 I'll look out for you. I don't have much, but I'll make sure
18 you're OK. We'll get together. We'll see some girls or
19 something.

20 He said, OK. We'll do that.

21 And that was that.

22 Q. Did you tell him your real name?

23 A. No.

24 Q. Why not?

25 A. Well, something is going to happen to him, he's going to be

Hbenros2

McCleod - direct

1 shot soon, and I don't want him knowing my real name. And I
2 don't want him knowing who he's talking to in case he talks to
3 someone else and they say, You were talking to who? And the
4 whole cover is blown.

5 Q. Why did you tell him that Bigs had told you to look out for
6 him?

7 A. Well, the whole Bigs thing was, Bigs is a Blood. He's a
8 Blood. And it fostered a false sense of trust. It
9 artificially aged the relationship.

10 When I'm using Bigs, he knows Bigs. He just left
11 Bigs. Now he will be much more open to talking to me.

12 Also what I am telling him, when he asked me was I
13 Blood and I said, no, and I'm telling him that a lot of my
14 friends are, I'm giving him the impression that perhaps Bigs
15 was protecting him on the inside, and he could continue that
16 same relationship. So I'm giving him a false sense of
17 superiority.

18 Q. Why did you offer to be able to give him help when he got
19 home?

20 A. To ingratiate him to me, to give him a reason to, a
21 financial incentive and a reason to be around me. And, just
22 from observing him inside, I could see that he fancied himself
23 as a tough guy. So I wanted to feed straight into that image
24 he had of himself and make it a relationship he could already
25 clearly see himself taking that role.

Hbenros2

McCleod - direct

1 Q. Why did you want him to do that?

2 A. So that he could kind of go anywhere I said to meet him,
3 meet me at, and that he would trust me, he wouldn't double
4 think and overthink anything I'm asking him to do.

5 Q. Why do you want him to trust you?

6 A. I want him to trust me because I'm bringing him someplace
7 for him to ultimately be shot.

8 Q. Before talking to Lodi Mack on that occasion, had you
9 planned out what you were going to say to him?

10 A. No.

11 Q. Which cell phone did you use to talk to him that day?

12 A. The Thibedoux phone.

13 Q. Before going to Queensboro that day, did you have a
14 conversation with Jason Williams or Derrick Grant about
15 bringing a gun to Queensboro?

16 A. No. We didn't have the specific conversation about
17 bringing a gun.

18 Q. On your trip to Queensboro, did you bring a gun?

19 A. No.

20 Q. Do you know if Jason Williams brought a gun?

21 A. I didn't know, but I was pretty sure he did.

22 Q. Did there come a time when you had another phone
23 conversation with Lowell Fletcher?

24 A. Yes. Either a day or two days later he called me and said
25 this was his cell phone number and that he was up in the Bronx

Hbenros2

McCleod - direct

1 and -- to kind of get acclimated to his PO.

2 I said, OK, we're going to have to definitely get
3 together real soon, you know, I don't have much, but I'll
4 probably be able to give you a little something.

5 He said, OK. We'll do that. We'll get together.

6 Q. What cell phone number did he call you on?

7 A. He called me on the Thibedoux phone.

8 Q. Did you have any specific plans with Lodi Mack, Lowell
9 Fletcher to meet up at that time?

10 A. No, not at that time.

11 Q. Did you give him -- after that conversation with Lowell
12 Fletcher, what did you do?

13 A. After that conversation with Lowell Fletcher, I contacted
14 Jason or Jimmy or both and let them know I made contact with
15 Fletcher and that he and I had spoken and that I told him we
16 would be meeting up in the near future.

17 Q. After your trip to Queensboro, did there come a time when
18 you had another meeting with Rosemond?

19 A. Yes.

20 Q. How long after the trip to Queensboro?

21 A. Maybe a week later, maybe a little bit more.

22 Q. What month was it in?

23 A. It was in the same month. It was September.

24 Q. 2009?

25 A. Yes.

Hbenros2

McCleod - direct

1 Q. Where did that meeting take place?

2 A. In the same general location, Columbus Circle in front of
3 Whole Foods.

4 Q. How was that meeting arranged?

5 A. I received a text message, Meet me in front of, you know,
6 the same place as last time, the same general location,
7 address.

8 And I probably texted back, Yes, OK. I'm en route.

9 I may have called to confirm that I was coming.

10 Q. Did you meet up with Rosemond that day?

11 A. I did.

12 Q. Who was present?

13 A. It was Jimmy, Jason, and myself.

14 Q. Jason is Jason Williams?

15 A. Yes.

16 Q. Jimmy is Rosemond?

17 A. Yes.

18 Q. Where did you speak with them?

19 A. I spoke with him right in front of Whole Foods.

20 Q. The same Whole Foods that you had met with Rosemond at
21 previously?

22 A. Yes.

23 MR. ENZER: Can we please publish Government Exhibit
24 656A.

25 Q. Does this photo show the general area where that Whole

Hbenros2

McCleod - direct

1 Foods is?

2 A. Yes.

3 Q. Did you meet with Rosemond and Jason that day outside the
4 building or inside the building?

5 A. Outside.

6 Q. What happened during this meeting?

7 A. Jimmy said, Slim, when you were talking to dude, did you
8 talk to him on that phone, on your phone? He pointed to the
9 Thibedoux phone.

10 I said, Yeah.

11 He said, No, go get another phone.

12 He said, You got money on you.

13 He said, Hold on. Jason you got money on you.

14 Jason said, Yeah.

15 He said, How much money you got? Just give me that
16 money. I'll give it back to you.

17 so Jason reached in his pocket and gave me like, you
18 know, like 700 -- 600, 700 dollars, maybe.

19 Jimmy said, Slim, take that money. Go right over to
20 the Radio Shack over there.

21 And he pointed like across, by the train station.
22 It's 58th Street.

23 And he said, Go on in there and get the phone, and
24 make sure you call dude on this phone and only speak to him on
25 this phone. Don't speak to anyone else on that phone.

Hbenros2

McCleod - direct

1 And I went over to the Radio Shack and I got an AT&T
2 prepaid GoPhone. And I used the name Stacy King. I thought
3 Stacy would be ambivalent; couldn't tell if it was female or
4 male, but he would probably think it was a female. King was
5 one of the aliases I've used before.

6 Q. Before we get to the store and Radio Shack, during your
7 meeting with Rosemond and Jason, did Rosemond say anything to
8 you, did he mention anything about Grant and Jason?

9 MR. TOUGER: Objection to leading, your Honor.

10 THE COURT: Rephrase the question.

11 BY MR. ENZER:

12 Q. During your meeting with Rosemond and Jason outside of the
13 Whole Foods, what, if anything else, did Rosemond say?

14 A. He said, Slim, are you sure you guys can handle this? Are
15 you sure you got it?

16 I said, Yeah.

17 He said, Because I'm telling you, you know, I got
18 somebody else that -- if you don't have it, if you can't handle
19 it, I have somebody.

20 I said, Jimmy, we got it.

21 He said, OK.

22 And I went and got the phone.

23 Q. Where did you go get the phone?

24 A. At the Radio Shack on 58th, I think it's between Eighth and
25 Ninth.

Hbenros2

McCleod - direct

1 Q. Did you buy a phone there?

2 A. I did.

3 Q. What kind?

4 A. AT&T prepaid. I think it's called a GoPhone.

5 Q. What is a prepaid phone?

6 A. It is a phone where you don't have a contract or a bill.

7 You give them a certain amount of money, you know, and you get,
8 you purchase a certain amount of minutes, certain amount of
9 airtime.

10 Q. What name did you provide as the user or subscriber of the
11 phone?

12 A. Stacy King.

13 Q. Where did you come up with that name?

14 A. I've used the name King in the past as an alias, Joseph. I
15 think Larry once.

16 And Stacy was a name I used because I felt it would
17 be -- he would think it was a female, but it would be
18 ambivalent. It would be kind of gender neutral.

19 Q. Why didn't you use your own name?

20 A. I don't want my name attached to a phone that's going to be
21 used to speak to an individual who's getting shot.

22 Q. After buying the Stacy King phone, did you have any further
23 contact with Fletcher?

24 A. I did. After I bought the Stacy King phone that evening, I
25 called Fletcher and told him, This is my new phone. The old

Hbenros2

McCleod - direct

1 phone is gone. Call me on this phone.

2 He said, OK.

3 I asked him how he was doing. He asked me how I was
4 doing.

5 I said, Listen, I didn't forget about you. I
6 definitely want to get together. Just give me a second. We
7 are going to get together and we're going to hang out. I got
8 you.

9 He said, All right. I'm here.

10 Q. From that point forward, who did you use the Stacy King
11 phone to communicate with?

12 A. Exclusively with Lowell Fletcher. I never called anybody
13 else with that phone.

14 Q. Was there any exception to that?

15 A. I didn't -- I think I -- I either used the Thibedoux phone
16 to call the Stacy King phone to see, to test connectivity, or I
17 used the Stacy King phone to call the Thibedoux phone, but I
18 didn't call anyone else and speak to anyone. I just called my
19 own phones.

20 Q. Just so we're clear, you're saying you used the Stacy King
21 phone only to communicate with Fletcher except maybe one time
22 when you called your other phone, the Thibedoux phone?

23 A. Right.

24 Q. And the Thibedoux phone, who did you use that to
25 communicate with?

Hbenros2

McCleod - direct

- 1 A. Everybody else.
- 2 Q. Who is everybody else?
- 3 A. Children, family, Jason, Jimmy, D.
- 4 Q. Did there come a time when you had another meeting with
- 5 Rosemond?
- 6 A. Yes.
- 7 Q. Where did you meet with him?
- 8 A. Rosemond I met on a Friday in front of -- we met at
- 9 Houston's Restaurant, but the table wasn't ready yet.
- 10 Q. Where was Houston's Restaurant?
- 11 A. It was in the 50s I think, 52nd and Third or 53rd and
- 12 Third.
- 13 Q. In Manhattan?
- 14 A. Yes.
- 15 Q. What was the date of this meeting?
- 16 A. Two days before the murder of Lowell Fletcher, September
- 17 25.
- 18 Q. 2009?
- 19 A. Yes.
- 20 Q. What day of the week?
- 21 A. It was a Friday.
- 22 Q. How did that meeting get arranged?
- 23 A. I received a text message and told me the general location
- 24 to meet up.
- 25 Q. Do you remember who the text was from?

Hbenros2

McCleod - direct

1 A. It -- I just received a text. I couldn't tell sometimes if
2 it was Jason or Jimmy.

3 Q. Did you go to Houston's and meet up with Jimmy?

4 A. I did.

5 Q. What happened when you arrived?

6 A. I think I got there slightly before him, and a little while
7 later, he came inside and he introduced me to his fiancée. And
8 we went upstairs in Barnes & Noble. There is a bookstore
9 directly above the Houston's. The table wasn't ready yet, so
10 we went upstairs and we talked for a while up there.

11 Q. When you went up to Barnes & Noble to talk, who were you
12 with?

13 A. It was Jimmy and myself. His fiancée was perusing the book
14 section.

15 Q. OK. So, when you and Jimmy were in the Barnes & Noble,
16 what happened?

17 A. He took out a phone, I think it was a BlackBerry, and he
18 showed me an address.

19 And he said, I have somebody in G-Unit who basically
20 found out where this guy lives at, and he showed me an address,
21 someplace on 161st Street.

22 He said, That's where he lives.

23 Q. That's where who lives?

24 A. Lodi Mack.

25 Q. 161st in what borough?

Hbenros2

McCleod - direct

1 A. In the Bronx.

2 Q. What, if anything, did Rosemond tell you about that
3 address?

4 A. He said, That's where he lives. That's where he's staying
5 at. He has somebody who he gave a thousand dollars to. That
6 person kept 500 and gave 500 to Fletcher.

7 He said -- he said, Slim, what are these guys doing?
8 They are not looking out for him. He's home. He doesn't have
9 any money. He's staying up in the Bronx.

10 And he said later on, There's a guy, you know, I want
11 you to talk to. I want you to -- I want to talk to him. I
12 want you to see him.

13 This is a guy that he has -- I guess you would call it
14 G-Unit defector. He has somebody inside of G-Unit who is
15 talking to Fletcher and giving him information on Fletcher.

16 Q. Giving who information?

17 A. Giving Rosemond.

18 Q. OK. After this conversation with Rosemond at the Barnes &
19 Noble, what happened next?

20 A. A little while later our table was called. We went
21 downstairs and we ate.

22 Q. Who was present for the meal?

23 A. Jimmy, his fiancée, his son, and his daughter.

24 Q. Was there any discussion about Lowell Fletcher at that
25 meal?

Hbenros2

McCleod - direct

1 A. No.

2 Q. What happened after the meal?

3 A. After the meal, Jason pulled up. He was taking everyone
4 home, and Jimmy and I stayed. And we ended up taking a walk
5 over, and I observed a conversation between Jimmy and G-Unit
6 guy.

7 Q. The G-Unit guy, who are you referring to?

8 A. I don't know his name. This was an individual who was
9 giving Jimmy information about Lowell Fletcher.

10 Q. OK. Who went to meet with the G-Unit guy?

11 A. Jimmy and myself.

12 Q. Where did that meeting occur?

13 A. It was in the same general area, but we had to walk off
14 maybe like a five- ten-minute walk. We had to take a little
15 walk, and we got next to a bar, and there was a guy who looked
16 very much out of place and he was looking in our direction so I
17 knew that was him.

18 Q. Did Rosemond say anything to you on the walk over to meet
19 with the G-Unit guy?

20 A. He said, Slim, I think, I think we may -- I think Fletcher
21 may be suspicious of something, but I am not sure if it's you.

22 I said, No, I'm almost sure it's not me.

23 He said, Well, I want to make sure. So I want you to
24 just hear what this guy has to say. But don't say anything,
25 just listen.

Hbenros2

McCleod - direct

1 I said, OK.

2 So we went and I kind of hung back a few feet. I just
3 listened to their conversation.

4 Q. And what was the conversation?

5 A. The guy was telling Jimmy that Fletcher is getting a little
6 nervous because there is a guy name Shies, Shiesty, who keeps
7 calling him and keeps asking him questions and keeps trying to
8 meet up with him and he's making him nervous.

9 Q. Did Rosemond say anything to the G-Unit guy?

10 A. Rosemond did more listening.

11 He just asked a couple of questions: What's the guy's
12 name? What did he call him? Yeah? Is he all right?

13 Yeah. He's just a little nervous. He thinks, you
14 know, he doesn't really trust this guy. Why is this guy
15 speaking to him?

16 Q. After that conversation between Rosemond and the G-Unit
17 guy, what happened next?

18 A. The G-Unit guy left and Jimmy and I walked off together.

19 And I said, Jimmy, I know who he's talking about.
20 He's talking about Shies. This is the guy inside who's trying
21 to introduce me to Lodi Mack, and I told him, Don't say
22 anything to him about me. I don't want to meet him.

23 I said, Yeah, he's that type. He's always in the mix.
24 He's not talking about me.

25 Q. What did Rosemond say?

Hbenros2

McCleod - direct

1 A. He said, OK.

2 And he said, Well, Slim -- and he showed me the
3 address again.

4 He said, I want you to take a look at this address.
5 See if something can be done up there. Take a look at that
6 address, take a look at the area, and let me know. Hit me.

7 I said, OK. If I like it, I'll tell you, yeah, it is
8 a good date. You know, I like her. This is a nice girl.

9 If I don't like it, if it's a bad location, I'll say
10 something like, um, no, there's no real chemistry here. I
11 don't like this girl.

12 He said, OK.

13 And I got in the cab and went up to the 161st Street
14 location.

15 Q. I was going ask you just, so we are clear, what address was
16 Rosemond asking you to check out?

17 A. The address where Lodi Mack was living.

18 Q. Remind us what street.

19 A. 161st Street in the Bronx.

20 Q. And you went there you said?

21 A. I did.

22 Q. When you got there, what happened?

23 A. When I got there, I looked around.

24 I saw the building and I said in my mind, This is one
25 of those buildings that used to be something else. They just

Hbenros2

McCleod - direct

1 kind of did a facelift on the building.

2 So I looked inside and I saw, you know, the mailboxes,
3 and I saw a camera in the building. I saw the elevator, and I
4 was assuming it was probably a camera also looking towards the
5 elevator. And I looked around there for about three or four
6 minutes.

7 Then I walked off and -- I think it's Eagle Avenue. I
8 think it was Morris and Eagle Avenues. And I saw that bubble
9 that's indicative of a camera being on the light. I saw the
10 camera and I saw another camera.

11 I said, No, I've seen enough.

12 I walked off. I went to the corner store. I think
13 it's the one -- it's across from a gas station. I think it's
14 161st and Morris.

15 I texted Jimmy. I said, Yeah, I don't like this girl.
16 There's no real chemistry.

17 He said, OK. Get with -- give Jason and D a call.
18 Get with Jason and D tomorrow.

19 I said, OK.

20 I texted him back and I got in the cab and I went
21 home.

22 MR. ENZER: Can we publish Government Exhibit 615A.

23 THE COURT: In evidence?

24 MR. ENZER: It is in evidence already, your Honor.

25 THE COURT: OK.

Hbenros2

McCleod - direct

1 BY MR. ENZER:

2 Q. Do you recognize this building?

3 A. This is the building where Lodi Mack lived at, the building
4 that I looked inside.

5 Q. What day is it that you -- how long after your meeting with
6 Rosemond at Houston's did you go see 161st to check this
7 building out?

8 A. After dinner and after the walk where I observed the
9 conversation, I immediately got in the cab and went up there.

10 Q. OK. You can take that down.

11 After texting Jimmy and telling him you didn't like
12 the spot, what happened next?

13 A. He said OK. He told me to get with Jason and call Jason
14 and Jimmy -- I mean, call Jason and Derrick to arrange meeting
15 up the next day, which is Saturday.

16 Q. That conversation with Jimmy, how did you engage in that
17 conversation?

18 A. We texted each other.

19 Q. Which phone were you using?

20 A. I was using the Thibedoux phone.

21 Q. You said you went home. Where did you go home?

22 A. New Lots Avenue.

23 Q. The three-quarter house?

24 A. Yes.

25 Q. Did there come a time when you had a conversation with

Hbenros2

McCleod - direct

1 Jason Williams or Derrick Grant about a location?

2 A. Yeah. I informed them that we will meet up tomorrow,
3 Saturday. I will hit you tomorrow in the afternoon so we can
4 meet up and find a place.

5 He said, OK. Just hit me in the afternoon and let me
6 know when you're coming up there. I'll meet you up there.
7 This is Jason.

8 Then I told D, I'll see you tomorrow about 2, 3 in the
9 afternoon so we can find a spot.

10 All right. We waiting for you.

11 Q. How did you engage in that communication?

12 A. It was a text.

13 Q. Which phone did you use?

14 A. Thibedoux.

15 Q. Let's talk about the next day, Saturday, September 26,
16 2009.

17 What, if anything, did you do that day?

18 A. I think I called -- I think I called and texted Jimmy -- I
19 mean Jason and Derrick, and we met up at Derrick's house.

20 I got there, and a little while later Jason pulled up
21 in the green Maxima, and I wanted to take a look at a spot over
22 in the Parkchester housing complex. I lived there for a little
23 while. So where Derrick lived at was in close proximity, so I
24 said we can just walk over.

25 So we just -- Jason parked his car in front of

Hbenros2

McCleod - direct

1 Derrick's house, and we just walked across -- I think it's
2 called Cross Bronx Expressway Avenue or something like that,
3 just a straight route.

4 We walked over to Metropolitan Avenue in the Bronx,
5 and I took them over to Tremont and Purdy. There's a
6 Sizzlers -- or there was a Sizzlers restaurant there. I'm not
7 sure if it is still there. It used to be the old DMV.

8 Behind there there's like a grassy area, like some
9 train tracks and like, kind of an isolated deserted area. I
10 thought it would be a good location for the shooting to take
11 place.

12 So Jason, Derrick, and I myself looked at it, and I
13 could see from their body language and just the general
14 conversation they weren't really feeling that spot.

15 Q. Before you went to that spot, where did you meet with
16 Derrick and Jason that day?

17 A. I met with Derrick and Jason at Derrick's house.

18 Q. Remind us, who was Derrick living with at the time?

19 A. His girlfriend Michelle.

20 Q. How did you get there?

21 A. I took the train.

22 Q. How did Jason get there?

23 A. He drove up.

24 Q. Which car?

25 A. The green Maxima.

Hbenros2

McCleod - direct

1 Q. So you guys met up, you looked at a couple of spots. You
2 mentioned that the spot you just described they didn't like it?

3 A. No.

4 Q. What happened next?

5 A. So next what we did was we made small talk as we walked
6 back towards the Parkchester train station, back towards where
7 we came from, the direction we came from.

8 And right adjacent to the train there's like a park
9 area. It looks like there should be a basketball court there,
10 but I don't think there is a basketball court there.

11 And there's a Zaro's breadbasket across the street.
12 There's a bank. I was showing them the park area, the
13 basketball court area. And they liked that a little bit
14 better, but it's kind of busy right there. There's the train
15 station, there is lots of cabs that park there. Jason
16 mentioned there's a bank. There's probably a camera there. I
17 said, Yeah, there probably is.

18 So we looked at that for a little while, and I could
19 tell they weren't really feeling that either.

20 So, it was getting a little dark -- it's not dark, but
21 it's getting a little darker. And we're walking and talking,
22 and then I said, I know the perfect place. Come on. We'll
23 drive over there.

24 So we walked back to Derrick's house and got in the
25 Maxima. I said, Jason, get to the Cross Bronx.

Hbenros2

McCleod - direct

1 So we got on the Cross Bronx.

2 Take exit 1.

3 We got off at exit 1. We got off at Mt. Eden Avenue.

4 And as soon as we drove on Mt. Eden Avenue you could
5 see Derrick like looking around.

6 I said, Yeah, this is a much better place.

7 He made a U-turn. We pulled in and immediately I
8 could see that this was the place that they liked a lot better.

9 Q. So what part of the Bronx did you go to with Jason and
10 Grant?

11 A. We went to Mt. Eden Avenue, the Mt. Eden -- the 4 line,
12 Jerome Avenue. The 4 train runs along Jerome Avenue, and we
13 were on Mt. Eden.

14 Q. Next to you is a poster board of what is in evidence as
15 Government Exhibit 142G.

16 MR. ENZER: Mr. Pavlis, is there a marker?

17 Q. Do you recognize that?

18 A. Yes.

19 Q. Is the laser pointer up there? There should be a laser
20 pointer in front of you. Let me just move the chair.

21 MR. ENZER: Permission to approach, your Honor?

22 THE COURT: Yes.

23 MR. ENZER: Thank you.

24 BY MR. ENZER:

25 Q. Using the laser pointer, can you show the jury where Jerome

Hbenros2

McCleod - direct

1 Avenue is on this map.

2 A. This is Jerome Avenue. Right here.

3 Q. Mr. McCleod, if you don't mind, if you could stay in your
4 seat and just use the pointer.

5 A. OK.

6 Q. When you do that you block the jury's view.

7 A. Sorry about that.

8 Q. That's all right.

9 A. That's Jerome Avenue.

10 Q. Indicating Jerome Avenue running up -- left to the top of
11 the --

12 THE COURT: That's OK. We are going to break here.

13 MR. ENZER: OK.

14 THE COURT: 9:30 tomorrow morning, ladies and
15 gentlemen.

16 Thank you.

17 Counsel remain.

18 (Continued on next page)

19

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21

22

23

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25

Hbenros2

McCleod - direct

1 (Jury not present)

2 THE COURT: Be seated, folks.

3 OK. Mr. Enzer, please bring me up to date on the
4 schedule.

5 MR. ENZER: Your Honor, we are more than halfway
6 through Mr. McCleod's testimony. I have about -- of a 70-page
7 direct I am on 40. I think we still might be in a position to
8 either rest tomorrow or early Thursday.

9 THE COURT: OK.

10 Mr. Touger, any different view?

11 MR. TOUGER: No, your Honor. I mean, I think Thursday
12 might be more likely than Wednesday, but that doesn't --

13 THE COURT: OK.

14 Anything else we need to do?

15 MR. ENZER: Nothing, your Honor.

16 THE COURT: OK. See you tomorrow.

17 (Adjourned to Wednesday, November 15, 2017, at 9:30
18 a.m.)

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INDEX OF EXAMINATION

Examination of:	Page
BRIAN MCCLEOD	
Direct By Mr. Enzer	901

GOVERNMENT EXHIBITS

Exhibit No.	Received
675H	923
660A	929
656A, 655L and 656H	936
610A, B, and C	963
685A and 685B	978

1
2
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HBFAAROSF-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 15, 2017
9:20 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)

HBFAAROSF-Corrected2

1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Mr. Skinner, you didn't get too much sleep
4 last night I guess.

5 MR. JOHNSON-SKINNER: It wasn't just me.

6 THE COURT: OK. Well, in any case, all right. I have
7 the letter. Mr. Touger, I assume you got the government's
8 letter.

9 MR. TOUGER: Yes, at 11:30 last night.

10 THE COURT: I didn't think it was earlier.

11 MR. TOUGER: Your Honor, unfortunately, Mr. Edelstein
12 was the one who was preparing the counterargument. He hasn't
13 arrived yet.

14 THE COURT: OK. Well, so much for that.

15 MR. TOUGER: I do want to commend the Court on the
16 power of the Court has. When Mr. Mohan called me this morning,
17 I was stuck in bumper-to-bumper traffic, and the minute I hung
18 up the phone the traffic just parted like the Red Sea. Your
19 Honor, I commend you for your power you have on the traffic
20 gods.

21 THE COURT: That's great, but it doesn't do me any
22 good. I hit the traffic no matter what.

23 All right. So does Mr. Edelstein know to be here now?

24 MR. TOUGER: I e-mailed him and I have tried calling
25 him, but I haven't been able to reach him personally.

HBFAAROSF-Corrected2

1 THE COURT: I was under the impression everybody was
2 here. So you don't want to respond to this, right?

3 MR. TOUGER: Mr. Edelstein was up. I would think it
4 would be better that he respond to it.

5 THE COURT: All right. False start.

6 We will wait for Mr. Edelstein for a reasonable
7 period, but not beyond 9:30.

8 MR. TOUGER: I am sure he will be here before then.

9 (Recess)

10 THE COURT: OK. Mr. Edelstein, I am told you are the
11 man to respond to the government's letter overnight.

12 MR. EDELSTEIN: your Honor, yes.

13 THE COURT: We usually stand up and go to the lectern.

14 MR. EDELSTEIN: Your Honor, I would like to take the
15 government's second point first, because their argument that
16 they might be prejudiced by the defense summation, the defense
17 does not intend to make any argument, any such argument on
18 summation.

19 THE COURT: Why don't we begin with their first point.

20 MR. EDELSTEIN: Well, in their first point, they are
21 citing the *Kaufman* case, and then an out-of-circuit case, both
22 of which involved statements made by coconspirators. We are
23 not disputing the coconspirator statements come in. In the
24 *Kaufman* case, the evidence at issue were recorded statements
25 that a coconspirator made, things that he said. The other case

HBFAAROSF-Corrected2

1 on that page also involved statements. We are not disputing
2 that. Mr. McCleod is perfectly free to testify as to what he
3 said and what was said to him by other alleged coconspirators,
4 and the jury is free to use that evidence to draw whatever
5 inferences it likes, including inferences as to the parties'
6 state of mind.

7 Neither of those cases involved an alleged
8 coconspirator going the next step and saying, well, you know,
9 because of these statements that I made or because of those
10 statements that I heard, this is the opinion I came to about
11 the scope of everything.

12 Then later on in their letter the government cites to
13 other cases. The first of those involves an alleged gambling
14 operation, and the Court placed heavy emphasis on the fact that
15 both the defendant and the alleged coconspirator had the same
16 basis of knowledge and saw and heard the same things.

17 Essentially the Court allowed the coconspirator to
18 testify to what he thought when he sized up this house, went
19 into it, saw and heard what was going on, and these were things
20 that the defendant had also seen and heard. That was the
21 relevance.

22 In this case, in the final case cited by the
23 government also, that was the securities one, that also
24 involved -- first of all, it was a plain error case, but --

25 THE COURT: What case are you talking about?

HBFAAROSF-Corrected2

1 MR. EDELSTEIN: I apologize, your Honor. The
2 government's letter came too late for me to get a hard copy so
3 I am just getting it on the screen.

4 Judge, I am talking about the *Offill* case, which is
5 the securities fraud; and then the case of *Giovannetti*, cited
6 on page 2, was the case with the gambling operation.

7 Again, both of those cases involved defendants and
8 coconspirators who saw and heard the same things and had the
9 same factual basis for knowledge.

10 That's not the case here.

11 The evidence here is that Mr. McCleod is up in the
12 Bronx out in the field scouting out locations, doing some
13 planning, and at this time Mr. Rosemond is in Miami.

14 There are things that Mr. Rosemond knows that
15 Mr. McCleod doesn't, including apparently the purpose of why
16 Rodney Johnson may have been there. There are things that
17 Mr. McCleod knows that Mr. Rosemond doesn't, such as the
18 reasons why he chose a particular location.

19 According to his testimony, these were not things he
20 communicated to Rosemond. He communicated that the location
21 had been chosen, but not why or how or who he was with.

22 THE COURT: Mr. Edelstein, you're getting I think
23 pretty far off the point.

24 MR. EDELSTEIN: Well, I would submit I am not getting
25 far off the point because the basis --

HBFAAROSF-Corrected2

1 THE COURT: But I am the one who decides.

2 As I understand the government's position, there are
3 three prongs to it, but there's only one that I think
4 ultimately matters.

5 The one that seems most persuasive is that the
6 defendant is charged with being a party to a conspiracy to
7 commit murder for hire. Thus, the government has to prove that
8 such a conspiracy existed, which includes proof that the
9 agreement was an agreement to kill for hire as opposed to shoot
10 at or whatever some of the other euphemisms have been.

11 Implicit in the posture in which the case stands now,
12 the government's argument must be that McCleod and at least one
13 other person reached an unlawful agreement. McCleod's state of
14 mind is relevant to whether the agreement was an agreement to
15 kill, and thus McCleod's testimony as to what McCleod
16 understood as distinguished from what McCleod thinks was in the
17 defendant's mind is nonhearsay, it is an historical fact, it is
18 relevant to the existence of the conspiracy, and McCleod's
19 adherence to it, all of which is perfectly sensible.

20 Now, it probably should not be considered by the jury
21 as -- I will rephrase that to be more precise. I do not take
22 the government now to be arguing, as distinguished from
23 yesterday, that McCleod's personal understanding of what
24 Rosemond allegedly said is evidence as to what Rosemond
25 personally believed, intended, or intended to convey. For that

HBFAAROSF-Corrected2

1 the jury would have to rely on other evidence.

2 Is that the argument, Mr. Skinner or Mr. Enzer,
3 whoever is going to --

4 MR. ENZER: You are correct, your Honor.

5 THE COURT: So what about that?

6 MR. EDELSTEIN: My response to that would be twofold.

7 First of all, federal conspiracy is bilateral, not
8 unilateral. What is at issue here -- the government has to
9 prove an agreement.

10 THE COURT: Of course, but we know already that Jason
11 Williams has testified that he went, I think he went with
12 McCleod, right, but in any case the two of them were acting
13 together. And Jason Williams certainly knew the objective was
14 to kill, if the jury credits Jason Williams. So there is
15 certainly evidence of the existence of the charged conspiracy,
16 at least involving Jason Williams and McCleod; and, if you
17 accept McCleod's testimony, you add in Derrick Grant. So that
18 there's three conspirators, and there are others, Tef and so
19 forth. That still, of course, leaves the question of was the
20 defendant a member of the conspiracy.

21 MR. EDELSTEIN: Judge, what I was about to say is that
22 an understanding and agreement are two different things.

23 THE COURT: Really?

24 MR. EDELSTEIN: What Mr. McCleod's unilateral --

25 THE COURT: You are going to object to the charge that

HBFAAROSF-Corrected2

1 a conspiracy is an agreement or understanding that has been
2 used in every conspiracy case in this courthouse for probably
3 two centuries?

4 MR. EDELSTEIN: In that context the word
5 "understanding" is basically used to mean the same thing as an
6 agreement, a mutual understanding between two people, not a
7 unilateral understanding of one person concerning what he
8 personally thought he was out there to do, that what
9 Mr. McCleod personally believed or understood, the objective,
10 you know, that he was out there to do on that day is not the
11 same thing as what he might have agreed to with Mr. Rosemond
12 and achieved a meeting of the minds with, with Mr. Rosemond,
13 because there is no evidence that any of this understanding was
14 ever communicated to Mr. Rosemond.

15 THE COURT: OK. If you haven't found anything better
16 on that, and I'll give you the chance, the full chance, but if
17 that's the best you can do, I'm going to allow it.

18 It is not a criticism of you. That's just the way I
19 read the law.

20 MR. EDELSTEIN: I mean, as to the testimony of Jason
21 Williams, he did testify on cross-examination that he didn't
22 know whether this was going to be a shooting or a killing.

23 But, in any event, I would also make a Rule 403
24 argument that here both the Court and the government have made
25 the distinction of saying that this evidence will be admitted

HBFAAROSF-Corrected2

1 only for Mr. McCleod's intent and the existence of the
2 conspiracy and not for Mr. Rosemond's intent.

3 I would question whether a jury, even properly
4 instructed, would be able to draw that distinction, because
5 this would be very inflammatory evidence, and it would spill
6 over into the jury's consideration of Mr. Rosemond's intent as
7 well as Mr. McCleods.

8 I would submit also it is that not any more helpful
9 than the facts on which his alleged understanding was based.
10 The jury is going to hear from Mr. McCleod all of the things
11 that he saw, all the things he did, all the things he said, all
12 the things that were said to him. They are going to have the
13 same resources available to make whatever logical inferences
14 they need to make that Mr. McCleod did.

15 I would submit that, given that, you know, only
16 Mr. Rosemond is on trial here and the jury is ultimately going
17 to have to find his intent, even if the other three
18 conspirators or the other five or however many had an agreement
19 among themselves, the jury has to acquit if Mr. Rosemond isn't
20 part of it.

21 So, I would submit that, given that the jury is going
22 to have before it all of the things that Mr. McCleod actually
23 saw, did, heard, and said, it doesn't need this extra
24 embellishment from him about what he thought it all added up
25 to.

HBFAAROSF-Corrected2

1 THE COURT: All right.

2 I would like Mr. Enzer to state clearly and succinctly
3 exactly what he proposes to elicit.

4 MR. ENZER: I would ask Mr. McCleod -- just give me
5 one second, your Honor. I would ask Mr. McCleod, on September
6 27, 2009, when you agreed to carry out the plan to lure
7 Fletcher to Mt. Eden Avenue? Did you have an understanding of
8 the goal of the plan?

9 I expect he would say yes.

10 THE COURT: That is another way of asking what
11 Mr. Rosemond intended.

12 MR. ENZER: It is not. We are not asking who is a
13 party to the plan.

14 THE COURT: If that is what you want to elicit, I am
15 not allowing it.

16 MR. ENZER: OK, your Honor.

17 THE COURT: There is a different way to do this.

18 MR. ENZER: Sure. We are open to -- how about if we
19 said, what was your intention or what was your -- when you
20 agreed to carry out the plan on that date --

21 THE COURT: That assumes a commonality as to a plan.
22 Look, Mr. Enzer, it's simple.

23 MR. ENZER: When you showed up there on that date,
24 what did you believe was going to happen to Lowell Fletcher?

25 THE COURT: Look, I thought I understood your letter

HBFAAROSF-Corrected2

1 to be proposing something different. I stated what I
2 understood it to mean, and we've proceeded this morning so far
3 on that understanding.

4 If I misunderstood your letter and you really want to
5 do what you are now saying, and which is actually in the
6 opening paragraph of your letter, but it's not consistent with
7 the second paragraph of your letter, I need to know that.

8 MR. ENZER: Judge, I may be phrasing them poorly now.
9 We are just asking McCleod about his intent. I will phrase the
10 question however the Court will permit it, but all we want to
11 ask him is what's in McCleod's mind. What did he think, what
12 was his belief.

13 THE COURT: What was his belief about what? That's
14 the key. I thought you were trying to elicit from McCleod what
15 he understood Rosemond's words to mean.

16 MR. ENZER: We're past that.

17 THE COURT: We're past that?

18 MR. ENZER: We're past that. Your Honor ruled on
19 that. Yesterday your Honor ruled we cannot ask McCleod what
20 Rosemond meant by his statements, and we are not trying to
21 revisit that.

22 THE COURT: I understood this differently.

23 What I ruled yesterday, and I am going to read it to
24 you because you need to hear it again.

25 "I take the objection to be directed to two things: A

HBFAAROSF-Corrected2

1 question as to the witness's opinion as to what the defendant
2 meant with respect to the statements that he had 30,000 for
3 anybody who brings him to me and I'm going to hit him, etc.
4 The first opinion." And then I said, "I guess that really
5 covers both, what he meant by I have 30,000 for someone or
6 anyone and the hard and fast. I'm going to sustain those
7 objections."

8 OK?

9 MR. ENZER: Yes.

10 THE COURT: All right. That is different from asking
11 him what he, McCleod, understood the statements to mean, which
12 could be different than what the defendant meant.

13 The key point, of course, or a key point is quite
14 simply this: First of all, it leaves open to the defense the
15 argument that, because of a limiting instruction I'll certainly
16 give, the jury's not entitled to consider what McCleod
17 understood by this ambiguous statement -- ambiguous obviously
18 because we discussed the ambiguity yesterday at length -- as
19 evidence of what Rosemond meant by the statements. We had the
20 whole long discussion about what "hit" means, for example.

21 Secondly, it leaves open the argument, which it seems
22 to me is perfectly fair, that the jury should not conclude,
23 whether based on McCleod or otherwise, that Rosemond, assuming
24 he made the statements that McCleod testified to, actually
25 meant kill as distinguished from a shooting, a nonfatal

HBFAAROSF-Corrected2

1 shooting or something less, and that the evidence is not
2 sufficient -- this is an argument I can conceive the defense
3 making -- to permit a conclusion beyond a reasonable doubt that
4 that's what Rosemond meant.

5 Now, I understand the government would have arguments
6 to the contrary, that that was exactly what he meant; or, even
7 if it wasn't, that sometime later in the timeline Rosemond came
8 to understand that there was going to be a killing or likely to
9 be a killing and he facilitated it, that he promoted it.

10 So there's all kinds of latitude here for both sides,
11 but it seems to me that if the question is framed as to the
12 understanding of the witness, it goes to whether there was an
13 unlawful agreement to commit murder for hire as opposed to
14 shooting for hire, and that agreement conceivably at its
15 inception, depending on what the government persuades the jury
16 of, may or may not include Rosemond at that moment. He may
17 adhere to it later, maybe it includes him at that moment, all
18 uncertain. They are all jury questions is what I mean by
19 "uncertain."

20 MR. TOUGER: Your Honor, I understand the Court's
21 ruling.

22 THE COURT: I haven't made it yet. I'm still trying
23 to find out what the government wants to do, because their
24 letter is not pellucid. Part of it is a very good thought
25 overnight.

HBFAAROSF-Corrected2

1 MR. ENZER: Your Honor, we agree with your analysis we
2 are not looking to ask McCleod what his understanding of
3 Rosemond -- we are not asking to ask -- we are not looking to
4 ask McCleod --

5 THE COURT: His opinion of what Rosemond meant, right?

6 MR. ENZER: Right.

7 THE COURT: That's the ruling yesterday.

8 MR. ENZER: Right.

9 I'm not looking to ask McCleod about his understanding
10 during that Whole Foods meeting with Rosemond about what the
11 goal of what he was discussing with Rosemond was.

12 I want to ask him, not at that point in time, but on
13 the day of the murder itself, after the sequence of events
14 between the initial meeting at Whole Foods up to the murder on
15 the day of the murder, on that day what was his state of mind
16 about what he was doing that day, what was the purpose of his
17 actions that day. Your Honor, the logic of why his state of
18 mind as to the nature of the agreement is relevant, whether
19 it's at the initial meeting or on the day of --

20 THE COURT: Look, there is a fundamental difference,
21 or at least there seems to me to be a fundamental difference
22 between what he thought he was doing on the day of the shooting
23 and what I thought this whole discussion was about, which was
24 the Whole Foods meeting.

25 MR. ENZER: We are not focused on the Whole Foods

HBFAAROSF-Corrected2

1 meeting. We don't mention it in our letter, Judge. I didn't
2 mean to suggest that this was focused on that meeting.

3 THE COURT: Did you really think that you were going
4 to get a ruling that you could ask a lay witness what he
5 thought the goal of the conspiracy was when there's no finding
6 there was a conspiracy?

7 I mean that's something you've got to prove. The
8 question articulated in the first paragraph of your letter
9 presupposes the existence of a conspiracy, which is one of the
10 issues that the jury will have to decide. You can't do that,
11 or at least I'm not going to let you do that.

12 Here's what I think you ought to do. We are going to
13 be with this witness most of the day, right?

14 MR. ENZER: Yes.

15 THE COURT: I want to see the questions in writing
16 that you propose to put to him.

17 MR. ENZER: OK, your Honor.

18 THE COURT: All right.

19 We don't have a full jury yet.

20 OK. We'll stand in recess until we get the jury.

21 (Recess)

22 MR. TOUGER: Your Honor, one thing before the jury
23 comes in. Since the Court hasn't made a ruling yet on this
24 issue --

25 THE COURT: I haven't seen the question yet.

HBFAAROSF-Corrected2

1 MR. TOUGER: Right. Exactly.

2 My only point is that the witness should be instructed
3 to only testify about the facts and not any of his
4 interpretations of those facts, just so we don't have him
5 blurting out something.

6 THE COURT: Mr. Enzer?

7 MR. ENZER: That is not a necessary instruction or
8 helpful instruction to the witness. I am not going to ask
9 him -- I am going to abide by the Court's ruling. I understand
10 that we are in a gray area on this issue right now. We are
11 trying to work up questions to present to the Court. I am not
12 going to go into this. If I think the witness is going there,
13 I will ask him to stop.

14 THE COURT: I am not going to give a vague instruction
15 like that. I don't know what the witness might make out of
16 that.

17 Let's bring the jurors in.

18 Before we do, I got a note from Juror No. 7, who may
19 need to accompany an elderly parent to a doctor on Friday
20 morning if we're still going on Friday. We are not going to
21 still be going on Friday, right?

22 MR. TOUGER: Right.

23 THE COURT: I am not going to give them a guarantee.

24 OK. Let's go.

25 The note is Court Exhibit H.

Hbfnros1

McCleod - direct

1 BRIAN MCCLEOD, resumed.

2 (Jury present)

3 THE COURT: Good morning, everybody.

4 JURORS: Good morning.

5 THE COURT: The defendant and the jurors all are
6 present. The witness is on the stand. The witness is reminded
7 he's still under oath. Before you start, Mr. Enzer, let me
8 just respond to the note from Juror No. 7.

9 We are reasonably confident that the evidence will be
10 concluded tomorrow. That is not a guarantee. I'm not
11 committing about Friday yet. Strange things happen sometimes.

12 If we need to sit Friday, we are going to sit Friday,
13 but the odds are significantly against it.

14 Let's go ahead.

15 DIRECT EXAMINATION

16 BY MR. ENZER:

17 Q. Good morning, Mr. McCleod.

18 A. Good morning.

19 Q. Yesterday you told the jury about a discussion in which you
20 recruited Derrick Grant as a shooter.

21 Do you remember that?

22 A. Yes.

23 Q. Whose idea was it to suggest Derrick Grant as a shooter?

24 A. It was my idea.

25 Q. Why did you suggest Derrick Grant as a shooter?

Hbfnros1

McCleod - direct

1 A. Firstly because I wasn't going to be a part of anything
2 that involved Jimmy shooting anybody. And, secondly, because
3 Derrick was an individual who Jimmy was intimately familiar
4 with who I was familiar with, so we both trusted him.

5 Q. Had Derrick ever done any shootings for Rosemond before
6 that?

7 A. Yes.

8 Q. What are you referring to?

9 A. Referring to the shooting of the Violator offices.

10 Q. In the early 2000s?

11 A. Yes.

12 Q. That is something you talked about yesterday?

13 A. Yes.

14 Q. OK. Yesterday you were mentioning, you were describing a
15 trip that you made to Mt. Eden Avenue with Derrick Grant and
16 Jason Williams the day before the murder of Lowell Fletcher.

17 Do you remember that?

18 A. Yes.

19 Q. Up there next to you is a blowup of Government Exhibit
20 142G, which is already in evidence, an aerial photograph of Mt.
21 Eden Avenue in that area.

22 Remind us, why did you go with Jason Williams and
23 Derrick Grant to that area the day before the murder?

24 A. I went there because we had gone over by Parkchester to
25 pick a location that I felt would be a good location for a

Hbfnros1

McCleod - direct

1 murder. And they didn't like --

2 MR. TOUGER: Objection, your Honor.

3 THE COURT: Overruled.

4 MR. ENZER: You can continue.

5 A. They didn't like -- I could see from their body language
6 and just the lack of communication they didn't approve of those
7 locations in Parkchester.

8 Q. How did you and Jason and Derrick get to this area?

9 A. To Mt. Eden?

10 Q. Yes.

11 A. We drove over.

12 Q. Whose car?

13 A. It was Jason's car.

14 Q. Approximately what time did you arrive there on that day?

15 A. Between 7:30 and 8:30 I think.

16 Q. Morning or night?

17 A. Evening.

18 Q. Do you have the laser pointer in front of you?

19 A. I do.

20 Q. Can you show the jury when you and Derrick and Jason
21 arrived in that area on that night where you went on the blowup
22 next to you.

23 A. This being Mt. Eden Avenue, he came from the Cross Bronx
24 and came across and he drove up. When we got about right here,
25 we made a U-turn so that we would be parked on this side of the

Hbfnros1

McCleod - direct

1 street.

2 Q. OK.

3 A. It is a two-way street. So we came up --

4 Q. If I heard you correctly, you Jason and Grant came off the
5 Cross Bronx, drove up Mt. Eden away from Jerome towards
6 Macombs?

7 A. Yes.

8 Q. And then stopped between Inwood and Macombs, is that right?

9 A. Yes.

10 Q. And you said when you were driving. I guess you were
11 driving towards Macombs, made a U-turn, and now the car is
12 facing towards Jerome?

13 A. Yes.

14 Q. And did you park near a building?

15 A. We did. We parked in -- we parked in this vicinity right
16 here.

17 Q. What kind of building is that?

18 A. This building is a -- it's like a rehab center. I also
19 believe it houses people who may be suffering from HIV.

20 Q. Were you familiar with this area before going there that
21 day?

22 A. Yes.

23 Q. How are you familiar with the area?

24 A. I was familiar with that area because I had rented a room
25 on University Avenue, so I was always -- when I was in that

Hbfnros1

McCleod - direct

1 area and I would go to that room, I would walk to the 4 train
2 to go to work.

3 Q. When you got there and parked, what happened?

4 A. When we got there and parked -- actually, as we pulled in,
5 I could just see that they were much more approving of this
6 location. When we got there and parked, they took a look
7 around, and they were much more responsive.

8 Q. "They" is Grant and Jason?

9 A. Yes.

10 Q. After you arrived, did you walk around the area at all?

11 A. We kind of did, but it was more me showing, with head nods
12 and conversation about different things.

13 Q. Did you have any discussion with Jason and Grant in that
14 area?

15 A. I did. I told them that I know from experience that if you
16 look up, and Derrick and Jason both saw, and I said, There's a
17 camera. They kind of looked at each other.

18 I said, Don't worry about that camera, because as long
19 as you walk very, very close to the wall.

20 I demonstrated. I said, Almost like your shoulder is
21 against the wall, the camera won't see you.

22 So Jason kind of looked at me.

23 I said, I know. I had a girlfriend in there, and I
24 used to just walk in there and she would say, Where did you
25 come from? I did not see you.

Hbfnros1

McCleod - direct

1 So, I figured out what it was. It was freezing cold
2 outside, and I was walking close to the wall. I did a little
3 experiment and I looked at it and I said, Oh, you can't see me
4 when I walk next to that wall.

5 That's how I knew.

6 Q. Did you show them -- that camera, what building was it
7 against?

8 A. That camera is -- it shows the entire kind of straight down
9 Mt. Eden, but it's around -- it's around -- right around this
10 location there's a mounted camera.

11 Q. Is that attached to the rehab building?

12 A. I think so.

13 Q. On Mt. Eden did you have a further conversation with Grant
14 and Williams about a specific location for the murder?

15 A. Yes. I explained to them that right around here there's
16 like a black gate, and there's bushes, and it's very, very
17 dark. Even in the daytime for some reason that area is darker.

18 And I explained to them that a couple of times when
19 Jonathan Brown and I walked there, there would be people. We
20 never knew they were there until they lit up a cigarette or
21 they said something.

22 He said, Bro, somebody could just get killed right
23 here. Look how dark it is.

24 I said, Yeah. I always make sure I step out in the
25 street when I walk right here because it's very dark.

Hbfnros1

McCleod - direct

1 I explained to him: Derrick, if you stand right here,
2 the guy has to walk past you because the sidewalk ends. He's
3 hit right here. There's nowhere else for him to go. It's the
4 perfect place for you to stand.

5 Q. How would you describe this spot you are talking about?

6 A. It's pushed in, like a recess.

7 Q. Can you show the jury where the recess was.

8 A. Right about here. Where a building -- it's where a
9 building -- between this building and this building is a black
10 gate, and I guess there's like a backyard and trees and like a
11 grassy area. Where the gate and the building come together,
12 it's pushed in, and it's very dark there.

13 Q. That's between Inwood and Macombs on Mt. Eden Avenue?

14 A. Yes.

15 Q. Near where the trees are close to the buildings?

16 A. Yes.

17 Q. And can you explain -- you said, you mentioned something
18 about somebody has to walk past it?

19 A. Yes.

20 Q. Can you explain what you mean by that.

21 A. As you are coming up Mt. Eden Avenue, no matter what side
22 of the street you walk on, if you walk on this side, the side
23 that -- this side right here, it doesn't matter, you are going
24 to end up on this side, because the sidewalk ends. You have to
25 cross the street.

Hbfnros1

McCleod - direct

1 So, no matter what side of the street you walk up on,
2 you are going to end up on Mt. Eden on this side of the street
3 right around here, which is before the recess. So the person
4 has to walk past you unless they are out in the middle of the
5 street.

6 Q. So, to be clear, who were you envisioning would be in the
7 recess?

8 A. Derrick Grant would be in the recess.

9 Q. And who were you envisioning would have to walk past
10 Derrick Grant?

11 A. Lodi Mack, Lowell Fletcher, would have to walk past him.

12 Q. Can we show the witness what has been premarked for
13 identification as Government Exhibit 1400.

14 Do you recognize this photograph?

15 A. Yes.

16 Q. What is this?

17 A. This is exactly the area I am talking with the recess.
18 That's the gate, that's the black gate where they come
19 together, where that shadow is, even in the daytime.

20 Q. The recess on Mt. Eden Avenue?

21 A. Yes.

22 MR. ENZER: The government offers Government Exhibit
23 1400.

24 THE COURT: Received.

25 (Government's Exhibit 1400 received in evidence)

Hbfnros1

McCleod - direct

1 MR. ENZER: Permission to publish, your Honor.

2 THE COURT: Yes.

3 MR. ENZER: I think the jury can now see the photo.

4 BY MR. ENZER:

5 Q. Can you describe for the jury what we are looking at in
6 this photograph.

7 A. What you are looking at is Mt. Eden Avenue. On the other
8 side -- on the side of the street that's going towards Macombs,
9 you can see there's no sidewalk.

10 And on the side that the car is in the traffic has to
11 go towards Jerome, there is a sidewalk. And that angle that
12 perpendicular -- where it comes together right here, is the
13 recess that I was explaining to Derrick that if you are over
14 there, it's nighttime, it's dark, it's already dark there. He
15 won't see you, but he has to walk past you. As he walks past
16 you, that's when you can do what you need to do.

17 Q. In this photo is the recess where the gate is on the left?

18 A. Yes.

19 Q. And if you're coming from the train on Jerome you would be
20 walking towards the recess?

21 A. Yes.

22 Q. And past it towards Macombs?

23 A. Yes.

24 Q. So you would pass the recess?

25 A. Yes.

Hbfnros1

McCleod - direct

1 Q. After showing the recess to Williams and Grant, did you
2 three reach agreement on a location for the murder?

3 A. Yes. They --

4 MR. TOUGER: Objection, your Honor.

5 THE COURT: Sustained as to form.

6 Q. What happened after you showed the recess to Williams and
7 Grant?

8 A. After we -- after I showed them the recess, Derrick kind of
9 looked around. We had small talk to the point where, This is a
10 much better place. Why didn't we just come here first?

11 I said, you know, I didn't think about it. Now that
12 it's darker, you can see even better.

13 They're like Yeah, cool. This is the spot.

14 So we got back in the car and we proceeded to leave.

15 Q. How long were you in the area of Mt. Eden and Jerome that
16 night?

17 A. It's been a while. It is hard to determine. I would say
18 about an hour.

19 Q. Did there come a point where you and Grant and Williams
20 left?

21 A. Yes.

22 Q. How did you leave?

23 A. We got back in the car and we drove off.

24 MR. ENZER: You can take that exhibit down.

25 Q. What happened when you left?

Hbfnros1

McCleod - direct

1 A. When we left, we were about to get back on the Cross Bronx.
2 As we made the left onto Jerome, it's kind of like you are
3 bearing left and the way the train traffic -- the way the train
4 tracks are and -- it's just a mess in that area.

5 So, as soon as we left, allegedly we broke some type
6 of traffic law, and there was a marked car there and a police
7 van. They pulled us over and asked us for ID and said I didn't
8 have a seat belt on. I clearly had a seat belt on.

9 Q. What happened?

10 A. The officer said, well, you know, basically take one for
11 the team.

12 Q. Why did you need to take one for the team?

13 A. He told me to take one for the team because when he asked
14 Jason for his ID and his insurance, Jason's insurance was
15 expired.

16 He said, I could just be an asshole and just take the
17 car.

18 The guy said: You are not doing anything. Look at it
19 from my point of view. You got Jersey tags, coming to a
20 drug-prone area. How do I know you are not picking up
21 something? Don't worry about it. You showed me ID. These
22 guys are good. Take one for the team. You had your seatbelt
23 on. He showed me, he said on the ticket all's you gotta do is
24 just plead guilty, mail it in. Just send \$150 in. This way
25 your guy gets to keep the car.

Hbfnros1

McCleod - direct

1 I said, All right.

2 He kind of chuckled about it and he pulled off.

3 Q. Did you have a parole curfew at the time?

4 A. I did.

5 Q. Did you receive this ticket before or after the curfew?

6 A. It was after curfew.

7 Q. Was it still the day before the murder?

8 A. Yes. September 26.

9 Q. After you received the ticket, where did you go?

10 A. After we received -- after I received the ticket, we drove
11 over to Harlem kind of like 145th and Lenox area, by where
12 Jason was staying from time to time with his aunt, Epsilon
13 Gardens, like the parking lot over there.

14 Q. Are there any restaurants or anything that are near it?

15 A. I think there might have been like a Pathmark and a pizza
16 place, a Domino's or a Papa John's.

17 Q. What happened when you arrived there?

18 A. We arrived there, we got out the car, and we saw Toree.
19 Toree was there. And Toree and I hadn't seen each other in a
20 while, so we spoke a little bit.

21 And either Jason or maybe even me -- I think Jason
22 might have said, We just came from over looking at a spot.

23 And Toree said, OK. Because I got Lover over on 161st
24 Street right now.

25 I said to myself, first, why is lover over on 161st

Hbfnros1

McCleod - direct

1 Street; and secondly why is Toree saying this; and, thirdly, I
2 just went over there yesterday.

3 So there's obviously a miscommunication, because that
4 place has cameras everywhere.

5 Q. Let's walk through that for a minute. Remind us, who is
6 Lover?

7 A. Lover is Brian James, who was in Mohawk with Toree and
8 myself.

9 Q. Remind us, who is Toree.

10 A. Toree is Rodney Johnson.

11 Q. Did he have an affiliation with Rosemond?

12 A. Yes.

13 Q. What was your reaction to seeing Rodney Johnson, Toree.

14 A. I had visited him at his house a couple of times, so I knew
15 he lived in the area, walking distance. It wouldn't be totally
16 uncommon for him and Jason to speak to each other. But it was
17 odd that we had just left the location and now we're pulling up
18 talking to him and he's telling me that I have Lover over at
19 161st Street right now.

20 Q. Remind us, what's at 161st Street?

21 A. This is where Lowell Fletcher lives at.

22 Q. Before Toree mentioned that he had Lover looking at 161,
23 had you had any conversations with Toree about Lowell Fletcher?

24 A. None.

25 Q. Before that day, when was the last time you had seen Rodney

Hbfnros1

McCleod - direct

1 Johnson, Toree?

2 A. I think it was on August 28 of the same year, 2009.

3 Q. How do you remember that date?

4 A. It was my daughter's birthday, and Toree and I were both in
5 Mohawk together. He left and went home. And there was a
6 certain pair of sneakers, he said, Slim, these would be perfect
7 for you. I'm going to send them to you. And he bought them
8 and he never sent them.

9 When I got to his house, he gave me some money, and he
10 gave my the sneakers.

11 I said, Toree, look. And the receipt was August 28,
12 2008. So it was exactly a year prior. I'm getting the
13 sneakers that he said he bought, and he really bought them. It
14 was just very ironic to me that it was a year later I'm getting
15 the sneakers on that day.

16 Q. So he gave you the sneakers and money on August 28, 2009?

17 A. Yes.

18 Q. How much money did he give you?

19 A. A thousand dollars.

20 Q. Back to your meeting in Harlem, after Rodney Johnson said
21 he had Lover looking at 161, did anyone say anything in
22 response?

23 A. Not that I recall.

24 Q. How long were you with Johnson Grant and Jason Williams?

25 A. Maybe -- between maybe 45 -- between 30 minutes and an

Hbfnros1

McCleod - direct

1 hour.

2 Q. What did you do next?

3 A. Next, you know, I said my goodbyes to everybody and they
4 kind of joked and said -- there was like a little sidebar, and
5 Derrick was like, Watch Slim get on the train. He's such a
6 Jew.

7 They kind of laughed about it. And I went towards the
8 train, and they all started laughing. I guess the joke was
9 will I take a cab or will I get on the train. I realized what
10 they were saying. I said I got a weekly MetroCard. I got on
11 the train.

12 Q. The train is cheaper?

13 A. Yeah, I paid for a weekly MetroCard.

14 Q. Did there come a time -- where did you go on the train?

15 A. I went back to the New Lots Avenue.

16 Q. Did there come a time when you communicated again with
17 Lowell Fletcher?

18 A. Yes. That evening after I got settled I gave him a call
19 and said, you know, What's up? You know, simple what's up.

20 Listen, you think you can make it tomorrow to see me?

21 He said, Yeah, of course.

22 I said, Listen, like I said, I'm not saying I'm rich,
23 like I got like a little maybe 25.

24 He said, \$25?

25 I said, No, 2500.

Hbfnros1

McCleod - direct

1 I could tell he was excited about that.

2 I said, We'll grab some drinks. I got two girls.

3 You know, he said, I'm not picky. Yeah, we can do
4 that.

5 I said, Listen, let's try to have it where it's right
6 around the time of our POs.

7 He said, Well, I'm good with my PO.

8 I said, All right we're cool. Then I'll call you
9 around 8, 8:30, and we'll get together up in the Bronx.

10 Q. Which night was this conversation?

11 A. This was Saturday night going into Sunday morning.

12 Q. What was the purpose of telling Fletcher that you had money
13 for him and girls?

14 A. Well, this is the meeting that I'm talking about with
15 Fletcher since day one, and this is how I'm going to bring him
16 to Mt. Eden Avenue.

17 Q. Which phone did you use to speak with Fletcher that night?

18 A. The radio -- the phone I got from Radio Shack.

19 Q. The Stacy King phone?

20 A. Yes.

21 Q. Did Fletcher agree to meet with you?

22 A. Yes, he did.

23 Q. When were you supposed to meet?

24 A. We were supposed to meet the following day, Sunday.

25 Q. Where?

Hbfnros1

McCleod - direct

1 A. We were going to -- I told him I was going call him and let
2 him know where it was at. I said it was a couple of stops away
3 from you.

4 He's at, like, 161st and Mt. Eden is I think, like,
5 three or four stops on the 4 train.

6 Q. After your phone call with Fletcher, what, if anything, did
7 you do?

8 A. I think I texted Jason and D -- or at least Jason.
9 Basically said, See you tomorrow and something to the extent of
10 I touched base with dude. We're on for tomorrow.

11 Q. Let's talk about the next day.

12 What happened that day?

13 A. The next day in the evening, I texted Jason. He told me he
14 was en route.

15 I called Lodi Mack, told him I would be up in the
16 Bronx soon. I would give him a call when I got in the area.

17 He said, OK, no problem. I'm waiting for you.

18 I said something like, You like light liquor or dark
19 liquor?

20 He said, Whatever you're drinking that's what I am
21 drinking.

22 I said, OK, we're going to do some light liquor.

23 I said, You are going to like the girls.

24 And Jason and I -- Jason eventually came and we
25 proceeded to drive to the Bronx.

Hbfnros1

McCleod - direct

1 Q. Where were you when you were communicating with Jason and
2 Lowell Fletcher?

3 A. I was at the New Lots Avenue three-quarter house.

4 Q. In Brooklyn?

5 A. Yes.

6 Q. And what date is this that we are talking about?

7 A. This is Sunday, September 27.

8 Q. And you said Jason picked you up?

9 A. Yes.

10 Q. What car did he pick you up in?

11 A. The green Maxima.

12 Q. After he picked you up, what happened next?

13 A. After he picked me up, I got in the car with him --
14 actually, before that, as he's en route, I texted Jimmy and
15 said, I got a hot date.

16 And Jimmy replied, OK, have fun.

17 And Jason came and picked me up.

18 We got in the car, and I was kind of half expecting D
19 to be there, half not.

20 I said, OK, he came out to Brooklyn to pick me up.

21 Maybe we'll see D. We will pick him up in the Bronx.

22 And Jason I proceeded to the Bronx.

23 Q. What phone did you use to communicate with Rosemond that
24 you had a hot date?

25 A. The Thibedeaux phone.

Hbfnros1

McCleod - direct

1 Q. Did you have a hot date?

2 A. Figuratively, but not literally.

3 Q. Where did you and Jason go?

4 A. Jason and I went back to Mt. Eden Avenue the same place we
5 were the day before.

6 Q. Using the -- well, what happened when you arrived?

7 A. As we pulled across the Cross Bronx and -- well, as we
8 pulled across Jerome Avenue from the Cross Bronx, I did my best
9 to take in the entire scene. The first thing I noticed was
10 that if I can, on -- right on the corner of Mt. Eden and
11 Jerome, pointing towards Jerome, Toree and another individual
12 were sitting in Toree's truck. I found that very odd.

13 Q. You're referring to Government Exhibit 142G, the aerial
14 map?

15 A. Yes.

16 Q. OK. Now, at the corner of Mt. Eden and Jerome there is a
17 McDonald's, right?

18 A. Right.

19 Q. Can you show the jury where the McDonald's is.

20 A. McDonald's is I think right here.

21 Q. From what you just pointed out, are you saying Toree was
22 parked across Mt. Eden from the McDonald's?

23 A. Across from the McDonald's, yes. He was right at the
24 corner. Like no car could park in front of him.

25 Q. So show us, when you and Jason arrived on Mt. Eden, where

Hbfnros1

McCleod - direct

1 did you go?

2 A. Jason and I are driving this way, coming down going towards
3 Macombs. And as we crossed Jerome Avenue, I see Toree and
4 Toree sees me, and just -- even though I know I'm looking at
5 Toree, just to confirm, I nodded to him and he nodded back.

6 I said, Jason, you see that?

7 He said, What?

8 I said, T.

9 He said, Yeah.

10 Q. Who is T?

11 A. T is Toree.

12 Q. What was your reaction to seeing Toree there?

13 A. I was very surprised. And I was almost more surprised that
14 Jason wasn't surprised. There was no reaction. He was like,
15 Yeah, I see him.

16 Q. Why is it surprising to you to see Toree there?

17 A. Somebody is about to get killed and there's two individuals
18 who I had no conversation with at all about this, and there is
19 another individual in the car who I don't even know.

20 Q. Who are you referring to there?

21 A. I learned his name was Shawn Williams, but at the time I
22 didn't know who he was.

23 Q. Who was he in the car with?

24 A. He was in the car with Toree.

25 Q. After passing Toree and seeing him, where did you and Jason

Hbfnros1

McCleod - direct

1 go?

2 A. Jason and I went back to the same place we were almost
3 exactly from the day before. We did almost the same routine.

4 We drove up, we made the U-turn, we parked right by
5 the recess. As we parked, I looked to my right and I saw
6 Derrick. He took his hood off, and he stepped out of the
7 recess.

8 Q. So Derrick was there in the recess when you arrived?

9 A. Yes.

10 Q. What was Derrick wearing?

11 A. Derrick was in all black. His jeans might have been dark
12 blue, but he had black gloves, black hood, black hat, black
13 boots.

14 Q. What were you wearing?

15 A. Kind of a white printed T-shirt, gray like windbreaker
16 jacket, New York Yankee hat, fitted blue jeans and like gray
17 and black Nike sneakers.

18 Q. After you saw Derrick Grant what happened next?

19 A. After I saw Derrick Grant, I said, Yo, D. Do you know T's
20 down there?

21 He said, Huh?

22 I said, Toree. He's on the corner.

23 He kind of looked at Jason and said, Oh, yeah.

24 I said, Wow, they both know Toree is here.

25 Q. What happened next?

Hbfnros1

McCleod - direct

1 A. Next Derrick said, B, Give me a walk. I want to go to the
2 store and get some chips or something to put this in.

3 Q. Put what in?

4 A. The gun.

5 Q. Did you see the gun?

6 A. No. I never physically saw the gun.

7 Q. What makes you think he was referring to the gun?

8 A. When he said "this," it was the way he shifted. I could
9 see, because I was expecting to see it, but I could also see
10 the bulge under his sweatshirt and the way he shifted. And
11 when he said "this," he kind of sort of gripped it, and we just
12 walked to the store to get something to put the gun in.

13 Q. Can you show the jury which way you and Derrick went using
14 142G?

15 A. We walked from the recess area, walked down Mt. Eden, and
16 crossed over Jerome, because the store is on the other side of
17 Jerome Avenue.

18 Q. While you and Derrick went to go to the store, where was
19 Jason?

20 A. Jason was still back at the car parked right here.

21 Q. As you and Grant were walking towards Jerome to get a bag
22 of chips, what happened?

23 A. I -- we both kind of nodded to T, and I was trying to gauge
24 his reaction to seeing T. And we just made kind of small talk,
25 and I was trying to tell him to be mindful of the way to walk,

Hbfnros1

McCleod - direct

1 because he was trying to like walk with me. I wanted to walk
2 in single file so that we wouldn't be seen on the camera.

3 And we walked to the store. He got a large bag of
4 Doritos, and we walked back up to the recess area where Jason
5 is.

6 Q. When you are referring to "we," you're talking about you
7 and Derrick Grant?

8 A. Yes.

9 Q. And the person you were giving advice to was Derrick Grant?

10 A. Yes.

11 Q. After getting the bag of Doritos, you said you and Derrick
12 walked back to where the recess was?

13 A. Yes.

14 Q. What happened at that point?

15 A. At that point, we were just kind of standing around. For
16 how many minutes it's kind of hard for me to gauge at this
17 point. My senses were very aware. But I would say maybe
18 between five and fifteen minutes.

19 And my phone rang. And when my phone rang, it was
20 Lodi Mack, and I was talking to him.

21 And I guess Jason and Derrick were thinking he was
22 telling me he was en route.

23 I said, You're here now?

24 I kind of like hit Jason, like hit him and pointed,
25 You're here now? You're coming off the train?

Hbfnros1

McCleod - direct

1 He said, Yeah.

2 And you could see -- I knew how he looked, of course,
3 because he had a white headband and a red jacket on.

4 Jason said, Oh, shit, Slim. That's him?

5 I said, Yeah.

6 So Jason jumps in the car, starts the car up, and
7 makes a U-turn and goes toward Macombs and Derrick got in
8 position.

9 I threw my hood on and walked towards Macombs and
10 continued my conversation with him.

11 I said, Yeah, all right. Where are you? Just keep
12 coming towards me.

13 The liquor store is on Featherbed Lane.

14 He said, Where's that?

15 I said, You're going to keep walking until you get to
16 Macombs and Featherbed Lane bends around.

17 Q. Let me stop you there. When you first had phone contact
18 with Fletcher saying he arrived, where were you?

19 A. I was right -- parked where the recess is.

20 Q. Can you show the jury?

21 A. I was right near this area, right where Jason was parked
22 on.

23 Q. You said you saw Fletcher?

24 A. Yes.

25 Q. Where was he coming from?

Hbfnros1

McCleod - direct

1 A. The Mt. Eden train. The Mt. Eden train station is elevated
2 and it's outside, so you can see an individual on the platform
3 and see them walking down the steps, and then you lose them in
4 the stairway and then you see them again.

5 Q. Which direction was he walking towards?

6 A. He was walking towards Macombs. He was coming off the --
7 this platform. This is where I'm looking at it and telling
8 Jason, He's here.

9 And now he's walking down Mt. Eden towards Macombs.

10 Q. You said Jason got in the car and drove?

11 A. Yes.

12 Q. Where did he drive?

13 A. Jason made a U-turn and went towards Macombs.

14 Q. Where did Derrick go?

15 A. Derrick went to the recess.

16 Q. Where did you go?

17 A. I went towards Macombs Avenue. I'm walking. I'm right
18 here. I turn around with my hood on, and I'm walking slowly
19 this way, and I am going to make a left, and I would be right
20 in this general vicinity on Macombs.

21 (Continued on next page)

22

23

24

25

HBFAAROS2

McCleod - Direct

1 BY MR. ENZER:

2 Q. Fair to say Fletcher at that point was walking toward
3 Macombs towards you?

4 A. Yes.

5 Q. What happened next?

6 A. Next we stayed on the phone and I'm just kind of making
7 smalltalk and he is saying, Where are you? You know, he's not
8 from this area so I'm saying just keep walking straight and the
9 next street you hit is gonna be Macombs. You're gonna cross
10 Macombs and you're gonna see me because the next street you're
11 gonna hit after you hit Macombs is gonna be Featherbed Lane.
12 You can't miss it. We're gonna dip inside the liquor store
13 right there. He said, OK. So, as he's walking, in my mind
14 he's never gonna make it to me because he has to walk passed
15 Derrick and he has to walk passed the recess. I'm almost
16 waiting for our conversation to stop, signaling to me he's just
17 been shot or to hear some type of ruckus or to hear some type
18 of activity that indicates he's being killed, the shooting is
19 taking place. That never happened.

20 Q. What happened?

21 A. What happened is I ended up saying, Give me a second, and
22 hanging up the phone. This was so that I could text Derrick.
23 Did you see him? Did you get him? No. How did he miss him?

24 Q. What happened next?

25 A. So I waited for a little while and I think I picked up the

HBFAAROS2

McCleod - Direct

1 phone and physically called him. Did you see him? Did you get
2 him? No. So now the phone rings. When the phone rings it's
3 Fletcher. Yo, son, where you at? I'm right here. Oh, I see
4 you. And I realize that somehow he's gotten passed me. He's
5 crossed over Macombss and I'm right here with my hood on on the
6 phone and he's on this side and he's looking directly at me.

7 Q. So just for the record, on 142G you're on the side of
8 Macombs closest to Jerome?

9 A. Yes.

10 Q. Near Mount Eden?

11 A. Yes.

12 Q. And he's on the opposite side of Macombs?

13 A. Yes. I've just come up Mount Eden and made the left. I'm
14 right here on this side of Macombs. He's across the street.

15 Q. Got it.

16 A. And he said, Oh, I see you. That's you with the gray
17 jacket on. I said, You see me? That's impossible. So I turn
18 around as he says that and I'm trying my best to be kind of
19 nonchalant so he doesn't realize it's me he's talking to. And
20 there was like a building with some steps and I physically
21 stepped down and started to urinate outside. And said, You see
22 me? And as I looked to the left I said, Oh, I see you. And
23 there was white car like -- I guess it was a gift. It was a
24 white car driving straight down the street and as I was saying
25 that the individual in the passenger side physically turned and

HBFAAROS2

McCleod - Direct

1 looked in the direction of Lodi Mack. So he said, Oh, I see
2 you. You in the car. I said, Yeah, just follow me back down.
3 I kind of laughed, like wow.

4 Q. Where was that car going?

5 A. The car was going towards Jerome Avenue. So he thinks he
6 is seeing me because the passenger and him made eye contact.
7 And he's walking right back towards Jerome Avenue following the
8 car but I'm still on Macombs watching him walk passed me.

9 Q. So we're clear, who are you saying walked towards -- walked
10 back down Mount Eden towards Jerome?

11 A. Lodi Mack is walking back down towards Jerome.

12 Q. You are saying Lodi Mack mistook somebody in that car for
13 you?

14 A. Right.

15 Q. What happened next?

16 A. So now I text Derrick and said, Coming right back at you.
17 And I waited and I called. Did you get him? No. Like what
18 the fuck are -- excuse me. That's what I said in my head, What
19 the fuck is he doing? He came passed him one time. Now he's
20 right back passed you. And you're still saying "no"?

21 Q. What happened next?

22 A. Now Lodi Mack calls me back. Where you at? I said, Where
23 are you? He said, I'm back down on Jerome Avenue. I said, Oh,
24 no, no, no. We mistook each other. I'm back at the store. I
25 said, Come on, man. I said, listen, I'm sorry. I said,

HBFAAROS2

McCleod - Direct

1 Listen, you're gonna love these girls. What are you drinking?
2 He said, It doesn't matter. Whatever you're drinking. I'm
3 coming back up. Listen, come back up and the place you were
4 just at wait for me. Wait for me. I got you. Just come back
5 up. He said, All right.

6 So this is his third time coming back passed the
7 recess and he makes a U-turn and he's walking back up toward
8 Macombs and I kind of went off to the side a little bit this
9 time so that this time if he should make it there he won't see
10 me. But I am saying to myself there's no way he's making it
11 back to Macombs this time. There is no way they're gonna miss
12 him this time.

13 Q. What happened next?

14 A. Calls me again. I'm like, OK. This is impossible. Where
15 you at, son? I'm right here. Where is "here"? Where you at?
16 Listen, where you are at? Stay right there. I got you. We're
17 missing each other. Come on. Listen, just relax. All right.
18 Go back down to Jerome Avenue and just wait there for me. Oh,
19 come on. I just came from up there. Just listen, do me a
20 favor. Just go there and wait. I'm gonna pick you up. Don't
21 move. All right.

22 So I called Derrick. He's coming back passed you.
23 He's coming back passed you right now. Right now. I wait.
24 Did you get him? No response. I text him, Did you get him?
25 No response. I call him. Nobody picks up. So I text Jason.

HBFAAROS2

McCleod - Direct

1 No reply. I call Jason. No reply. So at this point I walk
2 this next block here. There's some kind of like playground
3 area around here some --

4 Q. Talking about Goble Place?

5 A. On Goble or Gobble Place, it's like a playground area. And
6 I sat there and it's hard for me to determine how long it was.
7 But I think I reached out to Derrick and Jason maybe one mor
8 time and I said, I'm just not gonna to sit here. So I rather
9 than walk back down Mount Eden I took Goble or Gobble Place
10 down to Jerome Avenue. And when I turned the corner I noticed
11 that there was a car pulling up, an unmarked car. So I crossed
12 the street on the other side of Jerome Avenue. It's kind of
13 like elevated like a hill almost and I'm looking down. As I
14 looked I said, Oh, shit. That's him. And I could see Lodi
15 Mack laid on the curb with one foot in the street with the rest
16 of his body on the curb. And now I see it's the hospital
17 around there. But I could see like the little ambulette and
18 gurney coming out. I said, This is a crime scene. I'm seeing
19 the cones and little numbered triangles they put out, flares.
20 Cops are putting up flares.

21 So now there's a lot of activity. Like I kind of
22 watched it for like ten minutes and I wanted to pay far more
23 attention to Lodi Mack. I said, He's unresponsive. And when
24 they put him on the gurney he didn't move at all. I said He's
25 dead. I said, He's very dead. So I tried to reach Jason,

HBFAAROS2

McCleod - Direct

1 tried to reach "D". Got neither one of them and I called
2 Toree. And he said, Slim, come to my house. I said, OK. I'm
3 on my way. I hung up the phone and I got in a cab and I went
4 over to meet Toree in like 148 and Seventh or 147 and Eighth
5 somewhere in that area.

6 MR. ENZER: Okay. Before we get to that, will you
7 please publish the video that's in evidence as Government
8 Exhibit 150E. This was entered in evidence through stipulation
9 previously.

10 Q. Mr. McCleod, I'm going to ask you some questions about this
11 video. Before we start do you recognize the street shown in
12 this video?

13 A. This is Mount Eden Avenue and the street directly in front
14 of the rehab center where the camera would be Inwood Avenue,
15 that's what this is, the entrance to this building.

16 A. So the camera is showing the entrance to the rehab
17 building?

18 A. Yes. It's showing the steps and the side adjacent to that
19 building.

20 Q. And the street that goes basically left to right on screen,
21 what street is that?

22 A. Street that goes left to right, that would be Inwood
23 Avenue.

24 Q. And the street intersects?

25 A. Mount Eden Avenue.

HBFAAROS2

McCleod - Direct

1 Q. So in other words, if you look at the streets like a "T",
2 the top of the "T" is Mount Eden?

3 A. Yes.

4 Q. And the middle part of the "T" is Inwood?

5 A. Yes.

6 MR. ENZER: Can we please play that.

7 (Videotape played)

8 Q. Do you see the individual at the top of the screen walking?

9 A. Yes.

10 MR. ENZER: Pause it for a second.

11 Q. The individual at top of the screen; do you see that?

12 A. Are you, when say "top" are you referring to the individual
13 next the car with the lights?

14 Q. Yes.

15 A. Yes, I do.

16 Q. Who is that?

17 A. That's Lowell Fletcher, "Lodi Mack".

18 Q. How can you tell it's him?

19 A. The clothing, red jacket, the white "T" and his walk.

20 Q. Now the person who is in the middle left of the screen
21 wearing a black hoody, who is that?

22 A. That's "D", Derrick Grant.

23 MR. ENZER: Please play.

24 (Videotape played)

25 MR. ENZER: Pause it please.

HBFAAROS2

McCleod - Direct

1 Q. Do you see anything in Lowell Fletcher's hands?

2 A. I can't see anything in his hands.

3 Q. Can you see what Derrick is doing?

4 A. Derrick is adjusting something in his hands.

5 MR. ENZER: Please play.

6 (Videotape played)

7 MR. ENZER: Let's go to the next clip. Let's publish
8 what's that evidence as Government Exhibit 150F.

9 Please play.

10 (Videotape played)

11 Q. Who do we see here?

12 A. I see "D".

13 Q. And at the upper left corner who do we see in red?

14 A. "Lodi Mack", Lowell Fletcher.

15 Q. Which way are they both walking?

16 A. Toward Jerome Avenue.

17 (Videotape playing)

18 MR. ENZER: Pause

19 Q. Who do we see running?

20 A. See Derrick Grant running.

21 Q. Which way is he running?

22 A. Towards Macombs.

23 MR. ENZER: Please play.

24 (Videotape playing)

25 MR. ENZER: Please publish Government Exhibit, what's

HBFAAROS2

McCleod - Direct

1 in evidence as Government Exhibit 150G.

2 Pause it for a second.

3 Q. What are we looking at here, Mr. McCleod?

4 A. We're looking at Mount Eden Avenue, the camera view from
5 the side of the building closer to the recess.

6 Q. Is it facing towards Macombs or facing towards Jerome?

7 A. It looks like it's kind of getting both but more facing
8 towards Jerome.

9 MR. ENZER: Please play.

10 (Videotape playing)

11 Q. Do you recognize the individual here?

12 A. That's 'D'. That's Derrick.

13 MR. ENZER: Can with please publish Government Exhibit
14 150H.

15 (Videotape playing)

16 Q. Who is that?

17 A. It's Derrick.

18 Q. What's he wearing?

19 A. Black hood, dark jeans.

20 Q. And who is that behind him?

21 A. That's Lowell Fletcher.

22 MR. ENZER: Now please publish the video clip that is
23 in evidence as Government Exhibit 150I.

24 (Videotape playing)

25 Q. What do you see here in the, kind of the center of the

HBFAAROS2

McCleod - Direct

1 screen?

2 A. I see Derrick Grant.

3 Q. And who is that in the street?

4 MR. ENZER: Pause it and please go back a little bit.

5 (Videotape playing)

6 Q. Who is that in the middle of the street?

7 A. That's "Lodi Mack", Lowell Fletcher.

8 MR. ENZER: Will you please publish what is in
9 evidence as Government Exhibit 150J.

10 (Videotape playing)

11 Q. Who is running?

12 A. Derrick Grant?

13 MR. ENZER: Publish the video clip in evidence as
14 Government Exhibit 150K.

15 (Videotape playing)

16 Q. Who is that?

17 A. Derrick Grant.

18 Q. Who is that walking by the cab?

19 A. Derrick Grant.

20 Q. And who is walking in the street?

21 A. Lowell Fletcher.

22 MR. ENZER: Can we now publish what is in evidence as
23 Government Exhibit 150L.

24 (Videotape playing)

25 Q. Who is walking by the cab?

HBFAAROS2

McCleod - Direct

1 A. Derrick Grant.

2 Q. And who's in the street walking?

3 A. Lowell Fletcher.

4 MR. ENZER: Can we now publish the video clip in
5 evidence as Government Exhibit 150M.

6 (Videotape playing)

7 Q. Who's running?

8 A. Derrick Grant.

9 Q. OK. Mr. McCleod, let's go back to what happened after you
10 saw Fletcher on the ground?

11 A. After I saw Fletcher on the ground I saw all of the makings
12 of the crime scene.

13 Q. Let me stop you there. You said you called Rodney Johnson?

14 A. Yes.

15 Q. Why did you call him?

16 A. Called him because I was pretty sure he was in contact with
17 Jason and "D" cause I had saw him on the corner and I couldn't
18 get in contact with them.

19 Q. And did you agree with him to meet somewhere?

20 A. Yes, at his house.

21 Q. Where did you go?

22 A. Either 148 and Seventh or 147 and Eighth, something like
23 that.

24 Q. In Harlem?

25 A. Yes.

HBFAAROS2

McCleod - Direct

1 Q. What kind of building did Rodney Johnson live in?

2 A. Traditional tenement building New York City. It's like a
3 ramp I guess, like a handicapped access ramp and regular steps
4 and maybe three/four flights.

5 Q. Have you ever been to his apartment?

6 A. Yes.

7 Q. We're going to show you what has been premarked for
8 identification as Government Exhibit 620A and 620B.

9 Do you recognize those photographs?

10 A. Yes.

11 Q. What do they show?

12 A. They show the building and the entrance to the building.

13 Q. That's Rodney Johnson's building?

14 A. Yes.

15 MR. ENZER: The government offers Government Exhibit
16 620A and 620B.

17 THE COURT: Received.

18 (Government's Exhibits 620A and 620B received in
19 evidence)

20 MR. ENZER: Please publish Government Exhibit 620A.

21 (Pause)

22 MR. ENZER: I think the jury can now see this.

23 Q. What are we looking at in this photo?

24 A. We're looking at a shot of the front of the building.

25 Q. And who lived in the building?

HBFAAROS2

McCleod - Direct

1 A. Toree lived there.

2 Q. What happened when you got there?

3 A. When I got there I called him and said, "T", I'm here. He
4 said, OK. Give me a minute. I'll be right down. And I say
5 between 10 and 20 minutes elapsed and from like the left side
6 of me and the right side of me from different blocks it seemed
7 as if Jason and "D" and Toree and his guy all appeared almost
8 simultaneously.

9 Q. Did you meet up with them?

10 A. Yes, I did.

11 Q. Roughly, where?

12 A. In front of the building.

13 Q. And what happened when you met them?

14 A. Not here but around. When we got there I said something to
15 the extent of, He's finished. He's out of here. And I
16 described what I had just described to you about what I saw.
17 And then "D" said something like, What was you thinking? He
18 almost got away. I said, What was I thinking? So we kind of,
19 I I won't say an argument but we had a disagreement about our
20 perspective on what could have happened. And then Jason and
21 Derrick made a comment about the pinging sound of the bullets
22 coming off of the cars they were surrounding when Derrick was
23 doing the shooting. And in the midst of all this conversation
24 "T" made a phone signal like this, it's Slim and he pointed. I
25 gave him the phone and he began to break up the Stacey King

HBFAAROS2

McCleod - Direct

1 phone and he gave me the SIM card and as I watched him break it
2 up and give everybody a piece and they would break it up. I
3 totally destroyed the SIM card. I just kept twisting and
4 twisting and twisting until it was gone and basically broke it
5 in half and there was a sewer right in front of me and I put it
6 down in the gutter.

7 Q. OK. Let's break that down for a minute.

8 You mentioned that during this meeting you had a
9 conversation with Derrick Grant?

10 A. Yes.

11 Q. Now, when you were on Mount Eden at the time, you know
12 before you saw Fletcher on the ground, did you hear any
13 gunshots?

14 A. No.

15 Q. Now, when you're meeting in Harlem with Grant and Jason and
16 Toree and Toree's guy, did Derrick say anything about why there
17 was no sound?

18 A. Well, he was saying that, basically, he was saying, Yo,
19 "B", you almost let the -- You didn't do a good job of
20 directing him to me. I said, What are you talking about? I
21 sent him past you three times. What more do you want? He
22 said, He almost got away. The last time I couldn't let just
23 let him get away. I had to chase him down and luckily I had
24 the quiet on because I had to let off a lot of shots. I guess
25 guess I hit him. I said, Yeah, I guess you did.

HBFAAROS2

McCleod - Direct

1 Q. What's a "quiet"?

2 A. A silencer.

3 Q. And you mentioned that at some point during this
4 conversation "T" made what you described as a phone signal?

5 A. Yes.

6 Q. And I think you made a hand gesture. That hand gesture
7 you're simulating the appearance of a phone by your ear?

8 A. Right.

9 Q. And then he pointed?

10 A. Um-hmm.

11 Q. What did he point at?

12 A. He pointed at the phone.

13 Q. Which phone?

14 A. The Stacy King phone.

15 Q. Now remind us, during your communications with Fletcher
16 what was the main phone that you used?

17 A. The Stacy King phone.

18 Q. And during your communications with Rosemond and Grant and
19 Jason and others, what was the main phone you used?

20 A. The Metro PC -- the Thibedeaux phone.

21 Q. So "T" pointed to the Stacy King phone and then what
22 happened?

23 A. He gestured for me to give it to him and I did and he
24 started destroying it.

25 Q. Before that gesture had you ever mentioned to "T" that you

HBFAAROS2

McCleod - Direct

1 had a phone that you were using to communicate with Fletcher?

2 A. "T" and I had absolutely no conversation. I had no
3 conversation with anybody about what I was going to do except
4 for Jason, Derrick and Jimmy.

5 Q. You said the phone got broken up?

6 A. Yes.

7 Q. You mentioned a SIM card?

8 A. Yes.

9 Q. What's a SIM card?

10 A. A SIM card is, I guess you could say it's the data center
11 for a phone. It's what holds your information. It's what
12 makes the phone go.

13 Q. What happened to the SIM card for the Stacy King phone?

14 A. Toree started, he took it out and like kind of like bent it
15 up, disfigured it and I continued to disfigure it until it
16 popped. So it actually broke in half.

17 Q. What, if anything, did you or Johnson do with the
18 Thibedeaux phone?

19 A. Nothing.

20 Q. You kept it?

21 A. Yeah.

22 Q. Did Johnson do anything with anybody else's phones?

23 A. No, not to my knowledge.

24 Q. Now, you mentioned that "T" had a guy there?

25 A. Yes.

HBFAAROS2

McCleod - Direct

1 Q. What was that person's name?

2 A. Shawn Williams.

3 Q. Going to show you what's been premarked for identification
4 as Government Exhibit Seven. Do you recognize that person?

5 A. Yes, that's Shawn Williams.

6 MR. ENZER: The government offers Government Exhibit
7 seven.

8 THE COURT: Received.

9 (Government's Exhibit Seven received in evidence)

10 MR. ENZER: Permission to publish, your Honor?

11 THE COURT: Yes.

12 Q. Now, before this day, had you ever met Shawn Williamss?

13 A. I commented that he looked familiar and "T" said, You
14 know he said the same thing about you. But I've never to my
15 knowledge met him.

16 Q. Now during the conversation that you just described, this
17 meeting in Harlem, you said you mentioned that Lowell Fletcher
18 looked finished?

19 A. Yes.

20 Q. Did you observe any reaction to that from the people who
21 were with you?

22 A. No. I think Toree just kind of asked me like, Why? Yeah?
23 Why you say that? And I explained that the gurney, when they
24 put him on the gurney there was no movement. He was laid out
25 for a second with no movement no anything. He's out of here.

HBFAAROS2

McCleod - Direct

1 Q. Did you observe anyone seem surprised?

2 A. No.

3 Q. Did anyone seem angry?

4 A. No.

5 Q. Were you surprised that --

6 MR. TOUGER: Objection, your Honor.

7 THE COURT: Overruled.

8 Q. You can answer the question. Were you surprised that
9 Fletcher looked finished?

10 A. Not at all.

11 Q. Why not?

12 MR. TOUGER: Objection.

13 THE COURT: Take our morning break, folks.

14 (Jury not present)

15 THE COURT: The witness will step down and wait in the
16 witness room.

17 (Witness not present)

18 THE COURT: Be seated, folks, please.

19 Objection?

20 MR. TOUGER: I believe that adds for what are called,
21 what he thought was going happen that day.

22 THE COURT: I imagine so.

23 Mr. Enzer?

24 MR. ENZER: Your Honor, we think that that is
25 permissible. It would call for that but we think that's within

HBFAAROS2

McCleod - Direct

1 the scope of what your Honor discussed earlier.

2 THE COURT: Why not, Mr. Touger?

3 MR. TOUGER: I thought -- first of all, your Honor,
4 it's an open-ended question. So what his answer is going to
5 be, we don't know.

6 THE COURT: That's true.

7 MR. TOUGER: I thought the Court's ruling was
8 yesterday that his intentions are not important because he's
9 not the one on trial. I remember the Court saying that
10 specifically.

11 THE COURT: Yes. But the actual ruling was different
12 and I read it to you earlier.

13 MR. TOUGER: Right. I understand what you read
14 earlier but during that previous point in that discussion --

15 THE COURT: And the government has made an argument
16 that that was, that's not the case. And we had an argument
17 about it which you and Mr. Edelstein -- and I said I would wait
18 and see what the question was.

19 MR. TOUGER: And I think that question calls for
20 Mr. -- Well, we don't know how Mr. McCleod is going to answer
21 question so it's hard for me to argue against the answer. That
22 is one of the reasons that I objected because I didn't know
23 what the answer was going to be and I didn't want to go beyond
24 what the Court might allow or not allow. But the -- this is a
25 post incident statement where the witness mind of the event has

HBFAAROS2

McCleod - Direct

1 already been changed by the fact that he knows -- well, he
2 thinks the man has been murdered. Mr. McCleod is on record as
3 in proffer sessions as saying I never intended this to be a
4 murder that it was a shooting in my mind and then after I saw
5 him dead and put everything together, that's when I decided it
6 must have been a murder.

7 So for him to now say this after the event has
8 occurred his mind has been altered, your Honor. That's what he
9 said on previous occasions.

10 THE COURT: So in other words, no evidence is
11 admissible ever if it contradicts something that somebody said
12 before; is that your general principle of law?

13 MR. TOUGER: That's not what I've said, your Honor.
14 What I'm saying is --

15 THE COURT: Mr. Touger, I thought that's exactly what
16 you said.

17 MR. TOUGER: Well, let me explain myself better. The
18 question right now is were you surprised when you saw him dead?

19 THE COURT: And he said "no".

20 MR. TOUGER: Right. And the question then, the next
21 question is Why?

22 THE COURT: Right.

23 MR. TOUGER: So at this point it's already let's say
24 at least a half hour after the incident has occurred. OK? He
25 has -- the jury -- if he says because I figured the guy was

HBFAAROS2

McCleod - Direct

1 going to get killed or something of that nature, OK, his
2 opinion of that has already been changed from what he set out
3 to do that night, yes, it has by the fact that he saw Toree at
4 the scene which he never intended had any idea at the scene.

5 THE COURT: Where does the idea come from that his
6 opinion has been changed by something that happened after the
7 fact? Why does that idea come from?

8 MR. TOUGER: From his own testimony, your Honor.

9 THE COURT: In this trial today and yesterday?

10 MR. TOUGER: Yes.

11 THE COURT: Really?

12 MR. TOUGER: Yes. He's already testified, your Honor,
13 that he never had communicated with Rodney Johnson and that he
14 sees him on the scene for the first time and that shocks him.
15 OK? And that is one of the factors that he uses, that he has
16 on previous occasions said changed his mind that this was --

17 THE COURT: So in other words, if a witness comes into
18 court --

19 MR. TOUGER: I can't hear.

20 THE COURT: In other words, if a witness comes into
21 court and is asked a question to which the answer might be
22 different than something the witness said on a prior occasion,
23 that's grounds to exclude the witness from answering the
24 question?

25 MR. TOUGER: Well, of course not. But that's not what

HBFAAROS2

McCleod - Direct

1 we're arguing about here, your Honor. We're not arguing about
2 what I could do in response. What we're arguing about is can
3 he give his personal idea or thoughts on what was going to
4 happen that night? That's what we're arguing about. And I
5 think the Court was right yesterday when it says that his
6 opinion doesn't matter.

7 THE COURT: Look, you're just repeating yourself now.

8 MR. TOUGER: What I'm saying, your Honor, is that
9 obviously a witness can change their mind and then suffer the
10 consequence of that. But that's not what I'm talking about
11 here. What we're arguing here is, did Mr. Rosemond agree with
12 Mr. McCleod and others prior to the shooting of Lowell Fletcher
13 that this was going to be a murder?

14 THE COURT: And suppose the answer to the question
15 just hypothetically, is because Rosemond told me that the name
16 of the game here was to kill the guy and that's what I was
17 prepared to pay \$30,000 for, just suppose; is that relevant?

18 MR. TOUGER: Of course that would be relevant, your
19 Honor.

20 THE COURT: OK. That's a possible answer here. But
21 your position is I should not let the witness answer the
22 question.

23 MR. TOUGER: Well, if you want to have the witness
24 answer the question outside the presence of the jury cause I'm
25 fairly a hundred percent sure that's not going to be his

HBFAAROS2

McCleod - Direct

1 answer.

2 THE COURT: What does the government think he's going
3 to say?

4 MR. ENZER: I think he'll say something like, That's
5 what we went to do. Now, if you were -- separate and apart
6 from how he would answer the question, OK, if you explored with
7 this witness his state of mind, I think the best way to
8 summarize his state of mind is during the initial stages of the
9 formation of the conspiracy he knew or believed that the goal
10 was to shoot Fletcher, he suspected that it was to be a fatal
11 shooting and this suspicion was confirmed for him on the day
12 when he saw Toree there because the fact that Toree was there
13 without any conversations between Toree and himself told him
14 Rosemond must have sent Toree there. Rosemond must have had
15 conversations with people like Toree that McCleod wasn't part
16 of. The fact that there seems to be some kind of backup team
17 here tells him, all right, clearly, this is supposed to be a
18 murder.

19 Now, that is before the murder. It is not long before
20 the murder but it is before the murder. It's during the
21 period. It's ex ante. It's, you know it is a moment in time
22 before the agreement is culminated. That's I think my best
23 summary of the witness's state of mind.

24 MR. TOUGER: Your Honor, whether it's obviously before
25 the murder but it's way after any conversations with Jimmy

HBFAAROS2

McCleod - Direct

1 Rosemond. He is not communicating with Jimmy Rosemond prior to
2 seeing -- I mean after seeing Rodney Johnson. He's not even
3 communicating with Jimmy Rosemond since he left Brooklyn. So
4 my point is, your Honor, that the intention is -- the only
5 thing that's important here is did Mr. Rosemond intend to join
6 a conspiracy whose goal was to kill another individual, namely,
7 Lowell Fletcher? That's the only thing that's important here.

8 So therefore, in the Court's response to my last
9 argument was if Rosemond said "kill him" then, obviously, that
10 would be quite clear evidence of that. But the evidence in
11 this case is completely opposite, that he never used the word
12 "kill" and he never used the word "murder". He used the word
13 "hit".

14 THE COURT: The evidence is not that clear-cut but is
15 not clearly the opposite.

16 MR. TOUGER: Well, I don't believe we've heard any
17 witness say Jimmy used those words and I believe if you ask
18 this witness those questions those would be his answer. The
19 idea here is, your Honor, is when Jimmy and Mr. McCleod were
20 speaking prior to the shooting, what was Jimmy thinking? What
21 conspiracy was he joining? The fact that Mr. McCleod might
22 have decided with "D", Mr. Grant, to do -- if you remember the
23 conversation with Derrick Grant, the initial conversation with
24 Derrick Grant and McCleod, McCleod testified that Derrick's
25 like, oh, we can get more than 30. We can make it 60 or we can

HBFAAROS2

McCleod - Direct

1 get to 100. If they decided on their own to push this to a
2 homicide so they can get more money, that's their decision to
3 make. It doesn't mean that Mr. Rosemond who had no knowledge
4 of that conversation that Mr. Rosemond agreed to kill anybody.

5 And the fear factor here, your Honor, is that the jury
6 will take that statement as something that Rosemond intended to
7 do and I think that would be highly improper because there is
8 definitely a goal of McCleod and even more so maybe Grant cause
9 Grant the testimony is hasn't even seen Jimmy for three years.
10 So he might be trying to get on Jimmy's good list.

11 THE COURT: Mr. Touger, this is not helpful at this
12 point.

13 MR. TOUGER: OK.

14 THE COURT: Anything else, Mr. Enzer?

15 MR. ENZER: Just that everything that Mr. Touger said
16 he can argue to the jury. He can explore on cross. No one is
17 saying here that he can't go into these arguments. But our
18 position is we should be able to present the facts to the jury
19 so they have all of the information.

20 MR. TOUGER: That's not a fact, your Honor. That's an
21 opinion.

22 THE COURT: I'll rule after I come back out.

23 (Recess)

24 THE COURT: I'm going to overrule the objection and
25 give the following limiting instruction in substance. I'll

HBFAAROS2

McCleod - Direct

1 tell the jury that I'm going to allow the witness to answer.
2 They can consider the answer only for certain purposes and not
3 for others. I'll proceed then as follows:

4 Among the things that the government must prove beyond
5 a reasonable doubt in order to convict the defendant on Count
6 One are:

7 First, that two or more persons conspired to violate
8 the federal murder-for-hire law, that is that two or more
9 persons agreed to pay others to murder members of a rival music
10 organization or I could use "G-Unit" because that's obviously
11 the point or whatever you prefer.

12 And second, that the defendant knowingly and willfully
13 was or became a member of that conspiracy.

14 You are entitled to consider Mr. McCleod's answer to
15 this question only for the purpose of determining Mr. McCleod's
16 state of mind. Mr. McCleod's state of mind in turn may be
17 considered in determining whether there was a conspiracy
18 between or among two or more persons as charged in Count One.
19 That is, a conspiracy to violate the federal murder-for-hire
20 law.

21 And second, whether Mr. McCleod was a participant in
22 any such conspiracy.

23 You're not entitled to consider his answer as evidence
24 of the defendant's state of mind or intent.

25 Any objection to the limiting instruction?

HBFAAROS2

McCleod - Direct

1 MR. TOUGER: Or entering into that charged conspiracy
2 your Honor.

3 THE COURT: I'm sorry?

4 MR. TOUGER: Or that the defendant entered that
5 charged conspiracy.

6 THE COURT: Well, that's subsumed in the state of mind
7 or intent, isn't it?

8 MR. TOUGER: OK. Your Honor,.

9 THE COURT: I'd like to hear from the government.

10 MR. ENZER: We have no objection to that.

11 THE COURT: OK. Mr. Touger.

12 MR. TOUGER: My only objection, first of all, my
13 standing objection to the evidence is obviously in the record
14 but my only suggestion at this point is that since we don't
15 know what the witness's answer is going to be, that we hear it
16 first outside the presence of the jury and then move on from
17 there because we have a prediction but we don't really know
18 what the answer is going to be.

19 THE COURT: Well, I understand that but I'm not sure
20 it's necessary.

21 Mr. Enzer.

22 MR. ENZER: We have no objection to doing that.

23 THE COURT: OK. Let's do it.

24 (Witness is present)

25 THE COURT: Mr. McCleod, you are going to be asked

HBFAAROS2

McCleod - Direct

1 this question out of the presence of the jury so that I can
2 rule on it.

3 BY MR. ENZER:

4 Q. Mr. McCleod, while the jury was here you were asked whether
5 you were surprised that Fletcher was dead. You said "no". And
6 then I asked you why you weren't surprised. What's your answer
7 to that?

8 A. That was the expected result, his getting killed.

9 MR. ENZER: No further questions.

10 THE COURT: Anything else, Mr. Touger?

11 MR. TOUGER: Well, we have our standing objection to
12 the question.

13 THE COURT: OK. Let's bring in the jury.

14 MR. ENZER: Before we get the jury, one thing. I
15 think we should discuss this outside the presence of the
16 witness if that's all right.

17 THE COURT: All right. step out again please,
18 Mr. McCleod.

19 MR. ENZER: Sorry, Mr. McCleod.

20 (Witness not present)

21 THE COURT: What is it, Mr. Enzer?

22 MR. ENZER: OK. The defense has indicated to us that
23 they intend to cross-examine this witness about his state of
24 mind, statements that he made during proffers that he didn't
25 think until after the fact, that he thought this was going to

HBFAAROS2

McCleod - Direct

1 be a nonfatal shooting until after the murder, they want to
2 cross-examine him about that. I think we need some clarity
3 here. If they are going to do that I need to draw the sting
4 out of that on direct but you I don't want to run afoul of the
5 Court's ruling.

6 THE COURT: What about it, Mr. Touger? Question
7 Number One, are you going to do that on cross or not?

8 MR. TOUGER: Based on the Court's ruling I have no --
9 I wasn't planning to if the Court had ruled, had sustained the
10 objection. But, your Honor --

11 THE COURT: But I didn't.

12 MR. TOUGER: You didn't, right. So there is an order
13 to things though. They get to do direct. We get to do cross
14 and they get to do redirect. I don't know what they mean bring
15 the sting out of it.

16 THE COURT: Yes, you do. It's the same thing the
17 government does every time they put somebody who's committed
18 prior crimes on the stand.

19 MR. TOUGER: Those are facts, your Honor. They can't
20 bring out a prior inconsistent statement of their own witness.
21 I think that's a rule of law.

22 THE COURT: They can't impeach their witness.

23 MR. TOUGER: Right, with a prior inconsistent
24 statement.

25 THE COURT: I don't understand the purpose of this to

HBFAAROS2

McCleod - Direct

1 be able to impeach him.

2 MR. TOUGER: Well, that's what a prior inconsistent
3 statement does. It impeaches a witness's testimony in court.
4 That's why prior inconsistent statements are admissible on
5 cross.

6 And I further don't understand the final word from
7 Enzer that then we get to explore his state of mind further. I
8 don't understand what that means.

9 THE COURT: I'm not sure I heard it but that doesn't
10 mean it wasn't uttered.

11 THE COURT: Look, it seals to me that in light of the
12 fact that you intend to do this, I'm going to allow it. I mean
13 for that matter, even if it was impeachment under Rule 607 the
14 government will be entitled to do it.

15 MR. TOUGER: I'm more fearful of his last words to the
16 Court which and going to his state of mind. I don't know what
17 that means.

18 THE COURT: What are you talking about Mr. Enzer?

19 MR. ENZER: We want to be able to bring to the
20 witness's attention the prior statements that we expect the
21 defense is going to cross-examine him about and ask him to
22 explain what he meant by those statements. And I expect he'll
23 say, I had trouble admitting to myself that I had participated
24 in a murder but I did. I did participate in a murder and the
25 reason I didn't want to admit that initially in my proffers

HBFAAROS2

McCleod - Direct

1 with the government was I have a family history of violence
2 where young men in my family had been killed and murdered. So
3 it was hard to for me to admit to myself and the government
4 that what I had participated in was a murder as opposed to a
5 nonfatal shooting gone bad.

6 THE COURT: All right. Bring in the jury and the
7 witness.

8 (Continued on next page)

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Hbfnros3

McCleod - direct

1 (Jury present)

2 THE COURT: The defendant and the jurors all are
3 present. Everybody may be seated.

4 Would you read back the pending question, please, and
5 the one before it the answer to the one before it.

6 Let me read it off the draft. It will take me a
7 minute, too.

8 All right. I will read a couple of questions.

9 "Q. Did you observe any reaction to that from the people who
10 were with you?

11 "A. No. I think Toree just kind of asked me like, Why? Yeah.
12 Why do you say that? Something that's unintelligible in the
13 draft. I explained that the gurney, I didn't -- when they put
14 him on the gurney -- I didn't, there was no movement, he was
15 laid -- another unintelligible part of the draft -- with no
16 movement, no movement. No anything. He's out of here.

17 "Q. Did anyone seem surprised?

18 "A. No.

19 "Q. Did anyone seem angry?

20 "A. No.

21 "Q. Were you surprised?"

22 Then there was an objection.

23 "Q. Were you surprised that Fletcher looked finished?

24 "A. Not at all."

25 The pending question is, "Why not?"

Hbfnros3

McCleod - direct

1 Now, folks, I am going to allow the witness to respond
2 to that question, but I instruct you that you may consider his
3 answer only for certain purposes and not for others.

4 Among the things the government must prove beyond a
5 reasonable doubt in order to convict the defendant on Count One
6 are, first, that two or more persons conspired to violate the
7 federal murder-for-hire law, that is, that two or more persons
8 agreed to pay others to murder members of a rival music
9 organization; and, second, that the defendant knowingly and
10 willfully was or became a member of that conspiracy.

11 Now, you are entitled to consider Mr. McCleod's answer
12 to this question only for the purpose of determining
13 Mr. McCleod's state of mind. Mr. McCleod's state of mind in
14 turn may be considered in determining first whether there was a
15 conspiracy between or among two or more persons as charged in
16 Count One, a murder-for-hire conspiracy; and, second, whether
17 Mr. McCleod was a participant in any such conspiracy.

18 You are not entitled to consider his answer as
19 evidence of Mr. Rosemond's state of mind or Mr. Rosemond's
20 intent.

21 OK.

22 Please answer the question, Mr. McCleod.

23 BY MR. ENZER:

24 Q. Why were you not surprised?

25 A. I wasn't surprised because that was the expected outcome.

Hbfnros3

McCleod - direct

1 Q. After this meeting, what happened next?

2 A. After we spoke in front of the building?

3 Q. Yes.

4 A. Jason and D went off in their own direction, and Toree,
5 Shawn, and myself entered into the building.

6 Q. Which building are you talking about?

7 A. Where Toree lived.

8 MR. ENZER: Can we publish Government Exhibit 620A.

9 BY MR. ENZER:

10 Q. Is this the building you, Rodney Johnson, and Shawn
11 Williams entered?

12 A. Yes.

13 Q. What happened next?

14 A. Next we went inside and we went up two or three flights,
15 and right before -- I guess we were in front of where Shawn
16 Williams was staying, and right before he went inside, Toree
17 had like a fleece zip-up on, with like a pocket part right
18 here.

19 Q. Around the stomach?

20 A. Yes.

21 And right before he went inside, he passed very
22 quickly to Shawn Williams what I saw out of my peripheral as a
23 gun. It was covered. He was holding it not with his hand but
24 like one of those orangish yellow rags you wipe a car down
25 with, something like that, material like that.

Hbfnros3

McCleod - direct

1 Q. So Toree passed that to Shawn?

2 A. Yes.

3 Q. What did Shawn do?

4 A. Shawn immediately went into the door and did not come back
5 out. Toree and I went upstairs, and Toree lived in the exact
6 same location, apartment, only a floor above.

7 Q. So like, hypothetically, if Shawn's in the A apartment,
8 you're saying Toree is in the A, but a floor above?

9 A. Right. If Shawn's in 3A, Toree's in 4A.

10 Q. As a hypothetical?

11 A. Right.

12 Q. What happened when you and Toree went into Toree's
13 apartment?

14 A. When Toree and I went into the apartment, he went in the
15 bedroom area real quick and came back out and asked me if I was
16 hungry.

17 I had said, No.

18 He said, OK.

19 I asked him about a (unintelligible) or something like
20 that.

21 And we sat there for a little while, made small talk,
22 and a little while later I left.

23 Q. Where did you go?

24 A. I went back to New Lots Avenue.

25 Q. Did you contact Rosemond that night?

Hbfnros3

McCleod - direct

1 A. No.

2 Q. Why not?

3 A. A murder just took place.

4 Q. Did you know where Rosemond was at the time?

5 A. I didn't know for sure, but I had an idea that he was in
6 Miami.

7 Q. How did you know that?

8 A. He said he was going to go out of town, and that's where he
9 said he was going.

10 Q. After the day of the murder, when was the next time you
11 communicated about the murder?

12 MR. ENZER: We can take that exhibit down.

13 A. The next day I think I texted Toree and D, Toree and
14 Derrick, asking them had they seen anything. And Derrick asked
15 me had I seen anything.

16 Q. What did you mean by that?

17 A. Was there anything in any published media, any printed
18 media, any television about the homicide from the night before.

19 Q. When's the next time you communicated about the murder?

20 A. I think it was the Tuesday, two days later an actual
21 article appeared. I believe it was in the New York Post. It
22 may have been the Daily News. It was one of the New York
23 periodicals.

24 And it described I believe like a gang assault and
25 they said that this individual had been stabbed. But they were

Hbfnros3

McCleod - direct

1 referring to the Lodi Mack killing.

2 And I contacted Toree and said, Did you see it?

3 He said, No, send it to me.

4 So I told him where it was at on the phone.

5 And I think I also contacted Jimmy asking him did he
6 see it.

7 And Derrick and I texted each other, and then a little
8 while later, Derrick said there's something on TV on the
9 local -- like the New York One, I think it's borough specific.

10 So in the Bronx where he was living there was
11 something showing what happened or their rendition of what
12 happened, and he wanted me to come take a look at it.

13 I said, OK, I am on my way. I went up to Derrick's
14 house to watch it.

15 Q. With respect to the news article you mentioned, I'm going
16 to show you what's been premarked for identification as
17 Government Exhibit 1100.

18 Do you recognize this document?

19 A. Yes.

20 Q. What is it?

21 A. The bottom right-hand, "Knife Wielding Thugs Kill Bronx
22 Man." That's the article I was referring to.

23 MR. ENZER: The government offers Government Exhibit
24 1100.

25 THE COURT: Received.

Hbfnros3

McCleod - direct

1 (Government's Exhibit 1100 received in evidence)

2 MR. ENZER: Can we please publish.

3 BY MR. ENZER:

4 Q. You said the article on the bottom right is the one about
5 Fletcher?

6 A. Yes.

7 Q. Is this article correct about how Fletcher was killed?

8 A. No.

9 Q. You said after the article you went to Grant's house and
10 watched television with him?

11 A. Yes.

12 Q. What happened when you watched television with him?

13 A. When we watched television, it was basically -- I was
14 looking at kind of the crime scene I had witnessed before I
15 went to the meeting to -- to Toree I think. They were saying
16 similar. I think they were saying here that the victim was
17 stabbed and maybe shot, but there was nothing saying that the
18 individual had been shot, as I had known he had been.

19 MR. ENZER: You can take that down.

20 Q. Did there come a time when you called Rosemond?

21 A. Yes. Throughout -- from the time the killing actually took
22 place up until the Wednesday that I called Rosemond, Derrick
23 had been, you know, B, I did my part. Where's the money?
24 What's going on?

25 I'm sure they know. I'm sure he knows it took place.

Hbfnros3

McCleod - direct

1 Relax.

2 So that Wednesday -- well, taking a step back from --
3 the time I had been released from jail I had threw away my
4 blood pressure medication. I didn't like the way it caused
5 frequency and disturbed my diet. So I foolishly threw it away.

6 So all along my blood pressure was elevating and going
7 down, elevating and going down. On this Wednesday I felt that
8 it was very high. So I went to Woodhull Hospital in Bushwick
9 in Brooklyn to the emergency room, and at this time this is
10 when Derrick was like, Come on, it's three days later.

11 Q. What day did you go to the hospital?

12 A. That would be the 30th of September.

13 Q. The Wednesday of that week?

14 A. Yes.

15 Q. And you said in the hospital you were communicating with D,
16 Derrick Grant?

17 A. Yes.

18 Q. How are you communicating with him?

19 A. Using the Thibedaux phone. We called and texted.

20 Q. After communicating with Derrick, did you have any
21 communication with Rosemond?

22 A. I did.

23 Q. What happened?

24 A. I basically said, you know, D's asking about what's going
25 on. He said our part was done.

Hbfnros3

McCleod - direct

1 And Rosemond said, Y'all got to be patient. Relax.
2 Stay off my phone.

3 Q. Did you use the Thibedeaux phone for that?

4 A. Yes.

5 Q. What happened next?

6 A. I received -- I took my blood pressure, I received some
7 medication, and I left from there.

8 Q. How long were you at the hospital?

9 A. I don't know. Maybe three hours.

10 Q. Were you discharged the same day, that Wednesday?

11 A. Yes.

12 Q. Let me direct your attention to Friday of that week.

13 Do you remember the date that Friday?

14 A. I guess that would be October 2.

15 Q. 2009?

16 A. Yes.

17 Q. What happened that day?

18 A. That day earlier in the morning I received a text to meet
19 up at the general Whole Foods location area. And --

20 Q. Who was the text from?

21 A. The text was from Rosemond.

22 Q. What happened next?

23 A. I texted him back that I was en route. There was a lot
24 going on that day. I was -- I had to juggle going to my parole
25 officer and a couple of other things. So I kind of held my

Hbfnros3

McCleod - direct

1 parole officer off because I was -- my transfer from New York
2 to Maryland was coming in, so I had to go sign and pick up my
3 travel arrangements. So I held my parole officer for a second,
4 and I went to meet Jimmy over at Whole Foods.

5 Q. What happened when you met with Rosemond?

6 A. When I met with him, he asked me how I was doing because he
7 had heard about me, you know, going to the hospital for my
8 blood pressure. I kind of apologized for running a little
9 late.

10 He said, You know, Slim, that wasn't on me. As soon
11 as that happened I told Khalil and T to give that to y'all. I
12 don't know what they was thinking. That's my bad. Go meet T
13 right now. He's waiting for you. He has a joint for you. He
14 has one for you. Take that and give one piece to D, and one
15 piece to your guy that helped you put this -- that helped
16 you -- that helped bring Fletcher to you.

17 Q. How long was this meeting?

18 A. 10, 15 minutes.

19 Q. And during that meeting, did you have an opportunity to
20 observe Rosemond's demeanor?

21 A. Yes.

22 Q. Can you describe his demeanor?

23 A. He seemed fine, just a little -- kind of in a rush.

24 Q. Were you late to the meeting?

25 A. Slightly.

Hbfnros3

McCleod - direct

1 Q. During this meeting, did Rosemond express any anger about
2 the fact that Fletcher was dead?

3 A. Not at all.

4 Q. After meeting with Rosemond there, what did you do?

5 A. After the meeting with Rosemond, I jumped on the train and
6 I went to my parole office.

7 Q. Remind us the name of your parole officer?

8 A. Officer Kilcoyne.

9 Q. Where was the parole office?

10 A. It was in the Bronx.

11 Q. And what was the purpose of your meeting with your parole
12 officer that day?

13 A. I had to pick up my travel, my agreement allowing me to
14 travel from New York to Maryland for the purpose of
15 transferring my parole, and I had to sign the interstate
16 agreement stating that I was still actually under New York
17 guidelines, but just residing in Maryland.

18 Q. How often were you seeing your parole officer around this
19 period?

20 A. About once a week.

21 Q. What day?

22 A. Wednesdays or Fridays.

23 Q. After meeting with your parole officer, what did you do
24 next?

25 A. After I met with my parole officer, I jumped in a cab and

Hbfnros3

McCleod - direct

1 went to see Toree.

2 Q. Why did you go there?

3 A. For the purpose of picking up whatever it was that he had
4 for me. The payment from Rosemond.

5 Q. Where did you go to meet with Toree?

6 A. In front of the same building that we just saw the picture
7 of.

8 Q. The building he lived in?

9 A. Yes.

10 Q. What happened when you arrived?

11 A. When I arrived, I called him and told him I was there.

12 He said, OK, give me a second, Slim. I'm coming down.

13 About five minutes later he came down and he had Lover
14 with him. And Lover had a box, a computer box like an Apple
15 Mac Air box.

16 T said, Slim, that's the computer you asked me about.

17 I said, OK.

18 I spoke to Lover, and he passed me the box.

19 And I got in the cab and I realized I had the
20 MetroCard and a debit card, but no money on me. So I said,
21 "D", give me money for the cab.

22 And Lover said, Here, Slim, and gave me a \$50 bill.

23 Q. During that meeting you described, who was it that said
24 that's the computer you have been asking for?

25 A. Toree. T.

Hbfnros3

McCleod - direct

1 Q. Had you been asking for a computer?

2 A. No.

3 Q. Who gave you the computer box?

4 A. Lover.

5 Q. After receiving the box and getting money for a cab, what
6 did you do?

7 A. I went -- I called Derrick and said, D, I got that. I'm on
8 my way. And I went to Derrick's house.

9 Q. Did you look inside the computer box?

10 A. No.

11 Q. Not at that point, or, no, never?

12 A. Not at that point.

13 Q. OK. Where did you go?

14 A. I went to Derrick's house on 174th in the Bronx.

15 Q. What happened when you arrived?

16 A. When I arrived he kind of was waiting for me out front.

17 I paid the cab, stepped inside the house, and I opened
18 the box. And then there was kind of a little conversation with
19 Derrick with saying that, kind of like, there was a discussion,
20 would it be money, would it be drugs.

21 And D was like, Yeah, it's most definitely probably
22 drugs. You're probably right.

23 I opened the box. There was a kilo of cocaine.

24 I said, D, you got a scale?

25 He said, Yeah.

Hbfnros3

McCleod - direct

1 I said, Well, you're supposed to get a third of this.

2 He said, OK.

3 So he took a scale out and I gave him 340 grams of
4 cocaine.

5 Q. You gave who 340 grams?

6 A. I gave Derrick 340 grams of cocaine.

7 Q. In this discussion with Derrick, this is happening inside
8 his house?

9 A. Yes.

10 Q. In the basement part that you showed us earlier?

11 A. Yes.

12 Q. When you said you were having a discussion with him about
13 what it would be. What do you mean "it"?

14 A. What would be in the box, the payment.

15 Q. Payment for what?

16 A. The payment for the killing.

17 Q. You said D got 340 --

18 A. Yeah.

19 Q. -- grams?

20 How much did you get?

21 A. The remaining 660, which was supposed to be split between
22 me and Kevin Chung.

23 Q. Who is Kevin Chung again?

24 A. He's Bigs.

25 Q. Did you intend to give Chung the 330 grams or 340 grams

Hbfnros3

McCleod - direct

1 that would be his?

2 A. It would be kind of hard to send him 340 grams in jail.

3 Q. He was still at Mohawk?

4 A. Yes.

5 Q. What did you do with your share of the cocaine?

6 A. I had a conversations, maybe one or two conversations with
7 a friend of mine, Blast, Maurice Yarborough. And I knew that
8 he could definitely get rid of it up in his neighborhood in
9 like the Mount Vernon, Westchester, area, and it would be
10 slightly more expensive.

11 So I called him and said, Blast, I got that.

12 You got what?

13 I said, That.

14 He said, Oh, OK. For real?

15 Yeah.

16 I said, Meet me here, and I gave him the address.

17 When he got there, I gave him the 660 grams.

18 Q. Who is Maurice Yarborough?

19 A. He's Blast. He is an individual I meet while I was in
20 Mohawk.

21 Q. Is it Blass or blast?

22 A. B-l-a-s-t.

23 Q. Blast. That's his nickname?

24 A. Yes.

25 Q. And you said he came that day?

Hbfnros3

McCleod - direct

1 A. Yes.

2 Q. What did you do when he came?

3 A. When he came I gave him the computer box, and I told him,
4 Take that and give me 18.

5 Q. What does that mean?

6 A. Give me \$18,000 for 660 grams of cocaine.

7 Q. Did he pay you that day?

8 A. No.

9 Q. You were giving it to him on consignment?

10 A. Yes.

11 Q. Did he later pay you?

12 A. Yes.

13 Q. What is the street value of a kilogram of cocaine?

14 A. Right now I don't know.

15 Q. At the time, 2009.

16 A. 2009, at that time, between 33 and 36 thousand dollars.

17 Q. Did there come a time when you had a later conversation
18 with Grant about further payment for the murder of Fletcher?

19 A. Yes.

20 Q. Roughly when?

21 A. Well, from time to time -- Grant and I would always
22 communicate. We would always see each other periodically. So
23 from time to time, he would be like, Yo, I think that might be
24 it.

25 Like, what do you mean?

Hbfnros3

McCleod - direct

1 Like, has he said anything to you?

2 I'm like, No. You're with Jason every day. Have you
3 said anything?

4 He was like, Well, no. But come on. That can't be
5 everything.

6 I said, Well, D, I'm sure -- you can say something to
7 Jason, but the second I see Jimmy that's something we can bring
8 up. As a matter of fact, you can be there with me when I bring
9 it up.

10 He was like, All right, because this is crazy. I
11 mean, first we had to wait for payment, and now it's like we're
12 getting not even -- what, half? And then we had to sell it.

13 So he kind of had complaints or gripes about the
14 payment, the payment, I guess you would say schedule, the fact
15 that we had to convert drugs into money, and it was short. So
16 there were several small discussions about it.

17 Q. Did Blast sell the cocaine you gave him?

18 A. Yes.

19 Q. And he gave you money?

20 A. Yes.

21 Q. After that, where did you live? Where did you go?

22 A. I was living in Maryland with my sister.

23 Q. And the conversations you just described with D, Derrick,
24 were you living in Maryland at the time?

25 A. Here's the thing. I was definitely living in Maryland

Hbfnros3

McCleod - direct

1 legally, but I never gave up my spot in Brooklyn, the
2 transitional house. I paid like three months. So I could pop
3 into New York whenever I wanted but I was, for the record and
4 for parole's sake, living in Maryland.

5 Q. Did there come a time when you had a detailed discussion
6 with Grant about whether there would be further payment for the
7 murder?

8 A. Yes. At least once.

9 Q. Was that in person or on the phone?

10 A. That was in person.

11 Q. What happened in that discussion?

12 A. In that discussion, D and I were basically just trying to
13 figure out how much we were owed and when was it going to be
14 paid and why is it that it seems like we have to wait for our
15 payment.

16 And D's thing was like, There's all these people here
17 involved. That's where the money went. He sliced it up.
18 First it was just me and you and Jason. Then he got this
19 G-Unit guy involved, he gave him money. T was there --

20 MR. TOUGER: Objection, your Honor. This is all
21 supposition.

22 MR. ENZER: This is a conversation.

23 THE COURT: Yes. Overruled. Not a contemporaneous
24 objection.

25 BY MR. ENZER:

Hbfnros3

McCleod - direct

1 Q. You can answer. Just describe the conversation.

2 A. OK. Derrick just had seen that, he felt like the pie, so
3 to speak, had been sliced into so many pieces because Jimmy
4 involved other people who really in his opinion did nothing.

5 Q. Did you say anything to D about whether you would talk to
6 Rosemond about additional payment?

7 A. I told D that -- I kind of assured him like, when I see
8 Jimmy I'll definitely talk to him. Like, basically Jimmy's a
9 fair person. If we bring it up to him, it's going to be OK.

10 Q. Did you believe 30,000 was unfair?

11 A. I didn't look at it as unfair because my dealings with
12 Jimmy is that he's always been fair. So I looked at it as that
13 day -- I looked at it as Jimmy had authorized for Khalil and
14 Toree to take care of us immediately when the murder took
15 place. They didn't for whatever reason.

16 So now he had to reroute and have a personal
17 conversation with them and say, Take care of Slim.

18 And so that's why I'm meeting him on Friday in person,
19 for him to tell me this. So kind of the payment schedule in my
20 opinion was thrown off because of their, for lack of a better
21 word, incompetence and not being forthcoming with the payment.

22 So at that point there was no reason for me not to
23 trust Jimmy. I just felt like that was a Band-Aid. He gave us
24 the kilo because we were stressing him. He is on the move, we
25 are on the move, let me give these guys something.

Hbfnros3

McCleod - direct

1 But down the road he's going to give us probably
2 another 30, 50 thousand dollars, probably cash. And that's
3 what I was explaining to Derrick. Relax. You know, in other
4 words, it was -- there was one part of me saying this is just
5 the nature of what we do and Jimmy handling different things.

6 There's different moving parts and --

7 MR. TOUGER: I would object to the continued analysis
8 of the situation.

9 THE COURT: Have you finished your answer,
10 Mr. McCleod?

11 THE WITNESS: Yes, it's sufficient.

12 THE COURT: Let's go on.

13 Q. Just so we are clear. Did you believe that more than
14 \$30,000 was warranted because Fletcher was dead?

15 A. Definitely.

16 Q. Can you explain that?

17 A. I felt more than \$30,000 was due because of my involvement,
18 not because Fletcher was dead, but because I recruited a
19 shooter. I picked the location. I'm handling more logistics.

20 The original plan was just me to bring Fletcher. I've
21 done three more things. If Fletcher would have been shot in
22 the knee, I'd get more than \$30,000.

23 Q. Did there come a time when you had another meeting with
24 Rosemond?

25 A. Yes.

Hbfnros3

McCleod - direct

1 Q. Where?

2 A. Rosemond and I met the day after Thanksgiving 2009 at the
3 Mandarin Oriental Hotel.

4 Q. When was this?

5 THE COURT: The day after Thanksgiving.

6 A. The day after Thanksgiving.

7 THE COURT: Let's move it along.

8 BY MR. ENZER:

9 Q. Was that over the phone or in person?

10 A. We met in person.

11 Q. Who was there?

12 A. Initially it was Jimmy, myself, and a female acquaintance.

13 Q. At this meeting, what, if anything, did Rosemond say about
14 the murder of Fletcher?

15 A. At that meeting he said he wanted to touch bases with me,
16 and I had assumed that he was giving me money for the murder of
17 Fletcher.

18 And he explained to me that he was down a lot of
19 money. He said, Slim I've never been down this much money in
20 my life. I'm down one. I'm down a million dollars.

21 He was explaining to me that he sent money to
22 California, and it was a million eight, but only the 800,000
23 got there.

24 I said, A whole million's missing?

25 He said, Yeah.

Hbfnros3

McCleod - direct

1 I'm like, Wow.

2 He said, It's just one of those things. This is
3 just -- it's like deja vu. This is what happens when you take
4 a soul.

5 Q. Did he give you any money at that time?

6 A. No. He told me that pretty soon he would be taking care of
7 business and he would give me some money.

8 Q. Following that meeting, did you have additional meetings
9 with Rosemond?

10 A. Yes.

11 Q. One or several?

12 A. I think I saw -- several.

13 Q. Following that meeting, did you receive more money from
14 Rosemond?

15 A. Yes.

16 Q. One payment or several?

17 A. Several.

18 Q. How much in total?

19 A. The next time I received money was around between Christmas
20 and New Year's. Jason texted me and said Jimmy had something
21 for me and, quote-unquote a Christmas gift for me.

22 I said, Jason, I'm not around. Just give it to D.

23 It was \$5,000.

24 And then at the end of February 2010, it was like
25 around the time of that snowstorm, Jason asked me could I come,

Hbfnros3

McCleod - direct

1 could I meet him. I think it was like a Wednesday.

2 I said, No, but I can meet you the next day.

3 I met Jason in the 50s somewhere, by the N and R
4 train. He gave me \$5,000.

5 And the next day I received a text from Jimmy. And I
6 met him by the Four Seasons Hotel, and he gave me another
7 \$5,000.

8 Q. So is that a total of \$15,000?

9 A. Yes.

10 Q. Do you know what these payments were for? Yes or no?

11 A. Yes.

12 Q. How do you know what they were for?

13 A. Well, specifically, the Friday after the Four Seasons
14 meeting, when Jimmy gave me \$5,000, we sat in a car, and it was
15 Derrick myself and him.

16 And I sat in the front, Derrick sat in the back, Jimmy
17 was in the driver's seat.

18 He kind of did a tally.

19 He said, Slim, how much money have I given you since
20 you have been home?

21 We went over it.

22 He said, I have 50 for you, right?

23 I said, Yeah.

24 And I started telling him, Well, Jimmy, you gave me
25 \$5,000 through Taji, \$5,000 the following Monday. Then you

Hbfnros3

McCleod - direct

1 gave me the kilo.

2 He said, No, Slim, that's totally separate. It has
3 nothing do with the \$50,000 that I have for you.

4 So he began to recount again.

5 And we came up with the figure of \$25,000 he had given
6 me.

7 Q. So the \$50,000 he had for you, what was that for?

8 A. That's for me doing the time, the five years from 2004 to
9 2009, when I went to the house in Queens.

10 Q. The two payments of \$5,000 for a total of \$10,000 that you
11 got before the kilo of cocaine, what were those payments for,
12 the 10,000 payment?

13 A. The 10,000 was for the time I did for the Queens arrest.

14 Q. After the kilo, the \$15,000 you got at Christmas and
15 February 2010, etc., the ones you just described, what were
16 those for?

17 A. For the Queens arrest.

18 Q. The kilo, what was that for?

19 A. That was for the murder of Lowell Fletcher.

20 Q. At any time before Fletcher was killed, did Rosemond ever
21 say to you, Make sure Fletcher only gets shot in the leg?

22 A. No.

23 Q. At any time before Fletcher was killed, did Rosemond ever
24 say to you, Make sure no one kills Fletcher?

25 A. No.

Hbfnros3

McCleod - direct

1 Q. Did there come a time when you were arrested on federal
2 criminal charges?

3 A. Yes.

4 Q. When was that?

5 A. May 26, 2011.

6 Q. What kind of charges?

7 A. Cocaine and conspiracy to murder for hire.

8 Q. Following your arrest, were you detained?

9 A. Yes.

10 Q. Where?

11 A. MCC.

12 Q. What's the MCC?

13 A. I think the abbreviation stands for Metropolitan
14 Correctional Center. It's a pretrial for federal detainees.

15 Q. Where is it located?

16 A. 150 Park Row.

17 Q. In Manhattan?

18 A. Yes.

19 Q. Did there come a time when you decided to cooperate with
20 the government?

21 A. Yes.

22 Q. What did you do to cooperate?

23 A. I contacted my lawyer and met with him in person and asked
24 him about my options, and informed him, yeah, I'm willing to
25 speak to the government. He told me to write a summary, as

Hbfnros3

McCleod - direct

1 concise as I can --

2 Q. Let me stop you there. We don't want to know about your
3 conversations with your lawyer.

4 A. OK.

5 Q. Did there come a time when you met with the government for
6 what is called a proffer?

7 A. Yes.

8 Q. What is a proffer?

9 A. A proffer is when I disclose to the government criminal
10 activity, any aliases I've used, and my involvement in the
11 crime -- the instant offense I'm being charged for.

12 Q. When was your first proffer with the government? What
13 month?

14 A. I think it was in December of 2011.

15 Q. After that initial proffer, did you participate in
16 additional proffers with the government?

17 A. Yes, I did.

18 Q. Did you subsequently plead guilty to any crimes in this
19 case?

20 A. Yes, I did.

21 Q. What crimes did you plead guilty to?

22 A. Possession of -- conspiracy to possession with intent 500
23 and more grams of cocaine and conspiracy to murder for hire.

24 Q. The conspiracy to murder for hire, what's that based on?

25 A. It's based on the murder of Lowell Fletcher.

Hbfnros3

McCleod - direct

1 Q. And the narcotics conspiracy, what is that based on?

2 A. It's based upon me receiving a kilo of cocaine for payment
3 for the murder of Lowell Fletcher.

4 Q. By the way, that cocaine, how was it packaged?

5 A. It was like in a Ziploc bag, kind of like a cellophane seal
6 bag. It had like mustard I guess to conceal the smell.

7 Q. When did you plead guilty?

8 A. In June of 2012.

9 Q. Which judge did you plead guilty in front of you?

10 A. Colleen McMahon.

11 Q. When you pleaded guilty, what was the maximum sentence you
12 faced on the counts you pleaded guilty to?

13 A. Life imprisonment.

14 Q. And did any of the charges you pleaded guilty to carry a
15 mandatory minimum sentence?

16 A. The murder for hire carried a mandatory minimum of life,
17 and I think the cocaine, because of my criminal history,
18 carried a mandatory minimum of 20 years.

19 Q. Did you plead guilty to these charges under a cooperation
20 agreement between yourself and the United States Attorney's
21 Office?

22 A. Yes, I did.

23 Q. Which United States Attorney's Office?

24 A. For the Southern District.

25 Q. I am now going to show you on your screen what has been

Hbfnros3

McCleod - direct

1 premarked for identification as Government Exhibit 3518-R.

2 Do you recognize that document?

3 A. Yes.

4 Q. Can we flip to the last page.

5 What is this document?

6 A. This document is my -- I guess it's called the allocution.
7 It's my pleading guilty to the charges that I have been charged
8 with, and my signature verifying that it's been explained to me
9 and that I understand those charges.

10 Q. Is this your cooperation agreement, this document?

11 A. It looks like it. It's --

12 Q. Let me show you the first page. Actually, the second page.
13 The large paragraph, it's the fourth full paragraph.

14 Now that you see that, does that refresh your memory
15 about what this document is?

16 A. Now that I see that, I'm sure it's the cooperation
17 agreement.

18 Q. Now let's go to the last page.

19 Where it says agreed and consented to Brian McCleod,
20 whose signature is that above that line?

21 A. That's mine.

22 MR. ENZER: The government offers Government Exhibit
23 3518-R.

24 THE COURT: Received.

25 (Government's Exhibit 3518-R received in evidence)

Hbfnros3

McCleod - direct

1 MR. ENZER: You can take that down.

2 BY MR. ENZER:

3 Q. Did you enter into this agreement before or after you
4 pleaded guilty?

5 A. I entered into the agreement before I pleaded guilty.

6 Q. In your mind what were your obligations under that
7 agreement?

8 A. To tell the truth at all times.

9 Q. Did you have an obligation regarding testimony?

10 A. To be truthful and forthcoming with testimony.

11 Q. Did you have an obligation regarding committing no more
12 crimes.

13 A. Right, and I had to agree to cease all criminal activity.

14 Q. From the time you started cooperating with the government
15 in December 2011, did you commit any further crimes in jail or
16 outside of jail?

17 A. No.

18 Q. In your mind what were the government's obligations under
19 the cooperation agreement you just talked about?

20 A. As long as I committed no more crimes and was truthful and
21 forthcoming, the government's obligation was to write a letter
22 in the form of a 5K1 where they explained to the judge that,
23 giving her permission to go away from the mandatory minimum
24 when she sentences me based upon substantial assistance to the
25 United States government.

Hbfnros3

McCleod - direct

1 Q. What is a 5K1 letter?

2 A. A 5K1 letter is a recommendation for a lesser sentence, and
3 it gives the judge the leeway to deviate from the mandatory
4 minimum set forth in the guidelines.

5 Q. Who writes the 5K1 letter?

6 A. The 5K1 letter is written by the United States Attorney's
7 Office.

8 Q. And who is it addressed to?

9 A. It's addressed to the judge.

10 Q. What information goes in the 5K1 letter?

11 A. The witnesses' behavior, meaning their disciplinary record,
12 their criminal history, the truthfulness of their testimony,
13 the effectiveness -- did the defendant hold back information,
14 the timeliness of it. All of that is inside of the letter.

15 Q. All the crimes you've committed in your life go in the
16 letter?

17 A. Yes, the criminal history.

18 Q. And does all the assistance you have given the government
19 go in the letter?

20 A. Yes.

21 Q. Does the 5K1 letter guarantee that you get a reduced
22 sentence?

23 A. No, it does not.

24 Q. You mentioned earlier that under your cooperation agreement
25 you're required to provide truthful testimony if the government

Hbfnros3

McCleod - direct

1 asked you to, is that right?

2 A. Yes.

3 Q. As part of your cooperation under that agreement, did you,
4 in fact, testify at prior proceedings in 2014?

5 A. Yes, I did.

6 Q. Who was the federal judge who oversaw the prior
7 proceedings?

8 A. The Honorable Judge Colleen McMahon.

9 Q. After you testified for the government at those prior
10 proceedings, did you get sentenced?

11 A. I did.

12 Q. Who sentenced you?

13 A. The same Judge, Colleen McMahon.

14 Q. In connection with your sentencing, did the government
15 provide a 5K1 letter and a supplemental 5K1 letter to Judge
16 McMahon?

17 A. Yes, they did.

18 Q. Generally speaking, what kind of information was in those
19 letters?

20 A. What you just described, my criminal history and my
21 testimony at both trials.

22 Q. In those 5K1 letters or at your sentencing, did the
23 government recommend any specific sentence for you to Judge
24 McMahon?

25 A. No.

Hbfnros3

McCleod - direct

- 1 Q. At your sentencing, did you receive a sentence?
- 2 A. I did.
- 3 Q. Who decided your sentence?
- 4 A. Judge McMahon.
- 5 Q. What sentence did you receive?
- 6 A. She gave me a sentence of 72 months.
- 7 Q. In years what is that?
- 8 A. Six years.
- 9 Q. Was that to be followed by anyone?
- 10 A. Five years post supervised released.
- 11 Q. What is fives years' postrelease?
- 12 A. It's like parole for defendants.
- 13 Q. Is it called supervised release?
- 14 A. Yes.
- 15 Q. Have you finished the prison term of your sentence?
- 16 A. I have finished the prison term.
- 17 Q. When were you released from prison?
- 18 A. I was released to the halfway house April 6, 2016. I was
- 19 placed on regular supervised release September 22, 2016.
- 20 Q. Are you now on supervised release?
- 21 A. I am.
- 22 Q. Do you have a probation officer who supervises you?
- 23 A. I do.
- 24 Q. What you are your obligations on supervised release?
- 25 A. To commit no crimes, to be gainfully employed and/or in

Hbfnros3

McCleod - direct

1 school, and to abide by the terms set forth in the 5K1.

2 Q. For how long were you supposed to be on supervised release
3 going forward?

4 A. It was a term of five years. So from September 22, 2016, I
5 guess you would say September 22, 2021.

6 Q. Since being released on supervised release, have you
7 received any money from the government?

8 A. I have.

9 Q. Can you tell the jury what money you've received from the
10 government?

11 A. In June or July of 2016, the government paid for me to
12 enroll in school because the financial aid was -- I was past
13 the deadline. So the government gave me \$3,000 to pay for
14 school.

15 Since that time, I had to make several trips in
16 preparation for this trial, I think three times, and the
17 government gave me amounts of money of \$500 and two checks for
18 \$268 to cover travel.

19 Q. In connection with your testimony today, have you entered
20 into a new agreement with the government, a Rule 35 agreement?

21 A. Yes, I have.

22 Q. Showing you on your screen what has been premarked for
23 identification as Government Exhibit 3518-EEE, do you recognize
24 this document dated October 27, 2017?

25 A. I do.

Hbfnros3

McCleod - direct

1 Q. What is this document?

2 A. It's what's known as a Rule 35. It effectively states
3 that --

4 Q. Not what it states, just what it --

5 A. OK. It's a Rule 35.

6 MR. ENZER: Can we turn to the last page.

7 Q. Is that your signature above the line that says "Brian
8 McCleod"?

9 A. Yes.

10 MR. ENZER: The government offers Government Exhibit
11 3518-EEE.

12 THE COURT: Received.

13 (Government's Exhibit 3518-EEE received in evidence)

14 MR. ENZER: Can we publish the first page.

15 THE COURT: Yes.

16 MR. ENZER: Actually, I'm sorry. Go to the third
17 page. Highlight the top paragraph, please.

18 BY MR. ENZER:

19 Q. In your mind what are your obligations under this
20 agreement?

21 A. Very similar to the obligations under the 5K1, to not
22 commit any crimes and to be truthful and forthcoming in the
23 testimony.

24 Q. If you live up to your end of this agreement, what is the
25 government supposed to do?

Hbfnros3

McCleod - direct

1 A. If I live up to my end of the agreement, the government is
2 supposed to recommend to the judge that he can shorten my
3 supervision.

4 Q. Is that done through a Rule 35 motion?

5 A. Yes, it is.

6 Q. A motion under Rule 35 of the Federal Rules of Criminal
7 Procedure?

8 A. Yes.

9 Q. What is a Rule 35 motion?

10 A. My understanding is that a Rule 35 motion is, it gives the
11 judge the wherewithal to shorten my post supervised release
12 term.

13 Q. Based on what?

14 A. Based upon my testimony in these proceedings.

15 Q. The government writes the Rule 35 motion, is that right?

16 A. Yes.

17 Q. The motion goes to the judge?

18 A. Yes.

19 Q. What information goes in it?

20 A. My criminal history and my behavior since I was in jail and
21 since I have been released on post supervised release.

22 Q. Does it also describe your cooperation and testimony?

23 A. Yes.

24 Q. Does the government decide whether or not your supervised
25 release will be reduced as a result of your cooperation and

Hbfnros3

McCleod - direct

1 testimony?

2 A. No.

3 Q. Who decides that?

4 A. The judge does.

5 Q. Which judge?

6 A. Judge Kaplan.

7 Q. If the government files a Rule 35 motion, does Judge Kaplan
8 have to reduce your supervised release?

9 A. No.

10 Q. What will happen to your agreement if you do not tell the
11 truth today?

12 A. My agreement will be null and void. It will be not
13 effective.

14 Q. Will you get a reduction of supervised release?

15 A. No.

16 Q. Could you be charged with new crimes?

17 A. I would think so. I could be charged with perjury.

18 Q. What would happen to you if you were convicted?

19 A. I would be incarcerated.

20 Q. Since you have been released on supervised release, what,
21 if anything, have you been doing?

22 A. I have been going to school, studying cyber security.

23 Q. Do you have any exams coming up?

24 A. I just finished a Cisco exam and a networking exam, a
25 statistics exam. And I have another exam coming up for Cisco

Hbfnros3

McCleod - direct

1 2, and there is a major exam called a CCENT that I'll have
2 coming up.

3 Q. You mentioned that before you entered into your original,
4 your first cooperation agreement with the government in 2012,
5 you met with prosecutors for several proffer sessions, is that
6 right?

7 A. Yes.

8 Q. During the initial stages of the proffer process, what, if
9 anything, did you tell prosecutors about an individual named
10 Tiquan?

11 A. I was not truthful. There was an individual by the name of
12 Tiquan who, I knew his brother from Jersey City. I knew he had
13 been recently killed.

14 So, when asked about what I did with my portion of the
15 cocaine, I told the United States Attorney's Office that I gave
16 my 660 grams to Tiquan to sell.

17 my purpose in doing that was to protect Maurice
18 Yarborough, or Blast, because if Tiquan is dead he can't say
19 yea or nay that I gave him the cocaine.

20 Q. Did you eventually tell prosecutors that it was in fact
21 Maurice Yarborough who picked up the cocaine from you?

22 A. Yes. I contacted my lawyers and told them I needed to talk
23 to them about something, and -- it was a couple of days later,
24 and they said, OK, and they brought me back and I told the
25 government why I did it and who it was that I really gave the

Hbfnros3

McCleod - direct

1 cocaine to.

2 Q. Just so we're clear, how did this come to the attention of
3 the prosecutors?

4 A. I brought it to their attention.

5 Q. You testified for the government at prior proceedings in
6 2014, is that right?

7 A. Yes.

8 Q. And before your testimony in those proceedings, you
9 participated in proffers, including in December of 2011 and
10 January 2014, is that right?

11 A. Yes.

12 Q. During a meeting with the government in December of 2011
13 and a meeting with the government in January of 2014, what, if
14 anything, did you say to the government about your belief as to
15 whether or not the attack that you were hired to carry out
16 would be a murder?

17 A. At those meetings I said it was my belief that I was
18 participating in a shooting and not a murder.

19 Q. Why did you say that?

20 A. The main reason was it helped me cope.

21 Q. Was it true?

22 A. No.

23 Q. What's the truth?

24 A. The truth was I knew I was participating in a murder, but
25 it -- I would rather tell myself I was participating in a

Hbfnros3

McCleod - direct

1 scheme a shooting, so that I could move forward.

2 Q. Why did that help you cope to tell yourself that?

3 A. McCleod men have a history of being murdered in Baltimore.
4 My brother, who was very close to me, was killed when he was 20
5 years old, and I saw the effect it had on my mother. So that
6 right there, to tell myself that I'm participating in a murder
7 would be very hard for me to methodically plan the way I did
8 when I planned and schemed this out. So I just kept saying it
9 as a shooting.

10 Q. Have you ever met an individual known as Tef?

11 A. Yes.

12 MR. ENZER: I am going to publish Government Exhibit
13 10.

14 Q. Who is that?

15 A. That's Tef.

16 Q. When is the last time you saw Tef?

17 A. Either 2003 or 2004.

18 Q. When was the last time you spoke to Tef?

19 A. 2003 or 2004, when I saw him.

20 Q. Do you know of an individual named Khalil?

21 A. I don't know him, but I know of him.

22 Q. How do you know of him?

23 MR. ENZER: Take that down.

24 A. Rosemond had sent me pictures of different things when I
25 was locked up, and it was brought to my attention that one of

Hbfnros3

McCleod - direct

1 the people in the picture was Khalil. And I would hear Jason
2 and D speak about him, and Jimmy had spoken about him. I never
3 physically met him or spoke to him, but I knew who he was.

4 Q. Just so we're clear, you have never spoken to Khalil?

5 A. No.

6 Q. You've never met Khalil?

7 A. No.

8 Q. You testified earlier about meetings and conversations with
9 Jason Williams, is that right?

10 A. Yes.

11 MR. ENZER: Can we publish Government Exhibit 6.

12 Q. Who is that?

13 A. That's Jason Williams.

14 Q. When was the last time you saw Jason Williams?

15 A. I think 2011.

16 Q. Before or after you were arrested?

17 A. Before.

18 Q. When was the last time you spoke with Jason Williams?

19 A. 2011.

20 Q. Before or after you were arrested?

21 A. Before.

22 MR. ENZER: Can we publish Government Exhibit 54.

23 Q. Do you recognize this individual?

24 A. No. I've seen her before, but, no, I don't recognize her,
25 not from that picture.

Hbfnros3

McCleod - direct

1 Q. Do you know her name?

2 A. No, not from that picture.

3 Q. Have you ever met this person?

4 A. I may have been in her presence before.

5 Q. Have you ever spoken to this person?

6 A. Maybe hello.

7 Q. Mr. McCleod, can we go back for a moment to cocaine that
8 you received for the murder in the box.

9 What was inside the box? How was it packaged?

10 A. It was the two styrofoam pieces that would hold together
11 something that's fragile. Where the computer would be, the
12 kilo was there, and there was like a plastic like Seal-a-Meal
13 bag, like a -- if anybody who's ever had like a heat sealer, it
14 was one of those types of bags, and the cocaine was inside of
15 it, and there was like a mustard mixture to conceal the smell
16 also inside the package.

17 MR. ENZER: No further questions.

18 THE COURT: All right. Thank you.

19 Members of the jury, we will take our lunch break.

20 Please come back at 10 minutes to 2.

21 (Jury not present)

22 (Luncheon recess)

23

24

25

HBFAAROS4

McCleod - Cross

1 AFTERNOON SESSION

2 1:50 p.m.

3 THE COURT: Good afternoon, everybody.

4 I did want to bring attention to the fact that on page
5 688, lines 14 and 15 the record incorrectly fails to reflect
6 that Government Exhibit 1007 was received at that point.

7 Now unless there's objection, the reporter will fix
8 the transcript.

9 (Government's Exhibit 1007 received in evidence)

10 OK. Let's proceed.

11 (Witness and jury are present)

12 THE COURT: All right. The witness is reminded he is
13 still under oath.

14 Cross-examination, Mr. Touger.

15 MR. TOUGER: Thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MR. TOUGER:

18 Q. Good afternoon, Mr. McCleod.

19 A. Good afternoon, sir.

20 Q. Would I be correct in saying that when you first got arrest
21 on these federal charges you were facing a maximum and minimum
22 sentence of life in jail?

23 A. Yes, sir.

24 Q. And you decided to cooperate. You did cooperate and you
25 ended up getting six years?

HBFAAROS4

McCleod - Cross

- 1 A. Yes, sir.
- 2 Q. So you saved yourself decades in jail by cooperating?
- 3 A. Had I been convicted, yes, sir.
- 4 Q. And how old are you now?
- 5 A. 47.
- 6 Q. So, when you went in you were approximately 40 years old?
- 7 A. 40 years old.
- 8 Q. So now -- and you said that at some point after you were
- 9 arrested you decided to cooperate, right?
- 10 A. Yes, sir.
- 11 Q. And you came to that decision after reviewing all your
- 12 options of what you could do, right?
- 13 A. After reviewing, after having several conversations with
- 14 Mr. Rosemond and reviewing my options, yes.
- 15 Q. And your options were to go to trial?
- 16 A. (Nodding)
- 17 Q. Plead guilty without cooperation or plead guilty with
- 18 cooperation, right?
- 19 A. Yes.
- 20 Q. And you chose door number three which is plead guilty with
- 21 cooperation?
- 22 A. Yes.
- 23 Q. And you knew before you ever met with the prosecution that
- 24 you had to tell them the truth when you went to the proffer
- 25 sessions?

HBFAAROS4

McCleod - Cross

1 A. No. I knew that I should say something that couldn't be
2 proven that it was a lie from talking to different people who
3 were cooperating, at least I thought I knew.

4 Q. OK. When you went in to your first proffer session you
5 were given a proffer agreement, right?

6 A. Yes, sir.

7 Q. And in that proffer agreement it says you've got to tell
8 them the truth, right?

9 A. Yes, sir.

10 Q. And the prosecutor himself went over that with you when you
11 met with him, right?

12 A. Yes, sir.

13 Q. And he said, Mr. McCleod, I don't care what you say today
14 as long as you tell me the truth, right?

15 A. Something similar to that, yes.

16 Q. Something to that effect, right? And you knew that at that
17 point at least you should tell them the truth?

18 A. I knew that I should say something that couldn't be proven
19 that it wasn't the truth.

20 Q. OK. So you figured you couldn't lie about something they
21 couldn't verify?

22 A. At that point, yes, I did think that.

23 Q. And before you went into the proffer session had you
24 reviewed in your mind what you were going to say?

25 A. Somewhat.

HBFAAROS4

McCleod - Cross

1 Q. And so you could -- so the story would come out in a
2 reasonable fashion, right?

3 A. I planned to tell the truth and change one part.

4 Q. What is the one part you planned to change?

5 A. Who I gave my portion of the cocaine to.

6 Q. OK. Besides that you planned to tell them the entire truth
7 about your activities?

8 A. Yes.

9 Q. Nothing else would be a nontruth?

10 A. Exactly.

11 Q. You made that decision before you went into the
12 government's meeting with the government?

13 A. Well, I said when this part comes up, if it comes up and
14 I'm sure it would, I'm going to protect Blast.

15 Q. I understand. Take that and put it aside now. OK?

16 Besides that one area, the protection of Blast you decide you
17 were going to tell the government the whole truth and not
18 protect anybody else?

19 A. Pretty much, yes.

20 Q. Now, would I be correct in saying like you've just
21 testified before lunch that at that first meeting you told the
22 prosecutors when they asked you, did you expect this only to be
23 a shooting that your answer was "yes"?

24 A. I don't think they asked me that that day.

25 Q. You didn't say on December 20, 2011, that you thought this

HBFAAROS4

McCleod - Cross

1 was only going to be a shooting, not a homicide?

2 A. On that day?

3 Q. Yes.

4 A. The first time I proffered I'm not sure if that question
5 was worded that way. I met with the government several times.

6 MR. TOUGER: Page 833 of the 3518-U.

7 THE COURT: Just a moment.

8 (Pause)

9 Q. Did you say that at one of the earlier proffer sessions as
10 opposed to one the of the later proffer sessions?

11 A. Yes, sir.

12 Q. OK. We'll take that. And you specifically told them that
13 this was going to be a shooting, not a homicide, right?

14 A. I told them I felt I was participating in what would be a
15 shooting and not a killing, yes, sir.

16 Q. And then you had many more meetings with the government
17 after that, right?

18 A. Yes, sir.

19 Q. And can you even count how many proffer sessions you've
20 attended prior to your testimony in February of 2014?

21 A. I would say somewhere between ten and 15.

22 Q. And you spoke to them for a long time at some of those
23 proffer sessions, right?

24 A. Yes, sir.

25 Q. And each one of those proffer sessions you signed that

HBFAAROS4

McCleod - Cross

1 proffer agreement saying you are going to tell the truth?

2 A. I believe so, yes, sir.

3 Q. And by then after the first -- when did it take you to
4 realize that you had to tell them the whole truth even about
5 Blast?

6 A. I realized that when I left the first session.

7 Q. So by the time a few proffer sessions had gone on you
8 realized you had to tell them the whole truth, right?

9 A. Yes, sir.

10 Q. And you weren't protecting anybody at this point?

11 A. No, sir.

12 Q. Now, and I believe you testified on direct that you
13 remember testifying at a prior proceeding in February of 2014?

14 A. Yes, sir.

15 Q. And would I be correct in saying that you -- or would I jog
16 our memory that you had a meeting with the government on
17 January 17th of 2014?

18 A. Somewhere in January.

19 Q. And again, when you walked into that meeting you knew you
20 had to tell them the truth?

21 A. It was always a presumption of truth at every meeting, yes,
22 sir.

23 Q. And what was supposed to happen if you didn't tell them the
24 truth?

25 A. Then I'm not abiding by the contract which I've signed.

HBFAAROS4

McCleod - Cross

1 Q. And what happens then?

2 A. That contract is null and void.

3 Q. And you had already signed your cooperation agreement by
4 January of 2014, right?

5 A. Yes, sir.

6 Q. So you had your cooperation agreement in hand, right, and
7 you certainly knew you had to tell them the truth?

8 THE COURT: How many questions are you going to string
9 together, Mr. Touger?

10 MR. TOUGER: He is shaking his head.

11 THE COURT: I don't care what movements he's making.
12 One question at a time.

13 Q. You had your cooperation agreement in hand, correct?

14 A. Yes, sir.

15 Q. And you knew that required you to tell the truth?

16 A. Yes, sir.

17 Q. And you knew the consequences of that would be the possibly
18 of that cooperation agreement being ripped up?

19 A. Yes, sir.

20 Q. And would I be correct in saying that at that meeting,
21 again, you said I thought this was only going to be a shooting,
22 not a homicide?

23 A. Yes, sir.

24 Q. And would I also be correct in saying that at that point a
25 problem erupted at that meeting?

HBFAAROS4

McCleod - Cross

1 A. Yes, sir.

2 Q. And the government stopped the meeting, right?

3 A. Yes, sir.

4 Q. And your lawyers weren't present at that meeting, were
5 they?

6 A. No, sir.

7 Q. And the government wasn't happy with that answer, were
8 they?

9 MR. ENZER: Objection.

10 THE COURT: Sustained.

11 Q. Did the government express their dissatisfaction with that
12 answer to you at that point in time?

13 A. I wouldn't a call it dissatisfaction, sir.

14 Q. Well, they cut the meeting off at that point?

15 A. Yes, sir.

16 Q. What would you call it?

17 THE COURT: Sustained?

18 A. I would call it --

19 THE COURT: Sustained.

20 Q. Now they told you you'd better go meet with your lawyers,
21 right?

22 A. No.

23 Q. What did they tell you?

24 A. They said, Brian, we're going to have to reconvene. We're
25 going to speak with your lawyers.

HBFAAROS4

McCleod - Cross

1 Q. They were going to go speak to your lawyers?

2 A. Right.

3 Q. And I don't want to hear what you said with your lawyers
4 but at some point you met with your lawyers, right?

5 A. Yes, sir.

6 Q. And at some point there was another proffer session after
7 that, right?

8 A. That was the same day.

9 Q. So they brought your lawyers in that same day?

10 A. They brought my lawyers -- they called me to court. I meet
11 with my lawyers and later on that same day there was another
12 proffer session.

13 Q. OK. And you understood at this point that in your mind you
14 felt they weren't happy with that answer?

15 MR. ENZER: Objection.

16 THE COURT: Overruled.

17 A. Happy dis -- no, that's not how I felt.

18 Q. How did you feel?

19 A. I felt that there was something that needed to be clarified
20 or something that they needed me to have explained and make
21 sure that I understood what's being explained in the presence
22 of my lawyers.

23 Q. OK. And then you went back into the second proffer session
24 of the day, right?

25 A. No, it's the only proffer session of the day.

HBFAAROS4

McCleod - Cross

1 Q. Well, you had the proffer session that was stopped, right?

2 A. I never -- that day ended.

3 Q. That day ended. I'm sorry. I misunderstood.

4 So the proffer session where you, that was stopped was
5 a different day than the day you met with your attorneys?

6 A. Exactly.

7 Q. Sorry. So you went back into the second, the first proffer
8 session that day but the second meeting with the prosecutors,
9 the first meeting after -- withdraw the whole question.

10 You met with the prosecutors again after speaking with
11 your lawyers?

12 A. Yes.

13 Q. And they asked you the same question again, right?

14 A. They asked me had I spoke to my lawyers.

15 Q. Right. And then they asked you the same question again?

16 A. Yes.

17 Q. And the answer you gave at this point in time was basically
18 the answer that you gave to the jury early this morning
19 about --

20 THE COURT: Sustained as to form.

21 Q. The answer you gave to the prosecutors at that point was a
22 modified answer, right? It was different than what you said
23 the day before at the last proffer session?

24 A. The day before?

25 Q. At the last proffer session, it was different from that

HBFAAROS4

McCleod - Cross

1 answer you gave at that point?

2 A. Yes.

3 Q. And you went on, you testified at that prior proceeding
4 February of 2014, right?

5 A. Yes.

6 Q. And after that you got your 5K1 letter?

7 A. Yes.

8 Q. And after that you got sentenced not to life in jail, not
9 to 20 years but to six years?

10 A. Well, I think you're leaving out another proceeding in
11 November.

12 Q. Right.

13 A. But, yes.

14 Q. Ultimately, you got sentenced to six years after you got
15 the 5K1 letter?

16 A. Yes.

17 Q. And you've now walked out of jail?

18 A. I left jail, yes.

19 Q. All for correcting that one answer?

20 MR. ENZER: Objection.

21 THE COURT: Sustained.

22 Q. Now, can --

23 THE COURT: The jury will disregard that. It was not
24 proper.

25 Q. Can we agree, Mr. McCleod, that Jimmy never told you

HBFAAROS4

McCleod - Cross

1 pointblank to kill Lowell Fletcher?

2 A. We can agree he never used that had specific language, yes.

3 Q. Can we agree he never told you to murder Lowell Fletcher?

4 A. We can agree that he never specifically said that, yes.

5 Q. And can we agree that you never had a conversation when you
6 were standing on Mount Eden Avenue the night of the shooting
7 that, where you told Derrick Grant to kill Lowell Fletcher?

8 A. We can't actually agree with that.

9 Q. You told Derrick Grant to kill Lowell Fletcher?

10 A. No. Derrick Grant and Jason Williams told me they thought
11 I would do this.

12 Q. My question to you is, did you ever tell Derrick Grant --

13 A. No, I did not.

14 Q. That's my question.

15 A. OK.

16 Q. Did you?

17 A. No.

18 Q. And you had no conversations with Rodney Johnson about the
19 whole Lowell Fletcher incident, correct?

20 A. None at all.

21 Q. And you have never told Jason Williams to kill Lowell
22 Fletcher, right?

23 A. No.

24 THE COURT: No, you didn't do it or, no, he's not
25 right?

HBFAAROS4

McCleod - Cross

1 A. No, I never had a conversation with Jason or Derrick or
2 Rodney Johnson telling them to kill Lowell Fletcher.

3 Q. And from the point you started to cooperate till today, how
4 many proffer sessions have you had with the government?

5 A. Let's just say maybe 20 to 25.

6 Q. And again, some of these lasted multiple hours, right?

7 A. Yes.

8 Q. And they asked you lots of questions during those proffer
9 sessions?

10 A. Yes.

11 Q. And you gave them the answers to those questions?

12 A. Yes.

13 Q. And you went over those answers in detail with them?

14 THE COURT: Sustained as to form. Not clear what you
15 mean.

16 Q. You went over your answers with the prosecutor in detail
17 similar to the way you did this morning when you answered their
18 questions here in court?

19 THE COURT: Sustained as it to form.

20 Q. And how many times in those proffer sessions or --
21 withdrawn.

22 How many of those proffer sessions did you discuss the
23 Lowell Fletcher shooting?

24 A. Just about every time.

25 Q. And have you ever met me before?

HBFAAROS4

McCleod - Cross

1 A. No.

2 Q. Have you ever answered any of my questions about anything
3 you've ever done?

4 A. No, sir.

5 Q. Whether on the telephone, in text or media?

6 A. No, sir.

7 THE COURT: Mr. Touger, it's not necessary to do that.
8 He gave you the answer.

9 Q. Now, I want to go back to the first time you met with Jimmy
10 when you got out of New York state jail. Do you know the time
11 period we're talking about?

12 A. Yes, sir.

13 Q. Now, do you know if the New York State Department of
14 Corrections has a website?

15 A. Yes, I do.

16 Q. And do you know if you go on that website you can locate a
17 person who is in jail and where they are?

18 A. Sometimes you can.

19 Q. And do you also know that when you look that person up you
20 get a proposed release date?

21 A. Sometimes. It's not always updated.

22 Q. And if I'm correct you, at that meeting, this first
23 meeting, that's all I am talking about right now, that first
24 meeting, you tell Jimmy your information on Lowell Fletcher,
25 right?

HBFAAROS4

McCleod - Cross

1 A. Yes, sir.

2 Q. You've got to answer. You can't just shake your head.

3 THE COURT: He said "yes, sir".

4 Q. And Jimmy tells you that, offers you \$30,000 to bring
5 Lowell Fletcher to him?

6 A. No, sir, not at the first meeting.

7 Q. OK. And do you bring up "D" at the first meeting?

8 A. No.

9 Q. OK. At this first meeting there is no planning or strategy
10 discussed about how to shoot Lowell Fletcher, is there?

11 A. Are you ask asking me that question?

12 Q. Yes.

13 A. How could there be?

14 Q. It has to be asked. There wasn't, right?

15 A. No, sir.

16 Q. And then have you a second meeting with Jimmy, right?

17 A. Yes.

18 Q. At that meeting what do you say to Jimmy --

19 A. Mr. Touger, for the sake of clarity, the first meeting you
20 are speaking about in front of Central Park when I was first
21 released --

22 Q. Right.

23 A. -- from state prison. And the second meeting you are
24 referring to is the meeting at Whole Foods.

25 Q. Exactly.

HBFAAROS4

McCleod - Cross

1 A. Now, could you ask me the question again.

2 Q. At the Whole Foods meeting you bring up Lowell Fletcher
3 again, right?

4 A. No. Jimmy brought up Lowell Fletcher.

5 Q. And you give him your update information on Lowell
6 Fletcher?

7 A. I don't have any update information.

8 Q. So what is discussed at that meeting?

9 A. Jimmy asked me about the integrity of the information and
10 the person who has the line on Lowell Fletcher.

11 Q. And you say the integrity is fine, unquestionable?

12 A. Yes, sir.

13 Q. And is that when you bring up "D"?

14 A. No.

15 Q. That doesn't happen that the meeting either?

16 A. Mr. Touger, you are asking me questions but --

17 Q. That doesn't happen at a meeting, does it?

18 A. It happens at that meeting but it doesn't happen in the
19 chronological order in which you are suggesting.

20 Q. I'm not suggesting a chronological order at all.

21 THE COURT: Look, Mr. Touger, just try to ask a clear
22 questions. Your question was:

23 Is that when you bring up "D"?

24 MR. TOUGER: Exactly.

25 THE COURT: "Is that when" goes immediately to the

HBFAAROS4

McCleod - Cross

1 sequence of events.

2 Q. At this meeting at Whole Foods do you bring up "D"?

3 A. Yes, I do.

4 Q. Thank you. Does Jimmy bring up "D" or do you bring up "D"?

5 A. I bring up "D".

6 Q. And Jimmy responds, OK. Get with him.

7 A. Something like that, yes, sir.

8 Q. Is that at the meeting where the \$30,000 is discussed?

9 A. Yes, sir.

10 Q. And Jimmy says before you brought up "D" Jimmy says, I have
11 \$30,000 for somebody to bring Mr. Fletcher to me?

12 A. Yes, sir.

13 Q. And then you say what about, you bring up "D", right?

14 A. Yes, sir.

15 Q. And the meeting basically ends with Jimmy saying, Go get
16 with "D"?

17 A. Yes, sir.

18 Q. So at that meeting is there any planning or strategy
19 discussed about the actual shooting of Lowell Fletcher?

20 A. Yes, sir.

21 Q. What is discussed?

22 A. Jimmy says I'm going to hit him so hard and so quick, so
23 fast he's not going to know what hit him. So I suggest "D"
24 because he's talking about killing Lowell Fletcher himself.

25 Q. An that's the entirety of the strategy and planning at that

HBFAAROS4

McCleod - Cross

1 meeting?

2 A. Yes, sir.

3 Q. And would I be correct in saying that Jason is not involved
4 in these meetings, whatsoever?

5 A. Physically, no.

6 Q. When is the next meeting that you have with Jimmy?

7 A. About a week and a half later.

8 Q. And at that meeting which is I believe you testified to
9 before September 11, right?

10 A. Yes.

11 Q. What do you discuss with Jimmy at that meeting? Well,
12 first where is that meeting?

13 A. That meeting is in front of Whole Foods. We don't actually
14 go inside.

15 Q. And what is discussed at that meeting?

16 A. That meeting I'm being instructed to get another phone.

17 Q. And is that the entirety of the planning and strategy
18 discussed about the shooting of Lowell Fletcher?

19 A. I'm asked, Are you sure you guys can handle this? You got
20 this? Because if not, I got somebody else. So my confidence
21 in getting another phone is the gist of that meeting.

22 Q. Thank you.

23 And then you received information that Mr. Fletcher is
24 being released possibly on September 11, correct?

25 A. Correct.

HBFAAROS4

McCleod - Cross

1 Q. And you inform Jimmy of that information?

2 A. Yes.

3 Q. How do you do that?

4 A. I text him.

5 Q. And he says, Get with Jason?

6 A. Yes.

7 Q. Is that the entirety of the planning and strategy that's
8 discussed prior to, with Jimmy prior to you going to Queens
9 borough on September 11?

10 A. There may have been something else like, get with Jason to
11 see if something. It was more to it but I don't know verbatim
12 exactly. I don't remember verbatim what was said.

13 Q. And you then text Jason, right?

14 A. Yes.

15 Q. And by this time "D" has already, Derrick Grant has already
16 agreed to a third person involved in the shooting of Lowell
17 Fletcher?

18 A. Yes.

19 Q. And you text Jason, Pick me up tomorrow morning?

20 A. Yes.

21 Q. Is that the entirety of your conversation with Jason prior
22 to going to Queens borough on September 11?

23 A. There may have been something else mentioned about "D" but,
24 yes.

25 Q. And would I also be correct in saying that "D" does not

HBFAAROS4

McCleod - Cross

1 drive with you to Queens borough?

2 A. You are correct. He does not drive with us.

3 Q. There is no discussion with Jason prior to going to Queens
4 borough about shooting, is there?

5 A. No.

6 Q. But when you were going to Queens that day Jason drives
7 you, right?

8 A. Yes.

9 Q. You were hoping to do the shooting that day, weren't you?

10 A. No.

11 MR. TOUGER: Page 646 of 3518-U.

12 MR. ENZER: Page 646.

13 THE COURT: Starting at line?

14 MR. TOUGER: Starting with line two. Do you remember
15 testifying --

16 THE COURT: Just a minute.

17 (Pause)

18 THE COURT: All right. Line two to where.

19 MR. TOUGER: To line seven.

20 THE COURT: All right. We are not going to do "do you
21 remember testifying". There was testimony given on December 4,
22 2014, by this witness under oath. Mr. Touger is now going to
23 read it question and answer. Then if he has a question about
24 it he will put the question.

25 "Q. And what was the plan? Were you guys to going to do on

HBFAAROS4

McCleod - Cross

1 September 11?

2 "A. Nothing was really mapped out. But my thinking was we
3 were going to go over to Queens borough that day and at least
4 Jason and Derrick would get a chance to see Lowell Fletcher and
5 perhaps if something could happen, maybe even do the deed that
6 day.

7 "Q. What deed?

8 "A. The shooting.

9 MR. TOUGER: I also want to direct your attention to
10 page 661.

11 MR. ENZER: Your Honor, is there a question about that
12 testimony?

13 THE COURT: Apparently, not.

14 MR. TOUGER: I was going to do the second part, your
15 Honor, and then ask the question.

16 Q. Do you remember giving that testimony and giving those
17 answer?

18 THE COURT: Which is the part about don't ask "do you
19 remember" blah, blah. There was a stenographer. That is why
20 the stenographer was there. Do you have a question about the
21 testimony?

22 MR. TOUGER: Not yet, your Honor.

23 Page 661.

24 THE COURT: Give us a moment to find it.

25 (Pause)

HBFAAROS4

McCleod - Cross

1 THE COURT: And what line?

2 MR. TOUGER: Line 22 through 662, line five.

3 THE COURT: Just a moment.

4 (Pause)

5 THE COURT: OK.

6 MR. TOUGER:

7 "Q. Can you just remind us what was the purpose of your trip
8 to Queens borough?

9 A. The purpose of my trip to Queens borough along with Jason
10 Williams and possibly Derrick Grant was to, one, give Jason and
11 Derrick a chance to view Mr. Fletcher, and two, to see if we
12 could actually perhaps do the deed there if the opportunity
13 arose.

14 Excuse my voice. I'm sorry.

15 "Q. Have some water. What deed are you talking about?

16 A. The shooting of Lowell Fletcher.

17 Q. So I ask you again, was your intention when you went to
18 Queens borough if the opportunity presented itself to shoot
19 Lowell Fletcher that day?

20 MR. ENZER: Objection. That was not the question.

21 THE COURT: Objection sustained. That was not the
22 question you asked before.

23 Q. Was it your intention on that day to do the deed?

24 A. Again, no.

25 Q. OK. Now, did you have a gun that day?

HBFAAROS4

McCleod - Cross

- 1 A. No.
- 2 Q. Did Jason have a gun that day?
- 3 A. To my knowledge, no.
- 4 Q. Did Derrick even show up that day?
- 5 A. No.
- 6 Q. Was Lowell Fletcher still at Queens borough that day?
- 7 A. No.
- 8 Q. You got there too late, right?
- 9 A. Yes.
- 10 Q. And there was no plan to get there early in the morning and
- 11 try to get there before he was released was there?
- 12 A. No.
- 13 Q. Did you tell Jimmy about what happened in Queens?
- 14 A. Not that I recall.
- 15 Q. And then you get in touch with Lowell Fletcher through his
- 16 attorney, right?
- 17 A. Yes.
- 18 Q. When is the next meeting you have with Jimmy?
- 19 A. I think Friday, September 25 at Houston's Restaurant.
- 20 Q. And at that meeting Jimmy gives you an address that he got
- 21 for Lowell Fletcher, correct?
- 22 A. Yes.
- 23 Q. And he explains to you how they got that address, right?
- 24 A. Yes.
- 25 Q. And he explains to you that he got that address through an

HBFAAROS4

McCleod - Cross

1 inside guy at G-Unit?

2 A. Yes.

3 Q. And that he was paying that man for the information?

4 A. He didn't specifically say he was paying that man for
5 information but everything else you said was consistent.

6 Q. At that part of the meeting, is that the entirety of the
7 planning and strategy about the shooting of Lowell Fletcher?

8 THE COURT: Are you asking him is that the entirety of
9 any planning and strategy that occurred that day?

10 MR. TOUGER: No. At that meeting.

11 A. No, I don't consider that a meeting but at that point, at
12 that juncture before we ate our table was called so that's all
13 we talked about, yes.

14 Q. During dinner there was no conversation about Lowell
15 Fletcher?

16 THE COURT: No. There was no conversation or no the
17 lawyer's question is wrong?

18 A. No, there was no conversation at dinner.

19 Q. And after the food has been eaten and you leave the
20 restaurant, you and Jimmy walk off together?

21 A. Yes.

22 Q. And Jimmy tells you that he thinks he has information that
23 Lowell Fletcher is getting nervous?

24 A. Yes.

25 Q. And you meet with, Jimmy meets with an individual who is

HBFAAROS4

McCleod - Cross

- 1 giving him the information, correct?
- 2 A. Yes.
- 3 Q. And you are listening to that conversation?
- 4 A. Yes.
- 5 Q. But you are not an active participant in that conversation?
- 6 A. Correct.
- 7 Q. And basically Jimmy is asking the G-Unit guy for lack of a
- 8 better term is -- getting nervous, right?
- 9 A. Right.
- 10 Q. And G-Unit guy explains to Jimmy the background of Lowell
- 11 Fletcher's nervousness?
- 12 A. Correct.
- 13 Q. At that point the G-Unit guy leaves?
- 14 A. Yes.
- 15 Q. And you talk with Jimmy alone again?
- 16 A. Yes.
- 17 Q. You and Jimmy are -- the G-Unit guy is gone?
- 18 A. Correct.
- 19 Q. And you tell Jimmy I know what he is talking about. That's
- 20 not me.
- 21 A. Right.
- 22 Q. And then Jimmy tells you to go check out the address that
- 23 he gave you.
- 24 A. Yes.
- 25 Q. And at that point you come up with a code that you're going

HBFAAROS4

McCleod - Cross

1 to use with Jimmy, right?

2 A. We came up with a code but, yes.

3 Q. And what was that code again?

4 A. Basically, a good address would be a good date, a good
5 sighting, no surveillance, good topography -- I'm
6 paraphrasing -- would be a good date. I liked her.

7 Surveillance, lighting, maybe problems with the locale would be
8 no chemistry, bad date.

9 Q. And you explained the code that you were going to use?

10 A. Yes.

11 Q. Because the code is only efficient and effective if both
12 sides are understanding the code?

13 A. Yes.

14 Q. And then the meeting breaks up?

15 A. Yes.

16 Q. Is that the entirety of the planning and strategy for the
17 shooting of Lowell Fletcher discussed at that meeting?

18 A. Yes.

19 Q. And would I be correct in saying that one of the things you
20 looked for when you went to Queens borough is cameras, right?

21 A. I didn't necessarily look for cameras but I definitely saw
22 cameras.

23 Q. I believe you testified on direct that when you went in you
24 saw the bank of cameras and you said this is not a good spot to
25 do this because of the cameras?

HBFAAROS4

McCleod - Cross

1 A. It's not a good spot to do anything because of the cameras.

2 Q. -- cameras?

3 A. Yes.

4 Q. You decide that on your own?

5 A. Decide what on my own?

6 Q. That it's not good to do a crime where there are cameras?

7 A. Yes.

8 Q. That's pretty logical, right?

9 A. Yes.

10 Q. You don't have to be to quote a term, a brain surgeon to
11 figure that out?

12 A. Agreed.

13 Q. Jimmy didn't have to tell you to look for cameras, right?

14 A. No, he did not.

15 Q. And then you go up and you investigate the address Jimmy
16 gave you?

17 A. Correct.

18 Q. And you decide on your own that this not a good spot?

19 MR. ENZER: Which address?

20 MR. TOUGER: The address that Jimmy gave you.

21 A. 165 Street address.

22 Q. Right?

23 A. I didn't actually decide on my own but it is as you said,
24 it's a logical foregone conclusion that you don't commit a
25 crime where there's heavy surveillance. But Jimmy specifically

HBFAAROS4

McCleod - Cross

1 said, Slim, check out the place. See how it looks. See if
2 it's good for this.

3 Q. And then you went up there?

4 A. Yes.

5 Q. And you decided it wasn't good for this?

6 A. According to his instruction and according to my own
7 understanding, yes.

8 Q. Jimmy wasn't with you, right?

9 A. No.

10 Q. He trusted you to make this decision?

11 A. Yes, sir.

12 Q. You sent back the code "bad date" of something like of that
13 nature?

14 A. Exactly.

15 Q. And you know Jimmy understands it because you had a
16 conversation with Jimmy explaining exactly what the code meant?

17 MR. ENZER: Objection. He's asking the witness --

18 THE COURT: Sustained.

19 MR. TOUGER: I'll withdraw that question.

20 Q. You and Jimmy had discussed together what the code meant?

21 THE COURT: This is repetitious.

22 Q. After you send that code to Jimmy you arrange to meet with
23 Jason and "D" the next day.

24 A. After Jimmy says, Meet with Jason and "D", I contact Jason
25 and "D", yes.

HBFAAROS4

McCleod - Cross

1 Q. And there is no planning or strategy discussed in those
2 text messages except for, we're going to meet the next day?

3 A. Get with Jason and "D" tomorrow to see if you guys can find
4 a spot.

5 Q. That's it?

6 A. Yes.

7 Q. And you then meet with the two of them the next day?

8 A. Yes.

9 Q. And you ultimately pick the spot on Mount Eden Avenue for
10 the spot?

11 A. Yes.

12 Q. And there is no communication with Jimmy during the day
13 about the different spots?

14 A. Not from me, no.

15 Q. And after you picked the spot you, Jason and "D" go your
16 separate ways?

17 A. No. After we picked the spot we go to see Toree.

18 Q. And you meet with Toree at that point?

19 A. Yes.

20 Q. No discussion about the Lowell Fletcher shooting during
21 that meeting?

22 MR. ENZER: Objection.

23 THE COURT: What's the objection?

24 MR. ENZER: He is mischaracterizing the testimony.

25 I'm not sure what he means "about the shooting". The witness

HBFAAROS4

McCleod - Cross

1 has talked about a conversation at that meeting --

2 THE COURT: That's enough, Mr. Enzer.

3 No, I'll let it stand.

4 Answer the question, please.

5 A. Can you restate the question again please.

6 Q. I'll make it more particular.

7 Where do you meet with Toree?

8 A. I meet with Toree near where Jason was living, 145 and
9 Lenox area.

10 Q. And your meeting with him, with "D" and Jason present?

11 A. Yes.

12 Q. And is there any discussion about the Lowell Fletcher
13 shooting at that meeting?

14 A. In a sense, yes.

15 Q. What does that mean, "in a sense"?

16 A. Well, you're saying you went to meet with Toree. I got in
17 the car with Jason and he went to meet with Toree and I was
18 present. When Jason met with Toree and I spoke with Toree and
19 Jason says we, quote/unquote, have a spot, Toree says oh, cause
20 I got Lover over at 161 Street right now checking things out.

21 Q. Exactly. Beside those comments there is no planning or
22 strategy discussed about the shooting of Lowell Fletcher?

23 A. No.

24 THE COURT: No, there is no planning or, no, the
25 lawyer's got it wrong?

HBFAAROS4

McCleod - Cross

1 A. No. The lawyer's correct. There was no planning and no
2 discussion of Toree.

3 Q. The next day comes and you go up to Mount Eden Avenue with
4 Jason, right?

5 A. Yes.

6 Q. And "D" is not with you for the ride up to the Bronx?

7 A. Correct.

8 Q. "D" appears at the spot?

9 MR. TOUGER: One moment.

10 (Pause)

11 Q. I'll start the question again. "D" appears at the spot
12 that you had picked for the shooting?

13 A. Correct.

14 Q. And would I be correct in saying that at some point after
15 you meet up with "D" that Jason William tells you he wants you
16 to be the shooter that night?

17 A. Well, what he says is we were thinking you would do this.

18 Q. And "do this" means do the shooting, correct?

19 A. Yes.

20 Q. And you say "no"?

21 A. Right.

22 Q. And I believe you testified on direct that you never saw
23 the actual gun that night?

24 A. No, I never saw the actual gun.

25 Q. But you were with Jason the whole time he was up on Mount

HBFAAROS4

McCleod - Cross

1 Eden Avenue before you saw Derrick, right?

2 A. Well, when he pulled -- we were in the car. When we pulled
3 and we made a U-turn, that's when Derrick came out, when we
4 parked.

5 Q. Exactly. You were with Jason in the car?

6 A. Right.

7 Q. You had not left the car at that point?

8 A. No.

9 Q. Did you ever see Jason give "D" the gun?

10 A. No, I did not.

11 Q. But when you and Derrick went to get the potato chips "D"
12 already had the gun?

13 A. To my knowledge, yes.

14 Q. But you never saw him get it?

15 A. No, I never saw him get the gun.

16 Q. And if you could -- there's a glare on the picture but I
17 think the laser will come out again. Could you again just for
18 the jury's edification, point out the spot where you had picked
19 for the shooting?

20 A. Right here.

21 Q. OK. And do you know in actuality where the shooting itself
22 took place?

23 A. I don't.

24 Q. Cause you did not see it?

25 A. Correct.

HBFAAROS4

McCleod - Cross

1 Q. Now, did you see "Toree", Rodney Johnson in the Mount Eden
2 vicinity after the shooting?

3 A. No, I did not.

4 Q. After the shooting occurs you get in touch with Toree and
5 you head to his place of domicile, correct?

6 A. Correct.

7 Q. And you meet with him there?

8 A. Yes.

9 Q. You remember Toree saying I saw --

10 MR. ENZER: Objection.

11 THE COURT: I haven't heard the question yet.

12 Q. Do you remember Toree saying, I saw Lowell Fletcher. He
13 looked twisted but not dead to me, during that meeting?

14 A. No.

15 Q. And if I'm correct you said you thought Lowell Fletcher was
16 dead?

17 A. Yes.

18 Q. And at that point or at some point during the meeting Toree
19 motioned you to give him your phone?

20 A. Yes.

21 Q. He did not say give me the Stacy King phone, did he?

22 A. No.

23 Q. He said give me your phone?

24 A. No. He never said anything.

25 Q. He just motioned what you interpreted to give him your

HBFAAROS4

McCleod - Cross

- 1 phone?
- 2 A. He pointed and I passed.
- 3 Q. It was your choice what phone to give him?
- 4 A. Yes.
- 5 Q. You had two phones on you at least at that point, right?
- 6 A. Correct.
- 7 Q. Did you have more than with two phones?
- 8 A. No.
- 9 Q. So you chose what phone to give Toree?
- 10 A. Yes.
- 11 Q. And I believe your testimony was that he handed out pieces
- 12 of the phone and you all destroyed the phone at that point?
- 13 A. Yes.
- 14 Q. I want to jump to the point of conversations you had with
- 15 "D" after the shooting, OK?
- 16 A. OK.
- 17 Q. At some point "D" complains to you about the fact that
- 18 they're only getting \$30,000, right?
- 19 A. Yes.
- 20 Q. He wants more?
- 21 A. Well, he didn't receive \$30,000. He complained about the
- 22 fact that we received \$30,000 worth of cocaine to split three
- 23 ways.
- 24 Q. And you wants more money?
- 25 A. Right.

HBFAAROS4

McCleod - Cross

1 Q. Because \$30,000 for bringing somebody in is one thing but
2 \$30,000 for a shooting that resulted in somebody's death is a
3 completely different thing, right?

4 A. Yes.

5 Q. You should in "D"'s mind and your mind get more for that?

6 A. More for what?

7 (Continued on next page)

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HBFNROS5

McCleod - cross

1 Q. You should in D's mind and your mind get more for that?

2 A. More for what?

3 Q. For instead of bringing somebody in, for luring somebody to
4 a spot, shooting and killing that person?

5 A. My thinking was I was --

6 Q. I will withdraw the question. Let me ask it again.

7 A. OK.

8 Q. The original deal was \$30,000 to bring somebody to Jimmy?

9 A. Correct.

10 Q. You and D think that, because you participated in a
11 shooting where somebody got killed, you should get more than
12 \$30,000?

13 A. I didn't care if he got killed or not to get paid more.

14 Q. OK. Because you were involved in the actual luring him to
15 that shooting?

16 A. My whole position had changed. I went from being a lurer
17 to a recruiter, a planner, logistics, tactician.

18 Q. You had a bigger role?

19 A. Right.

20 Q. You wanted more money?

21 A. Exactly.

22 Q. And D had a bigger role, and he wanted more money?

23 A. Right.

24 Q. Do you remember your testimony about when you went, when
25 you first got the state case for going to the house where the

HBFNROS5

McCleod - cross

1 drugs and the money were?

2 A. Yes.

3 Q. You testified that Jimmy told you to get the paper and
4 stuff out of the house?

5 A. Yes.

6 Q. And you testified that that was code for money and drugs?

7 A. Correct.

8 Q. And again we agree that a code is only effective if both
9 sides understand the code?

10 THE COURT: We are not doing this over and over again.

11 MR. TOUGER: It was just one question, your Honor.

12 THE COURT: No. It is zero questions.

13 Next question.

14 BY MR. TOUGER:

15 Q. Jimmy did not explain that code to you, did he?

16 A. No.

17 Q. You knew that "paper" referred to money?

18 A. Yes.

19 Q. Because that had been used before? That was in your
20 vernacular?

21 A. Yes.

22 Q. And you knew that "stuff" meant drugs, right?

23 A. Right.

24 Q. Because that was in your vernacular?

25 A. The circumstances dictated that "paper" and "stuff" were

HBFNROS5

McCleod - cross

1 money and drugs.

2 Q. So we can agree that Jimmy gave you enough information for
3 you to complete the task that he wanted you to do?

4 A. Yes.

5 Q. Similarly, when Jimmy said he had 10K for someone to mark
6 LF in prison, do you remember that testimony?

7 A. Yes.

8 Q. You knew that "mark" meant to scar him, not kill him?

9 A. Yes.

10 Q. Because "mark" is a term that is in your vernacular also?

11 A. Yes.

12 Q. I want to talk about some of the money that Jimmy gave you.

13 All the cash that Jimmy gave you had nothing to do
14 with the shooting of Lowell Fletcher?

15 A. Agreed.

16 Q. The only money Jimmy gave you -- excuse me, withdrawn.

17 The only payment that Jimmy gave you was your cut of
18 the one kilo of drugs?

19 A. Agreed.

20 Q. I don't want to go through your whole criminal history
21 again. You went through that in detail on direct. But would
22 you agree with me that you've done many crimes in your life?

23 A. I would definitely agree with that.

24 Q. You sold drugs on a daily basis for multiple periods of
25 your life, right?

HBFNROS5

McCleod - cross

1 A. For a ten-year period I definitely sold drugs daily.

2 Q. And you did that as you were going in and out of jail or in
3 and out of arrests, correct?

4 A. Definitely.

5 Q. And you testified about a credit card fraud that you
6 participated in also?

7 A. Yes.

8 Q. And you also testified about how you would use false names?

9 A. When arrested, yes.

10 Q. Yes. But the only federal case you have had is the one you
11 were arrested that we've spoken about, right?

12 A. Correct.

13 Q. Prior to that arrest, there was no other federal cases in
14 your history, correct?

15 A. Correct.

16 Q. But you knew that federal court sentences were stiffer than
17 state court, right?

18 A. No.

19 Q. Did you learn that upon your getting arrested in federal
20 court?

21 A. I learned certain things carried more weight than state and
22 certain things carried less weight than state.

23 Q. OK. You were never offered a sweet plea deal in the
24 federal court case, were you?

25 A. Describe a sweet plea deal.

HBFNROS5

McCleod - cross

1 Q. For instance, when you got time served on many of your
2 state cases, that is a sweet deal, right?

3 A. They weren't -- that's not a deal. That's I went in front
4 of the judge and the case was thrown out.

5 Q. Let me ask you this question: There was a time when you
6 got sentenced for your parole violation and a felony drug sale
7 at the same time, right?

8 A. Yes.

9 Q. And they ran those two sentences concurrent, right?

10 A. Yes.

11 Q. They did not have to run those sentences concurrent, did
12 they?

13 A. Actually, they did. A parole violation, I committed a
14 crime in the commission, if I was on parole, they did have to
15 run it concurrent.

16 Q. I'm glad that -- we won't go there.

17 You explored I believe you said your options when you
18 got arrested on the federal court case, right?

19 A. I explored my options every time I got arrested.

20 Q. Right. What was the best plea offer you were offered in
21 the federal court case?

22 MR. ENZER: Objection.

23 THE COURT: Sustained.

24 BY MR. TOUGER:

25 Q. Ultimately you decided that cooperation was your best way

HBFNROS5

McCleod - cross

1 to get out of jail quickest, right?

2 A. No. Ultimately I decided cooperation was the best thing
3 for me to do. I had no clue when I was getting out of jail.

4 Q. But you thought it would get you out of jail quicker than
5 either going to trial or pleading guilty without cooperating?

6 A. No.

7 Q. No, you didn't?

8 A. No. I was in a unit with guys who did 17, 18 years and
9 were still going to court from cooperating. I could have been
10 to trial and been home in 18 months, two years.

11 Q. How, if the penalty was 20 to life?

12 A. If I win at trial.

13 Q. Oh, if you win at trial, but you didn't decide to go to
14 trial, did you?

15 A. I am simply answering your question.

16 Q. Did you decide to go to trial?

17 A. No, sir.

18 Q. You decided to plead guilty with cooperation?

19 A. Yes, sir.

20 Q. By the way, besides your problems with getting arrested,
21 you have had other problems in your life following rules,
22 right? For instance, you got kicked out of your aunt's house
23 because she didn't like what you were doing?

24 A. I left my aunt's house.

25 Q. She kicked you out, right?

HBFNROS5

McCleod - cross

1 A. I left.

2 Q. Why did you leave?

3 A. I wanted to be with my cousin Javier. She wasn't going to
4 let both of us not work.

5 Q. She didn't want you selling drugs either, right?

6 A. She didn't know I was selling drugs.

7 Q. You got kicked out of the Army, right?

8 A. Yes, I did get kicked out of the Army.

9 Q. When you got a job at Jimmy's music business, you got
10 kicked out of there for smoking marijuana, right?

11 A. I got suspended from the studio for 30 days. Definitely,
12 yes.

13 Q. Now, you went over your cooperation agreement on direct.

14 Do you remember that testimony?

15 A. Yes.

16 Q. And your responsibilities?

17 A. Yes, sir.

18 Q. And you didn't just go over that one paragraph, you went
19 over the whole agreement before you signed it, right?

20 A. Yes, sir.

21 Q. And you had ample opportunity to review that agreement
22 before you signed it?

23 A. Yes, sir.

24 Q. Without discussing what you talked about with your lawyer,
25 you went over that agreement with your lawyer?

HBFNROS5

McCleod - cross

1 A. Yes, sir.

2 Q. And in that agreement it states that the government will
3 give you a 5K1 letter if you give them substantial assistance?

4 A. Yes.

5 Q. What does the term "substantial assistance" mean to you?

6 A. To me "substantial" is, deals with the quantity.

7 "Assistance" is kind of, you know, it's a very easy
8 definition -- assistance, help.

9 So an individual who is cooperating doesn't say -- if
10 he's looking at a murder charge, he doesn't say I stole a
11 Snapple when I was three. He talks about his involvement in
12 that crime, and he's forthcoming. He tells about his full
13 involvement in that crime.

14 Q. You give them a lot of help, right?

15 A. You tell them your part.

16 Q. Now, we can agree that after you testified in February of
17 2014 that was the second time you testified in prior
18 proceedings in this case?

19 A. Repeat that, please.

20 Q. February 2014 was the second time you testified in prior
21 proceedings in this case?

22 A. The first proceeding was February. The second proceeding
23 was November.

24 Q. You're right. I withdraw that. You're right. You
25 testified at two prior proceedings in this case, right?

HBFNROS5

McCleod - cross

1 A. Correct.

2 Q. After that you got your 5K1 letter?

3 A. Correct.

4 Q. Because the government agreed that you gave them
5 substantial assistance by testifying in these cases?

6 A. I don't know what the government agreed to.

7 Q. They agreed that you gave them substantial assistance,
8 right?

9 A. I cooperated and did my part. The government wrote a
10 letter. I don't know what they agreed to.

11 Q. They wrote the 5K1 letter?

12 A. Yes, sir.

13 Q. We can agree that they would not write it if they thought
14 that you had not given substantial assistance?

15 A. I would agree with that.

16 Q. You testified in those proceedings, as you did here today,
17 according to what you had told them at these proffer sessions
18 you had with them beforehand?

19 A. Say that again?

20 Q. You testified in those prior proceedings, as you did here
21 today and the day before, as you had told them your information
22 in the prior 25 proffer sessions?

23 A. Yes, sir.

24 MR. ENZER: Objection to form.

25 THE COURT: Sustained as to form.

HBFNROS5

McCleod - cross

1 The answer is stricken.

2 BY MR. TOUGER:

3 Q. Did you give any information here today or in your
4 testimony here today or the other times you testified in prior
5 proceedings that is different from what you told them in the
6 proffer sessions?

7 MR. ENZER: Objection to form.

8 THE COURT: Sustained.

9 BY MR. TOUGER:

10 Q. Have you modified your answers at all today from your prior
11 testimony and proffer sessions?

12 A. You have to be specific as to what time period you are
13 talking about.

14 Q. You have told the government prior to your testimony here
15 today and those prior proceedings everything you have testified
16 about?

17 A. I am a little confused as to what you are asking.

18 Q. I will rephrase it. Your testimony at this proceeding and
19 the prior proceedings, there is -- you had told the prosecution
20 everything that you said during these -- during that testimony
21 prior to you testifying?

22 A. Mr. Touger, as a suggestion -- I am not a lawyer -- maybe
23 you should ask me two separate questions.

24 Q. You proffered with the government 25 times, approximately?

25 A. Approximately.

HBFNROS5

McCleod - cross

1 Q. You told them everything you knew about your life and about
2 your crimes and about this shooting in particular?

3 THE COURT: Everything he knew about his life? You
4 couldn't do that in 280 proffer sessions.

5 Come on, Mr. Touger.

6 BY MR. TOUGER:

7 Q. You told the government everything you knew about this
8 incident, this shooting, correct?

9 A. Yes.

10 Q. And that's what you testified to here in court today and
11 the other day?

12 A. In a sense, no, because everything I've discussed in the
13 proffer session for the purposes of this proceeding you or the
14 United States government might not necessarily ask me.

15 Q. I didn't ask you that question. I'm asking what you did
16 say here today you said in the proffer sessions?

17 MR. ENZER: Objection.

18 THE COURT: Sustained.

19 MR. TOUGER: Nothing further, your Honor.

20 THE COURT: All right. Thank you.

21 Is there going to be a redirect?

22 MR. ENZER: Yes, your Honor.

23 THE COURT: All right. We are going to take our break
24 right here.

25 (Recess)

HBFNROS5

McCleod - cross

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(Jury not present)

THE COURT: Let's get the witness and the jury.

So we are clear that we are going to be done tomorrow?

MR. JOHNSON-SKINNER: Yes.

MR. ENZER: For sure.

(Witness resumed)

(Continued on next page)

Hbfnros5

McCleod - redirect

1 (Jury present)

2 THE COURT: The defendant and the jurors all are
3 present.

4 Mr. Enzer, redirect, please.

5 REDIRECT EXAMINATION

6 BY MR. ENZER:

7 Q. Mr. McCleod, on cross-examination, defense counsel asked
8 you questions about what you thought your obligation was to
9 tell the truth before you arrived at your first proffer.

10 Do you remember those questions?

11 A. Yes.

12 Q. Were you expressing your view about your obligation to tell
13 the truth before you started proffering, during proffers, after
14 what were you describing?

15 A. I was talking about after I became familiar with the
16 proffer session procedures and rules.

17 Q. Let me be more specific.

18 You were asked whether you believed you had to tell
19 the truth when you came into your first proffer.

20 Do you remember those questions?

21 A. Yes.

22 Q. I believe, if I am not mistaken, you said on
23 cross-examination that when you arrived at your first proffer
24 you thought you only had to provide information that could not
25 be disproven by the government.

Hbfnros5

McCleod - redirect

1 Do you remember that?

2 A. Yes.

3 Q. Was that your view before you started proffering? After
4 you started proffering? At what time did you hold that view?

5 A. I held that view before I actually started proffering.

6 Q. After you began proffering you participated in a number of
7 proffers with the government, is that right?

8 A. Yes.

9 Q. Do you still hold that view?

10 A. No.

11 Q. What is your view?

12 A. My view is that you have to be forthcoming and tell them
13 the entire truth.

14 Q. Under your cooperation agreement, is your obligation to
15 tell the jury just facts that you think the government can
16 disprove or the truth?

17 A. The truth.

18 Q. Mr. Touger asked you questions about times in your past
19 when you provided fake names.

20 Do you remember those questions?

21 A. Yes.

22 Q. When you provided fake names on arrests, why did you do
23 that?

24 A. To conceal my true identity.

25 Q. When was the last time you did that?

Hbfnros5

McCleod - redirect

1 A. June 16, 1999.

2 Q. Did you have a cooperation agreement at that time?

3 A. No.

4 Q. Would it be in your interest to lie to the jury?

5 A. No.

6 Q. Why not?

7 A. The entire cooperation agreement would be null and void.

8 Q. And why would that not serve your interests?

9 A. I could be and probably would be rearrested. I would begin
10 serving a substantially longer sentence and all of the work I
11 had done before would be for naught.

12 Q. You were asked questions on cross-examination about various
13 conversations and meetings in advance of the murder of Lowell
14 Fletcher.

15 Do you remember those questions?

16 A. Yes.

17 Q. And on cross-examination Mr. Touger asked you questions, he
18 took you through a series of meetings and conversations, and he
19 asked you whether you had described all of the planning in each
20 of those particular meetings and conversations.

21 Do you remember those questions?

22 A. Yes.

23 Q. Were you describing verbatim every single thing that
24 happened in those meetings and conversations or giving the
25 gist?

Hbfnros5

McCleod - redirect

1 A. Giving the gist.

2 Q. You were asked questions on cross-examination about whether
3 you told Derrick Grant, Jason Williams, Rodney Johnson to kill
4 Lowell Fletcher.

5 Do you remember those questions?

6 A. Yes.

7 Q. In answering those questions were you saying you never
8 discussed the murder of Lowell Fletcher with those people or
9 were you saying you didn't use the word "kill"?

10 A. I was saying the latter, that I never used the word "kill."
11 With the exception of Rodney Johnson, I never discussed any
12 part of the murder with him.

13 Q. You were asked questions on cross-examination about whether
14 you saw Jason Williams give a gun to Derrick Grant.

15 Do you remember those questions?

16 A. Yes.

17 Q. On the day of the murder, were you with Jason every moment
18 of the day?

19 A. No.

20 Q. Were there times when you were apart?

21 A. We were apart more than we were together.

22 Q. Were there times when you were apart when you had arrived
23 on Mt. Eden Avenue?

24 A. Yes.

25 Q. You were asked questions, and so let me ask you, is it

Hbfnros5

McCleod - redirect

1 possible Jason Williams handed a weapon to Grant when you
2 didn't see it?

3 MR. TOUGER: Objection to what is possible, your
4 Honor.

5 THE COURT: Sustained.

6 BY MR. ENZER:

7 Q. You were asked questions about whether Grant had the gun
8 when you went to go buy a bag of Doritos.

9 Do you remember that?

10 A. Yes.

11 Q. Do you know for sure whether Grant had a gun at that point?

12 A. A hundred percent sure, no.

13 Q. Why did you believe he had the gun?

14 A. The bulge, the way he moved, being around him when he was
15 carrying a gun before, and him asking me, Give me a walk
16 through the store so I can get something to put this in.

17 Q. You were asked questions about whether it was your choice
18 to give the Stacy King phone to Toree.

19 Do you remember those questions?

20 A. Yes.

21 Q. What phone did Toree point at?

22 A. He pointed at the Stacy King phone.

23 Q. And is that why you provided the Stacy phone to Toree?

24 A. That is precisely why. I had it in my hand. I had my
25 hands here, and he pointed and I passed it to him.

Hbfnros5

McCleod - redirect

1 Q. Just for the record, "here" is around your stomach?

2 A. Yes. Where a pocket was.

3 Q. Mr. Touger asked you questions on cross-examination about
4 discussions you had with Grant regarding whether or not more
5 than \$30,000 was appropriate as payment for the murder.

6 Do you remember those questions?

7 A. Yes.

8 Q. In your answers to those questions, were you saying \$30,000
9 wasn't enough because \$30,000 didn't cover a murder?

10 A. No.

11 Q. What were you saying?

12 A. I was saying \$30,000 wasn't enough because \$30,000 was the
13 agreed-upon amount when Jimmy was the shooter, when Jimmy was
14 performing the murder, and I was the lurer.

15 MR. TOUGER: Objection, your Honor.

16 May we approach?

17 THE COURT: No. I don't understand this. The
18 question was asked, the witness is halfway through the answer,
19 and now you object?

20 MR. TOUGER: I didn't mind the question, your Honor.

21 May we approach?

22 THE COURT: You can make a motion afterward.

23 BY MR. ENZER:

24 Q. You can answer the question.

25 A. My role significantly increased.

Hbfnros5

McCleod - redirect

1 Q. What was the original \$30,000 --

2 THE COURT: Is there a motion, Mr. Touger?

3 MR. TOUGER: Yes.

4 I would like to approach and make the motion, your
5 Honor.

6 THE COURT: All right.

7 (Continued on next page)

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Hbfnros5

McCleod - redirect

1 (At sidebar)

2 THE COURT: What is it?

3 MR. TOUGER: I would request that the part of the
4 answer where Jimmy do the murder be stricken from the record,
5 because Jimmy never says he was going to do the murder.

6 THE COURT: You can argue that.

7 Denied.

8 (Continued on next page)

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Hbfnros5

McCleod - redirect

1 (In open court)

2 BY MR. ENZER:

3 Q. Mr. McCleod, in your mind, what did the original \$30,000
4 cover?

5 MR. TOUGER: Objection, your Honor.

6 How many times?

7 THE COURT: Sustained.

8 BY MR. ENZER:

9 Q. Why was \$30,000 not enough?

10 MR. TOUGER: Objection.

11 Asked and answered.

12 THE COURT: Sustained.

13 BY MR. ENZER:

14 Q. Why did you and Grant --

15 MR. ENZER: I am going to move on.

16 Q. Mr. Touger asked you questions about vernacular.

17 Do you remember those questions?

18 A. Yes.

19 Q. He asked you about the conversation that you had with Jimmy
20 where Jimmy asked you to go clean out a stash house.

21 Do you remember that?

22 A. Yes.

23 Q. He asked you specifically what it meant when Jimmy said
24 "paper" and what it meant when Jimmy said "stuff."

25 Do you remember those questions?

Hbfnros5

McCleod - redirect

1 A. Yes.

2 Q. Before this call with Jimmy, had you had a meeting
3 beforehand where you discussed and agreed what "paper" meant?

4 A. No.

5 Q. Before this call with Jimmy, did Jimmy and you have a
6 meeting or a call where you discussed what "stuff" meant?

7 A. No.

8 Q. Was that the first time Jimmy used the term "paper" in a
9 conversation with you to refer to money?

10 A. Probably not.

11 Q. But whether he may have used the term before, you guys
12 didn't have an agreement ahead of this call as to what the
13 meaning of these two terms was, right?

14 A. No.

15 THE COURT: It's not right or you didn't have such a
16 conversation?

17 THE WITNESS: We didn't have such a conversation.

18 THE COURT: Thank you.

19 BY MR. ENZER:

20 Q. The same thing with the vernacular regarding the word
21 "mark."

22 Before Jimmy used the term "mark" at your meeting with
23 Jimmy at Central Park, did you have a call or a meeting or
24 conversation with Jimmy ahead of that where you guys agreed on
25 what the definition of "mark" was?

Hbfnros5

McCleod - recross

1 A. Not at all. It was my first time seeing him in over five
2 years.

3 MR. ENZER: No further questions.

4 THE COURT: OK.

5 MR. TOUGER: Very briefly, your Honor.

6 THE COURT: Yes, Mr. Touger.

7 RECCROSS EXAMINATION

8 BY MR. TOUGER:

9 Q. I want to talk to you about one subject.

10 THE COURT: I'm sorry. I can't understand you.

11 Q. I just want to talk to you about one subject.

12 When Toree makes the motion points to the phone, puts
13 his hand to the ear, can he see your other phone?

14 A. Yes.

15 Q. Where is your other phone?

16 A. Can he see the phone he's pointing to?

17 Q. No. Can he see your other phone?

18 A. No.

19 Q. So the only phone he could see was the phone he was
20 pointing to?

21 A. Correct.

22 Q. He did not know you had another phone?

23 MR. ENZER: Objection.

24 He doesn't know what the guy knows.

25 THE COURT: Sustained.

Hbfnros5

McCleod - recross

1 Q. Your other phone was not visible to the naked eye, was it?

2 A. No.

3 MR. TOUGER: Nothing further, your Honor.

4 THE COURT: Anything else?

5 MR. ENZER: Nothing further.

6 THE COURT: All right. The witness is excused.

7 (Witness excused)

8 Next witness.

9 MR. JOHNSON-SKINNER: Judge, at this time I would like
10 to read three stipulations to the jury.

11 THE COURT: Yes.

12 MR. JOHNSON-SKINNER: The first one is marked as
13 Government Exhibit 1380.

14 It is hereby stipulated and agreed that, if called to
15 testify, Sergeant Michael Loughran would testify that Loughran
16 is a sergeant with the New York City Police Department and has
17 been employed by the NYPD for approximately 37 years.

18 He is currently a sergeant in the NYPD's 13th
19 Precinct, which covers among other areas, Chelsea in Manhattan.

20 He has worked in the 13th Precinct since 1985.

21 As of January 2003 Loughran was working as a patrol
22 sergeant in the 13th Precinct.

23 On January 16, 2003, at approximately 7:28 p.m.,
24 Loughran received a call that shots had been fired at 36 West
25 25th Street.

Hbfnros5

McCleod - recross

1 Loughran responded to that call and arrived at the
2 building located at 36 West 25th Street between approximately
3 7:35 p.m. and 7:40 p.m.

4 The building to which Loughran responded is depicted
5 in Government Exhibit 600A.

6 We can put that up.

7 And the front door of the building is depicted at
8 Government Exhibit 600C.

9 Upon arriving, Loughran went to the 11th floor, where
10 a company named Violator Records was located.

11 Loughran observed shell casings on the floor by the
12 elevator, which opened almost directly into the company's
13 office.

14 Loughran also observed bullet holes in the glass of
15 the office's reception area and broken glass.

16 Loughran spoke to the employees of the company, who
17 were not cooperative.

18 Loughran had no further role in the investigation of
19 this case.

20 This stipulation as Government Exhibit 1380 and
21 Government Exhibits 600A and 600C are admissible in evidence as
22 government exhibits at trial.

23 We would offer those.

24 THE COURT: They are received.

25 (Government's Exhibits 1380, 600A, and 600C received

Hbfnros5

McCleod - recross

1 in evidence)

2 MR. JOHNSON-SKINNER: The next stipulation is
3 Government Exhibit 1381.

4 If called to testify, Wilson Perez would testify that
5 Perez is a patrol officer with the New York City Police
6 Department for approximately 20 years.

7 As of February 2003, Perez was a patrol officer
8 working patrol in the 13th Precinct, which covers, among other
9 areas, Chelsea.

10 On February 23, 2003, at approximately 10:18 p.m.,
11 Perez responded to a call that shots had been fired at 36 West
12 25th Street in Manhattan.

13 Perez proceeded with a partner to 36 West 25th Street,
14 which was a commercial building.

15 When he arrived at that address, he observed a 2003
16 black Suburban with six bullet holes in it. The bullet holes
17 were in the front passenger door of the vehicle.

18 Perez entered the building located at 26 West 25th
19 Street and spoke to individuals inside in order to gather
20 information to write a report.

21 Evidence Collection subsequently came to the scene and
22 collected evidence.

23 Perez does not know who committed the shooting and had
24 no further role in the investigation of this case.

25 This stipulation is Government Exhibit 1381 is

Hbfnros5

McCleod - recross

1 admissible in evidence and we would offer it.

2 THE COURT: Received.

3 (Government's Exhibits 1381 received in evidence)

4 MR. JOHNSON-SKINNER: The last one is 1382.

5 Christian Nunez would testify that Nunez is a deputy
6 chief of the New York State Department of Corrections and
7 Community Supervision.

8 Prior to that, Nunez served in several investigative
9 positions with the Department of Corrections and Community
10 Supervision.

11 In the course of his job, Nunez has become familiar
12 with the records of that department. Nunez has provided the
13 government with documents from that department related to this
14 case, which include visiting records, movement records, phone
15 records, inmate overviews, inmate account information, and
16 inmate phone registration information.

17 Those records include Government Exhibits 850A, 850B,
18 850C, 900, 905, 910, and 915. Those are all the Nunez
19 documents.

20 The Nunez documents are kept in the regular course of
21 the department's business.

22 It is a regular practice of the department to make
23 records such as those documents, the documents were made at or
24 near the time at which the information contained within them
25 occurred, and the documents are records of events based on

Hbfnros5

McCleod - recross

1 information transmitted by with a person with knowledge of the
2 events that occurred.

3 Government Exhibit 650A contains inmate visiting
4 records and account records for inmate Brian McCleod.

5 The first page of Government Exhibit 650A demonstrates
6 that the inmate commissary account for McCleod received the
7 following deposit amounts from the following people with the
8 addresses listed below.

9 I won't read them, but they are on the screen.

10 It goes on to the next page.

11 Government Exhibit 650B contains inmate visiting
12 records and account records for inmate Rodney Johnson.

13 The first page of Government Exhibit 650B demonstrates
14 that the inmate commissary accounts for Johnson received the
15 following deposit accounts from the following people with the
16 addresses listed below.

17 There is another chart in the stipulation which is on
18 the screen.

19 Government Exhibit 850C contains inmate visiting
20 records and account records for inmate Lowell Fletcher.

21 The first page of Government Exhibit 850C demonstrates
22 that the inmate commissary account for Fletcher received the
23 following deposit amounts from the following people with
24 addresses listed below.

25 They are on the screen.

Hbfnros5

McCleod - recross

1 The second page of Government Exhibit 850C contains a
2 list of phone numbers of individuals approved for calls to
3 inmate Lowell Fletcher. That list includes the names Curtis
4 Jackson, Marvin Bernard, Robert Macedonis it's spelled and
5 Robert Macedonio.

6 The third page of Government Exhibit 850C lists an
7 order of protection between inmate Lowell Fletcher and James
8 Rosemond, which signifies that one of those individuals has an
9 order of protection against the other.

10 Government Exhibit 900 indicates that Brian James was
11 incarcerated at the Mohawk Correctional Facility between April
12 25, 2005 and July 12, 2007.

13 Government Exhibit 905 indicates that Brian McCleod
14 was incarcerated at Mohawk between May 2, 2007 and June 30,
15 2009.

16 Government Exhibit 915 indicates that Lowell Fletcher
17 was incarcerated at Mohawk between May 18, 2009 and July 14,
18 2009.

19 Government Exhibit 910 indicates that Rodney Johnson
20 was incarcerated at Mohawk between May 8, 2007 and April 30,
21 2008.

22 Government Exhibit 915 further indicates that Lowell
23 Fletcher was incarcerated at the Queensboro Correctional
24 Facility in Queens, New York, from July 16, 2009 to September
25 11, 2009, and was released on parole from the Queensboro

Hbfnros5

Heintz - direct

1 Correctional Facility on September 11, 2009.

2 This stipulation as Government Exhibit 1382 and
3 Government Exhibits 850A, 850B, 850C, 900, 905, 910 and 915 are
4 admissible in evidence as government exhibits at trial.

5 We would offer all of those exhibits.

6 THE COURT: They are received.

7 (Government's Exhibits 850A, 850B, 850C, 900, 905,
8 910, 915 and 1382 received in evidence)

9 MR. JOHNSON-SKINNER: At this time the government --

10 THE COURT: Was 650A among the exhibits?

11 MR. JOHNSON-SKINNER: I think I mistakenly said 650
12 when I meant 850.

13 THE COURT: I think you did. OK.

14 MR. JOHNSON-SKINNER: At this time the government
15 calls John Heintz.

16 JOHN HEINTZ,

17 called as a witness by the Government,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JOHNSON-SKINNER:

21 THE COURT: You may proceed.

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Where do you work?

25 A. I work for the United States Marshals Service, technical

Hbfnros5

Heintz - direct

1 operations group, electronic surveillance unit.

2 Q. Do you have a title there?

3 A. I am the senior intelligence research specialist. I'm also
4 a special deputy U.S. marshal.

5 Q. How long have you been with the United States Marshals
6 Service?

7 A. I started in September 2006.

8 Q. What did you do before that?

9 A. Prior to that I was with the New York City Police
10 Department as a police officer and detective from January 1982
11 until June of 2006, for about 24 and a half years. Prior to
12 that I spent four years in the United States Navy.

13 Q. You said you were with the technical operations group.

14 What is that?

15 A. The technical operations group electronic surveillance
16 unit, we are a tech unit that provides electronic surveillance
17 for criminal investigations for federal, state, and local
18 agencies.

19 Q. Do you yourself specialize in a certain role within that
20 electronic surveillance group?

21 A. I specialize in telecommunication investigations since
22 1994, when I was with the New York City Police Department.

23 Q. What kinds of things do you do doing that telephone work?

24 A. We install pen register trap and traces, wiretaps, and we
25 analyze telephone communication records, primarily cellular

Hbfnros5

Heintz - direct

1 records now.

2 Q. Do you have any special training in analyzing cell site or
3 cellular records?

4 A. I attended the National Intelligence Academy for
5 beginning --

6 MR. TOUGER: I don't mean to interrupt the witness,
7 but I will stipulate to his expertise.

8 THE COURT: All right.

9 Proceed.

10 BY MR. JOHNSON-SKINNER:

11 Q. Tell us, what is cell site analysis?

12 A. Cell site analysis is the call records for incoming and
13 outgoing calls on cellular devices.

14 Q. How many times have you analyzed cell site records in
15 criminal investigations?

16 A. I have been doing it since 1994. Thousands of times.

17 Q. Have you found analysis of those records to be a reliable
18 means of investigating cases?

19 MR. TOUGER: Objection to the form of the question.

20 THE COURT: Sustained.

21 BY MR. JOHNSON-SKINNER:

22 Q. Are there any ways of testing the reliability of cell site
23 analysis?

24 A. Yes. I was trained by a company called Harris Corporation.
25 They are an electronics company that makes cellular network

Hbfnros5

Heintz - direct

1 testing equipment, and I have been certified on about five
2 different devices that they manufacture.

3 Over the course of my career, I have been able to take
4 this cellular test data -- cellular test machinery out into the
5 field to analyze the radio frequencies of various cell sites.

6 Q. What, if anything, have you learned from doing those tests?

7 A. Basically what it tells us is the signal strength of the
8 hours, the coverage area of the towers, depending upon
9 obstructions or the terrain or the amount of traffic in the
10 area.

11 Q. Have those tests told you anything about whether the cell
12 site information you get from the companies is reliable or not?

13 A. Yes. It lets us know -- it gives us basically a visual.
14 We take that data and we put it into a map program and it gives
15 us a visual of the energy, so to say, of that particular cell
16 tower and that network.

17 THE COURT: Maybe you better start telling us what a
18 cell tower is.

19 Q. Let's start with this, even simpler: What is a cell phone?

20 A. A cell phone is basically a two-way radio. It's a
21 transceiver, which means it can transmit radio signals and it
22 can receive radio signals.

23 Q. Where does it transmit those radio signals to and from?

24 A. A cellular phone will transmit to the strongest tower that
25 is in the vicinity of that phone in relation to the carrier

Hbfnros5

Heintz - direct

1 that that phone is associated with.

2 Q. What is a cell tower?

3 A. A cell tower is an antenna. It's a receiving antenna and a
4 transmit antenna. Basically, the telephone, when it is turned
5 on, it has unique identifiers that are transmitted over the air
6 through a radio frequency to the strongest tower for that
7 particular company.

8 At this point it has unique identifiers that are
9 transmitted. It goes into the cell tower, so to say. Then it
10 goes into a switch. From there it gets transmitted to a home
11 locator registry switch, is where that cell phone number, more
12 or less is a home switch where it resides.

13 At that point those unique identifiers are verified
14 with the company to say whether or not it is a good phone,
15 whether it's a good account. If it's a good account, then the
16 phone, the HLR as we call it will basically signal back to the
17 phone and say that it is can make and receive phone calls.

18 At the same time, that handset, that telephone, is
19 talking to that tower, so to say, via radio frequencies.

20 As it's talking to the tower, it's also talking to
21 about 20 other towers, and it's prioritizing and putting in a
22 hierarchy the signal strength from that main serving tower to
23 the other 20 towers or 25 that it sees also.

24 Q. Based on your experience, are there multiple cell towers in
25 the New York City area or just one?

Hbfnros5

Heintz - direct

1 A. There are thousands in the New York City area.

2 Q. What are some of the companies that provided cell phone
3 service in the New York City area in about 2009?

4 A. Yes. Sprint, Nextel, AT&T Wireless, Metro PCS and Verizon
5 Wireless.

6 Q. Do all of those providers use the same towers, or do they
7 have different towers?

8 A. Each provider uses its own network, its own tower.
9 However, many times companies collocate on one structure, but
10 each company will have its own individual towers.

11 Q. When a cell phone is in contact with a tower, does anyone
12 keep a record of that?

13 A. Yes. The phone company that that phone is assigned to.

14 Q. Why do the phone companies keep those records?

15 A. Subscribers, which are customers, have various plans with
16 the networks. And in order to keep track of the plan minutes
17 for data and for phone calls on these particular devices, the
18 company needs to keep accurate records of where the phone is
19 and how long the phone is on these calls.

20 Q. Does the phone need to be turned on in order for it to be
21 generating that type of data that's kept by the companies?

22 A. Yes.

23 Q. Thinking back to 2009, at that time period, when was cell
24 site data generated for phones? What did the phone have to be
25 doing, if anything?

Hbfnros5

Heintz - direct

1 A. At that particular time, the phones had to be on an event
2 with the network.

3 Q. What are some of those events?

4 A. An incoming or outgoing call, a multimedia session, like an
5 Internet session, or text messages in and out.

6 Q. Thinking back to the 2009 time period, what type of cell
7 site location information were the companies able to provide to
8 law enforcement?

9 A. Back in 2009, it was primarily cell sites for voice calls.
10 Data calls were recorded, but typically did not get cell site
11 information for data calls, which would be text messaging.

12 Q. You testified before that the cell phone calls is usually
13 routed to the strongest tower.

14 What makes a signal stronger or weaker?

15 A. That are various variables to either impede or amplify a
16 radio frequency.

17 Some examples of interfering with a signal could be
18 buildings, glass, concrete, metal.

19 Things that can amplify a signal could be water,
20 bodies of water or also sometimes glass on a building, because
21 radio signals, they travel through the air, and they can
22 reflect off of different objects.

23 Q. What about the location of the tower to the cell phone?

24 Does that affect the strength the signal?

25 A. Generally, yes.

Hbfnros5

Heintz - direct

1 Q. Is the strongest tower most of the time the closest tower?

2 A. Most of the times, it is, yes.

3 Q. When a cell phone connects to a tower does it have to be
4 within a certain area of that tower?

5 A. It has to be within an area where the radio frequencies
6 from that cell phone can communicate with the tower.

7 Q. In the New York City area, what's the approximate range of
8 cell phone towers?

9 A. It varies from borough to borough, but primarily in
10 Manhattan or in the Bronx, so to say, or downtown Brooklyn it's
11 probably about anywhere from a half a block to a block or two
12 maximum. When you go to the outer boroughs it's generally a
13 little further, a couple of blocks, maybe four blocks.

14 Q. Can one phone call be handled by multiple cell towers?

15 A. Yes.

16 (Continued on next page)

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HBFAAROS6

Heintz - Direct

1 BY MR. JOHNSON-SKINNER:

2 Q. How does that work?

3 A. What happens is when that phone is on a phone call or a
4 text session it will talk again to the strongest tower. If the
5 phone starts to move or if there is a lot of cellular traffic
6 coming into that particular tower, then the phone will then
7 have to hand-off to the next neighbor which would be one of
8 those other 20 or so cell towers that I said earlier that the
9 phone would be talking to.

10 So as the phone moves it does a hand-off. It will go
11 from one tower to the next and sometimes it can actually go
12 from one face in a tower to the next. Cell towers in the New
13 York City area primarily are made up of three faces. A
14 360-degree circle, each one is about 120 degree radius, each
15 face.

16 Q. When you get information from the cellphone companies do
17 they tell you anything about those faces?

18 A. Yes. They'll give you the switch that the phone is in, the
19 cell tower that it's in at the time. And it will give you face
20 on the beginning of the call and the face on the end of the
21 call.

22 Q. Taking you back to 2009, did all those cellphone companies
23 that you listed had the towers with the three faces?

24 A. Most of them with the exception of Metro PCS. During that
25 timeframe Metro PCS was the new carrier in the New York

HBFAAROS6

Heintz - Direct

1 vicinity, New York metropolitan area. And in order to roll out
2 the system quick enough for the subscribers that were signing
3 on, they deployed a series of small antennas called omni point
4 antennas. And they are putting them primarily onto light poles
5 in most outer boroughs. They would be probably two or three on
6 the block possibly. There was no specific face. They would
7 transmit 360 degree radius but for a smaller area.

8 Q. Is it possible for users of different phones standing in
9 the same place to be connected to different cellphone towers?

10 A. Yes.

11 Q. How was that possible?

12 A. Primarily through different networks, different carriers.

13 Q. Tell us the data that you get from cellphone companies when
14 you request this location information or call detail records?

15 A. On the call detail records you'll get the date, the time of
16 the call, the duration of the call, the direction of the call
17 whether it's inbound or outbound call. You'll also get the
18 switch identifier, meaning what switch that phone is in at the
19 time of the call. And you'll also get the cell tower and the
20 face or the sector, one of the three sectors or if it's an omni
21 it'll just tell you it's an omni antenna.

22 Q. Do you also have available to you a list of the towers and
23 where their physical street address is?

24 A. Yes. Both when I was with the New York Police Department
25 and with the U.S. Marshal Service, we usually update our cell

HBFAAROS6

Heintz - Direct

1 site lists every quarter from each carrier. What we do is we
2 get those lists and they come with the cell site number.
3 They'll come with the cell site address, the latitude and
4 longitude. It will give you the face of each tower of each
5 sector. And we take that information and we put it into a
6 mapping program and then it will display the various towers
7 throughout the whole network in that area that we're looking
8 at.

9 Q. Is there a difference between GPS information and cell site
10 information?

11 A. Yes.

12 Q. What's the difference?

13 A. GPS information is when you're monitoring a phone live and
14 that information is given to you from the carrier and it's
15 generally when the phone is communicating with satellites.

16 Q. Taking you back to about 2009, how long was GPS data kept
17 if it was kept at all by the cellphone companies?

18 A. GPS data back in -- first of all, GPS data has to be live.
19 So it's not stored. The only way you'll get GPS data is on
20 live intercept.

21 Q. Did you perform cell site analysis on this case?

22 A. Yes, I did.

23 Q. At this time I'll read a stipulation. It's Government
24 Exhibit 1305.

25 It is hereby stipulated and agreed that the records

HBFAAROS6

Heintz - Direct

1 marked as Government Exhibits 511A and B are records of
2 regularly conducted business activity of AT&T within the
3 meaning of Federal Rule of evidence 8036.

4 Government Exhibit 511A contains the subscriber
5 information for a cellular telephone with the number
6 646-696-8004, with a listed subscriber of Theresa Buckson, 2002
7 Medical Parkway, Suite 635, Annapolis, Maryland 21401.

8 Government Exhibit 511B contains calling location data
9 or cell site records associated with that cellular telephone
10 for the period of May 2, 2009 to October 2, 2009.

11 AT&T operates a telephone network that is capable of
12 placing calls between states and internationally.

13 The records marked as Government Exhibits 512A and
14 512B are record of regularly conducted business activity of
15 Metro PCS within the meaning of Federal Rule of Evidence 8036.

16 Government Exhibit 512A contains the subscriber
17 information for a cellular telephone with the number
18 347-785-7207 with a listed subscriber of Thibedeaux Ingam 1785
19 Eastern Parkway, Brooklyn, New York 11233.

20 Government Exhibit 512B contains calling and location
21 data or cell site records associated with that cellular
22 telephone for the period of August 13, 2009 to October 13, 200.

23 Metro PCS operates a telephone network that is capable
24 of placing calls between states and internationally.

25 The records marked as Government Exhibit 513A and 513B

HBFAAROS6

Heintz - Direct

1 are records of regularly conducted business activity of AT&T
2 within the meaning of Federal Rules of Evidence 8036.

3 Government Exhibit 513A even contains the subscriber
4 information for a cellular telephone with a number 347-901-2165
5 with a listed subscriber Stacy King, 3048 West 58 Street, New
6 York, New York 10019.

7 Government's Exhibit 513B contains calling and
8 location data or cell site records associated with that
9 cellular telephone for the period of September 25, 2009 to
10 September 27, 2009.

11 The records marked as Government Exhibit 514A and 514B
12 are records of regularly conducted business activity of AT&T
13 within the meaning of Federal Rules of Evidence 8036.

14 Government Exhibit 514A contains the subscriber
15 information for a cellular telephone with the number
16 917-456-2489 with a listed subscriber Jason Williams, 206
17 Lexington Avenue, Brooklyn, New York 11216.

18 Government Exhibit 514B contains calling and location
19 data or cell site records associated with that cellular
20 telephone for the period of September 1, 2009 to October 15,
21 2009.

22 The records marked as Government Exhibit 515A and 515B
23 are records of regularly conducted business activity of Verizon
24 within the meaning of Federal Rules of Evidence 8036.

25 Government Exhibit 515A contains the subscriber

HBFAAROS6

Heintz - Direct

1 information for cellular telephone with the number 917-767-5460
2 with a listed subscriber Emily Richardson, 1792 East 174th
3 Street, Bronx, New York 10472.

4 Government Exhibit 515B contains calling and location
5 data or cell site records associated with that cellular
6 telephone for the period of September 1, 2009 to October 15,
7 2009.

8 Verizon operates a telephone network that is capable
9 of placing calls between states and internationally.

10 The records marked as Government Exhibit 516A and 516B
11 are records of regularly conducted business activity of Metro
12 PCS within the meaning Federal Rule of Evidence 8036.

13 Government Exhibit 516A contains the subscriber
14 information for a cellular telephone with the number
15 (347)737-5264 with a listed subscriber Lowell Fletcher, 406
16 East 161 Street, Bronx, New York 10451.

17 Government Exhibit 516B contains calling and location
18 data for cell site records associated with that cellular
19 telephone for the period of September 13, 2009 to September 29,
20 2009.

21 The records marked as Government Exhibits 517A and
22 517B are records of regularly conducted business activity of
23 Verizon within the meaning of Federal Rule of Evidence 8036.

24 Government Exhibit 517A contains the subscriber
25 information for cellular telephone with the number 646-530-0329

HBFAAROS6

Heintz - Direct

1 with a listed subscriber Leslie Pretty, 285 East Clinton Avenue
2 Roosevelt, New York, 11575-1521.

3 Leslie Pretty is the mother of Rodney Johnson a/k/a
4 "Toree".

5 Government Exhibit 517B contains calling and location
6 data for cell site records associated with that cellular
7 telephone for the period of September 1, 2009 to October 15,
8 2009.

9 On April 28, 2010 that cellular telephone and
10 documents bearing Rodney Johnson's name were found in a vehicle
11 registered to his sister Kimberly Thomas. The records marked
12 as Government Exhibit 518A and 518B are records of regularly
13 conducted business activity of Sprint?

14 THE COURT: Mr. Skinner, excuse me. How many more
15 phones?

16 MR. JOHNSON-SKINNER: Two more like this and one more
17 paragraph and information.

18 THE COURT: OK.

19 MR. JOHNSON-SKINNER: Within the meaning of Federal
20 Rule of Evidence 8036, Government Exhibit 518 contains the
21 subscriber information for cellular telephone with a telephone
22 number 347-923-2806 with a listed subscriber Mike Tony, 34 East
23 Park Avenue, Long Beach, New York 11561.

24 Government Exhibit 518B contains calling and location
25 data for cell site records associated with that cellular

HBFAAROS6

Heintz - Direct

1 telephone for the period of August 18, 2009 to September 28,
2 2009.

3 sprint operates a telephone network that is capable of
4 placing calls between states and internationally.

5 The records marked as Government Exhibit 519A and 519B
6 are records of regularly conducted business activity of Sprint
7 within the meaning of Federal Rule of Evidence 8036.

8 Government Exhibit 519A contains the subscriber
9 information for cellular telephone with the number 201-838-4880
10 with a listed subscriber Khalil Abdullah 485 High Street,
11 Closter, New Jersey 07624-2403.

12 Government Exhibit 519B contains calling and location
13 data for cell site records associated with that cellular
14 telephone for the period of September 1, 2009 to October 15,
15 2009.

16 According to Verizon business records the cellular
17 telephone associated with this call number (516)459-0810 is
18 subscribed to Robert Macedonio and a landline telephone
19 associated with call number (631)582-3232 is subscribed to the
20 name of the Law Office of Robert Macedonio.

21 Government Exhibits 511A and B through 519A and B are
22 records of regularly conducted activity within the meaning of
23 Federal Rules of Evidence 8036 and Government Exhibits 511A
24 through 511A and B through 519A and B, this stipulation
25 Government Exhibit 1305 are admissible in evidence and we offer

HBFAAROS6

Heintz - Direct

1 them.

2 MR. TOUGER: No objection.

3 THE COURT: All right. 1305 is received. 511, 12,
4 13, 14, 15, 16, 17, 18, and 19 A and B in each case are all
5 received.

6 (Government's Exhibits 1305, 511, 511A, 511B, 512,
7 512A, 512B, 513, 513A, 513B, 514, 514A, 514B received in
8 evidence)

9 (Government's Exhibits 515, 515A, 515B, 516, 516A,

10 (Government's Exhibits 519, 519A and 519B received in
11 evidence) 516B, 517, 517A, 517B, 518, 518A, 518B received in
12 evidence)

13 MR. JOHNSON-SKINNER: With everyone's indulgence I
14 have two page stipulation to read next. It's Government
15 Exhibit 1374.

16 It is hereby stipulated and agreed that Government
17 Exhibit 501 is a summary chart consisting of phone numbers, the
18 subscriber, in shorthand titles for each phone number based on
19 the evidence in this case.

20 For example, in Government Exhibit 501 the phone
21 number subscribed to by Thibedeaux Ingam is identified as the
22 McCleod Phone One.

23 Government Exhibit 501 also includes in the right-hand
24 column the Government Exhibit numbers and/or testimony on which
25 the chart is based.

HBFAAROS6

Heintz - Direct

1 Government Exhibit 502 is a summary chart
2 demonstrating phone connectivity during the period of
3 August 19, 2009 and October 3, 2009 between certain individuals
4 involved in this case.

5 The underlying data used to develop the chart
6 originates from those call detail records marked as Government
7 Exhibits 511B through 518B.

8 Government Exhibit 502 indicates the date and time of
9 call, the calling phone number, the phone number called, the
10 call duration and the Government Exhibit number on which the
11 information in the chart is based.

12 Government Exhibit 502 only includes calls to or from
13 phone numbers listed on Government Exhibit 501 with the
14 exception of the Abdullah phone which is not listed in chart
15 Government Exhibit 502. It does not include calls made to or
16 from other phone numbers not included in Government Exhibit
17 501.

18 This stipulation is Government Exhibit 1374 and
19 Government Exhibits 501 and 502 are admissible in evidence as
20 Government exhibits at trial and we offer all of those.

21 THE COURT: 1374, 501 and 502 are all received.

22 (Government's Exhibits 1374, 501 and 502 received in
23 evidence)

24 MR. JOHNSON-SKINNER: If I could ask Mr. Pavlis to put
25 up Government Exhibit 501 on the chart.

HBFAAROS6

Heintz - Direct

1 (Pause)

2 Q. While he's doing that, Mr. Heintz, good afternoon again.

3 A. Good afternoon.

4 Q. Did you review all of the cellphone data that I just
5 referred to in those stipulations?

6 A. Yes, sir.

7 Q. Where did you get the information that was referred to in
8 those stipulations?

9 A. I got that information from the various phone carriers that
10 we served court orders on to receive that data.

11 THE COURT: I think we're going to break here for this
12 afternoon. In the morning I would appreciate it if you would
13 give me hard copies of the exhibits you are going to use.

14 Members of the jury, it is likely that this will be
15 the last witness and that the evidence will conclude tomorrow
16 and likely that you will not need to come in on Friday. Not a
17 total promise but it's looking very, very good from that point
18 of view.

19 I have another case to take now so we'll break here.

20 (Jury not present)

21 THE COURT: Is there anything else counsel need to do
22 with me before we break for the evening?

23 MR. ENZER: No, your Honor.

24 Thank you.

25 MR. TOUGER: Your Honor, are we going to get the

HBFAAROS6

Heintz - Direct

1 charge this evening?

2 THE COURT: No. Charge conference Monday at two.
3 You'll get the charge Monday morning.

4 MR. TOUGER: Thank you.

5 (Adjourned to Thursday November 16, 2017 at 9:30 a.m.)

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INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

BRIAN MCCLEOD

Direct By Mr. Enzer1022

Cross By Mr. Touger1119

Redirect By Mr. Enzer1166

Recross By Mr. Touger1176

JOHN HEINTZ

Direct By Mr. Johnson-Skinner1183

GOVERNMENT EXHIBITS

Exhibit No.	Received
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14001029

620A and 620B1058

Seven1063

11001083

3518-R1105

3518-EEE1111

10071119

1380, 600A, and 600C1178

13811180

850A, 850B, 850C, 900, 905, 910, 9151183

and 1382

1305, 511, 511A, 511B, 512, 512A, 512B, 513, 519A, 513B, 514, 514A, 514B

[Exhibits]*[received]1199

519, 519A and 519B1199

1
2
3
4
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6
7
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1374, 501 and 5021200

HBGAAROSF-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 16, 2017
9:30 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)

HBGAAROS1

Heintz - Direct

1 (Trial resume; Witness and jury present)

2 THE COURT: Good morning, all.

3 Defendant and the jurors all are present.

4 The witness is reminded he is still under oath.

5 Mr. Skinner.

6 MR. JOHNSON-SKINNER: Thank you, judge.

7 JOHN HEINTZ,

8 called as a witness by the Government,

9 having PREVIOUSLY been duly sworn, testified as follows:

10 CONTINUED DIRECT EXAMINATION

11 BY MR. JOHNSON-SKINNER:

12 Q. Good morning, deputy.

13 A. Good morning.

14 Q. Yesterday after I read that stipulation we were talking
15 about the phone records that were in the stipulation. Did you
16 review view that phone data?

17 A. Yes, I did.

18 Q. Remind us where you got that information from.

19 A. The information was received from the various phone
20 companies for the phones involved with this case.

21 Q. I'll show you what's in evidence through that stipulation
22 as Government Exhibit 501.

23 Did you review this chart before testifying today?

24 A. Yes, sir.

25 Q. Is it an accurate listing of the phone numbers in the case

HBGAAROS1

Heintz - Direct

1 as reflected in those records?

2 A. Yes, it is.

3 Q. And then let me also show you what's in evidence through
4 that stipulation as Government Exhibit 502, also in the folder
5 in front of you. Did you review that chart before testifying
6 today?

7 A. Yes, sir.

8 Q. Is that an accurate summary of the call detail records
9 between relevant phone numbers in this case?

10 A. Yes, it is.

11 Q. In addition to getting the phone data and location data,
12 did you get any other information from the government in this
13 case?

14 A. I was given certain dates and times to look at call
15 records.

16 Q. In general, what was your involvement in this
17 investigation?

18 A. I was first contacted by Detective Steve Smith of the NYPD
19 back in late December 2009. He told me that he had a case in
20 which he had three sets of phone records. He asked me if I'd
21 be able to assist him in analyzing the phone records helping
22 him with his investigation. It was right around the holidays,
23 so we didn't get a chance to meet until January of 2010 is when
24 he first brought me three sets of records for three different
25 phones and that was the beginning of this telephone

HBGAAROS1

Heintz - Direct

1 investigation.

2 Q. Did you end up looking at more phone records as this case
3 went on?

4 A. As the case went on and progressed, yes, more phones were
5 involved.

6 Q. What did you do to start analyzing that phone data?

7 A. We utilized a program. It's a telephone analytical program
8 called Pinlink. And it's specifically used to import records
9 into the program and you can run various different reports.
10 And from those reports we then take that information and we
11 transfer it into a mapping program.

12 Q. Before you in that folder is what's been marked for
13 identification as Government Exhibit 510. Do you recognize
14 that?

15 A. Yes, sir.

16 Q. What is that?

17 A. This is a map for the Theresa Buckson phone and it's the
18 main cell site area for the phone during the time period in
19 which we received records.

20 Q. Before we do that what's the whole exhibit, Government
21 Exhibit 510?

22 A. These are all of the various maps that I produced from the
23 phone records from the carriers for certain dates that are
24 relevant in the case.

25 Q. You did that after analyzing the cell site data that you

HBGAAROS1

Heintz - Direct

1 received?

2 A. Yes, sir.

3 Q. Is that fair and accurate representation of your analysis
4 of the cell site data?

5 A. Yes, it is.

6 MR. JOHNSON-SKINNER: We'll offer Government Exhibit
7 510.

8 THE COURT: Received.

9 (Government's Exhibit 510 received in evidence)

10 MR. JOHNSON-SKINNER: Before we get that to that
11 exhibit, let's look at the first row of Government Exhibit 501.
12 If we do could put that up on the screen.

13 (Pause)

14 Q. So who is the subscriber for this phone?

15 A. The subscriber for this phone is Theresa Buckson.

16 Q. What was the service provider? What was the company?

17 A. The provider was AT&T Wireless Services.

18 Q. What is a subscriber for a phone?

19 A. Subscriber is the customer name that's given when the
20 account is established.

21 Q. Is a user of a phone always the same as the subscriber?

22 A. No, it's not.

23 Q. Did these -- the records that you got for this phone
24 number, did these include both calls and text messages?

25 A. Yes, sir.

HBGAAROS1

Heintz - Direct

1 Q. And do the call records for this phone, do they come with
2 that cell site data information?

3 A. Yes, they did.

4 Q. What about for the text messages?

5 A. For the text messages back in this period of time in 2009,
6 the phone company only stored them for a short period of time.
7 When we served the court order for the cell site records the
8 timeframe had expired cause they didn't store the messages that
9 long period of time, the cell sites for the text messages.

10 Q. So you didn't end up with the cell sites for the text
11 messages?

12 A. No, sir, just the voice calls.

13 Q. You mentioned before a main cell site area. What is that?

14 A. One of the reports that this program Pinlink enables us to
15 do is to look at the history of all the cell sites for the
16 timeframe which we're running the reports, the dates. And what
17 we do is we look at the most common cell sites. It would give
18 us a hierarchy of the most common cell sites to the least
19 common cell sites that the phone was in. And usually when I'm
20 doing an investigation I'll look at where the phone is first
21 thing in the morning and where the phone is when it goes to
22 sleep so to say at nighttime. And based upon that that's where
23 I come up with my analysis of where the main cell site is.

24 Q. Did you analyze the records for this Theresa Buckson phone
25 to find the main cell site area for that phone?

HBGAAROS1

Heintz - Direct

1 A. Yes, sir, I did.

2 MR. JOHNSON-SKINNER: Let's look at page one of
3 Government Exhibit 510. Blow that up.

4 (Pause)

5 Q. And just to orient the jury, what are the red pins that we
6 see on this map?

7 A. The red pins on this particular map are the cell towers.
8 What happens is we get the list from the cell towers from the
9 carrier. Then we import, I imported the list into a program
10 called Mapquest -- Map Point -- excuse me -- to a Microsoft
11 program. And based upon the latitude and longitude we'll plot
12 the cell sites into the mapping program.

13 Q. What were the main cell site areas for this Buckson phone?

14 A. For the timeframe that we got the records the main cell
15 site area was on the upper west side of Manhattan in the 60s.

16 Q. And looks like it's hitting a cell tower on West End Avenue
17 and about 65 Street; is that right?

18 A. Yes. And also one on 205 West 61 Street.

19 Q. Did you look -- what time period are we talking about?
20 What time period were the records for this phone,
21 approximately?

22 A. From May 5, 2009 through September 25, 2009.

23 Q. Did you look to see whether that phone hit cell towers in
24 the Metro Washington D.C. or Maryland area during that time?

25 A. Yes, sir.

HBGAAROS1

Heintz - Direct

1 Q. Did it?

2 A. Couple of times.

3 Q. When you say "a couple", how many?

4 A. Two or three occasions.

5 Q. Just for example, how many times did it hit that cell tower
6 at 205 West 61 Street?

7 A. 51 times from 5/5/09 to 8/22/09.

8 Q. I am going to read a stipulation. It's stipulation 1370.

9 It is hereby stipulated and agreed --

10 MR. TOUGER: I missed that answer. Could we have that
11 answer read back?

12 THE WITNESS: Excuse me?

13 THE COURT: Could you read the last answer, please.

14 (Read back)

15 THE COURT: Go ahead, Mr. Skinner, please.

16 MR. JOHNSON-SKINNER: Government Exhibit 1370.

17 It is hereby stipulated and agreed that the records
18 marked as Government Exhibit 520 are records of regularly
19 conducted business activity of AT&T within the meaning of
20 Federal Rule of Evidence 8036.

21 Government Exhibit 520 contains subscriber information
22 for a cellular telephone with the number, (973)901-2076, with a
23 listed subscriber, Mohammed Stewart, 103 Chancler Avenue,
24 Newark, New Jersey 07112.

25 The records marked as Government Exhibit 521 are

HBGAAROS1

Heintz - Direct

1 records of regularly conducted business of Verizon within the
2 meaning of Federal Rule of Evidence 8036.

3 Government Exhibit 521 contains subscriber information
4 for a telephone number, (212)414-2483, with a listed subscriber
5 Czar Entertainment, 11 West 25th Street, New York, New York
6 10010.

7 It is stipulated and agreed that Government Exhibit
8 520 and 521 in this stipulation as Government Exhibit 1370 are
9 admissible in evidence as Government Exhibits at trial and we'd
10 offer all those exhibits.

11 THE COURT: 1370, 520 and 521 are received.

12 (Government's Exhibits 1370, 520 and 521 received in
13 evidence)

14 Q. Now, Deputy Heintz, that number that I just read with the
15 subscriber information, Mohammed Stewart, based on your
16 analysis, did the Buckson phone communicate at all with that
17 Mohammed Stewart phone during that time period we're talking
18 about?

19 A. Yes, sir.

20 Q. About how many communications did it have?

21 A. They are in excess of 360.

22 Q. Were they mostly texts or mostly calls?

23 A. I believe the majority of them were texts. I think about
24 ten or 11 were actual voice calls.

25 Q. That number that I read for Czar Entertainment, did the

HBGAAROS1

Heintz - Direct

1 Buckson phone have any communication with that Czar
2 Entertainment phone during that time period?

3 A. Yes, sir.

4 Q. Just looking for a moment at Government Exhibit 502, that's
5 the chart. And we can also see the phone number on Government
6 Exhibit 501, the McCleod Phone One, the Thibedeaux Ingam. Did
7 the Buckson phone have any communications with that phone,
8 McCleod Phone One during that time period?

9 A. Yes, sir.

10 Q. About how many did it have?

11 A. I believe it was about 70.

12 Q. OK. Looking back now at Government Exhibit 501, what is
13 the second row of that chart tell us.

14 A. Second row is it's a phone with a subscriber name of
15 Thibedeaux Ingram. It was a Metro PCS phone. The phone number
16 (347)785-7207 and it's called the McCleod Phone Number One.

17 Q. Thinking back to 2009, did cell phone companies always
18 verify subscriber information when a person signed-up for a
19 phone?

20 A. No, they didn't. There is two types of accounts. You can
21 have a regular monthly account and you can also get a prepaid
22 account with some of these carriers. The Thibedeaux Ingam
23 phone was a prepaid Metro PCS phone.

24 Q. Did the messages include call and text?

25 A. Calls and text. For the Thibedeaux Ingam phone, primarily

HBGAAROS1

Heintz - Direct

1 calls.

2 Q. Why would a company only give you calls for a certain
3 phone?

4 A. During that timeframe some companies didn't store the text
5 messages.

6 Q. As part of your analysis, did you try to determine the main
7 cell site area for a Thibedeaux Ingam phone?

8 A. Yes.

9 Q. We'll look at Government Exhibit 510. What does this map
10 tell us?

11 A. This is the main cell site map for the Thibedeaux Ingam
12 which would be the McCleod One Phone. And the main cell site
13 area for this phone was the East New York area Brooklyn and the
14 main cell tower was 120 Sector One.

15 MR. JOHNSON-SKINNER: Go to the third row of
16 Government Exhibit 501.

17 Q. What kind of phone is this phone?

18 A. This is a (347)901-2165. It's an AT&t wireless phone. The
19 subscriber is Stacy King and this would be the McCleod Phone
20 Number Two.

21 Q. As part of your analysis, did you compare the locations of
22 the McCleod Phone One and the McCleod Phone Two?

23 A. Yes, sir.

24 Q. What, if anything, did you learn from that?

25 A. What I learned is that when the first phone call when this

HBGAAROS1

Heintz - Direct

1 Stacy King phone was activated, it was in the middle of the
2 night. It was in East New York, Brooklyn and there was, there
3 appeared to be a text message to the Lowell Fletcher phone as
4 the first activity with that phone when was activated.

5 The second one was to the Thibedeaux Ingram phone and
6 the Thibedeaux Ingram phone was in the same area as the Stacy
7 King phone. During that particular call and during almost
8 every other call direct to the Stacy King phone compared to the
9 McCleod phone.

10 MR. JOHNSON-SKINNER: If we could put up page 14 of
11 Government Exhibit 510.

12 Q. What does this show?

13 A. This is the main cell site area for the Stacy King phone
14 which is the McCleod Number Two Phone. And like I just stated,
15 the very first call made on this phone on 9/25/09 at four a.m.
16 in the morning was to the Thibedeaux Ingam phone. That was the
17 first voice call. The first actual transaction on that phone
18 appeared to be a text message to the Lowell Fletcher phone.

19 MR. JOHNSON-SKINNER: OK. Let's go now to the fourth
20 row of Government Exhibit 501.

21 Q. What kind of phone is this?

22 A. This is an AT&T phone. It's phone number (917)456-2489.
23 The subscriber is Jason Williams. It's a monthly account. And
24 it's the Williams phone.

25 MR. JOHNSON-SKINNER: OK. Then let's go to page three

HBGAAROS1

Heintz - Direct

1 of Government Exhibit 510.

2 Q. What does this show?

3 A. There is a map that depicts the main cell site area for the
4 Jason Williams phone which is up in the upper west side of
5 Manhattan. It's actually the east side.

6 Q. We see two cell towers there in the vicinity of Lennox and
7 about 145 Street?

8 A. That's correct.

9 MR. JOHNSON-SKINNER: Let's go to the fifth row of
10 Government Exhibit 501.

11 Q. What does that row tell us?

12 A. This is a Verizon Wireless phone. The subscriber is a
13 monthly account was to an Emily Richardson. The phone number
14 is (917)767-5460. That is known as the Grant phone.

15 MR. JOHNSON-SKINNER: Let me read a stipulation here.
16 It's Government Exhibit 1373.

17 It is hereby stipulated and agreed that if called to
18 testify, Emily Richardson will testify that she is about
19 64-years-old and worked for Verizon in New York City for over
20 34 years. She is the mother of Michelle Bryant who is about
21 35-years-old.

22 In 2009 Emily Richardson lived in a private
23 multifamily house located 1792 East 174th Street in the Bronx,
24 New York. In 2009 her daughter, Michelle Bryant, lived in an
25 apartment in the basement of that house. The house is pictured

HBGAAROS1

Heintz - Direct

1 in Government Exhibit 610B.

2 In 2009 Michelle Bryant had a cellular phone that was
3 registered to Emily Richardson under a family cellular phone
4 plan. Emily Richardson gave that cellular phone to Michelle
5 Bryant and it was Michelle Bryant's only cellular phone. On
6 multiple occasions when Emily Richardson called her daughter's
7 phone Derrick Grant answered the cellphone.

8 Derrick Grant who is pictured in Government Exhibit
9 Five was a friend of Michelle Bryant. When Emily Richardson
10 first met Derrick Grant, Grant was with Michelle Bryant in her
11 basement apartment. Emily Richardson does not know whether or
12 not her daughter's relationship with Derrick Grant became
13 romantic.

14 It is further stipulated and agreed that this
15 stipulation, Government Exhibit 1373, is admitted in evidence
16 as a Government Exhibit at trial and we offer that.

17 THE COURT: Received.

18 (Government's Exhibit 1373 received in evidence)

19 Q. As part of why you analysis, did you try to determine the
20 main cell site area for that Emily Richardson phone?

21 A. Yes, sir.

22 Q. Let's look at page four of Government Exhibit -- what does
23 this show?

24 A. This is a map which shows the main cell site area are for
25 the Emily Richardson phone or the Grant phone. And that phone,

HBGAAROS1

Heintz - Direct

1 the main cell tower was up in the Parkchester section of the
2 Bronx in the vicinity of Derrick Grant's residence.

3 Q. Let's look at the sixth row of Government Exhibit 501. Who
4 is the subscriber for that phone?

5 A. The subscriber on this phone was a Lowell Fletcher.

6 Q. And if we could pull up Government Exhibit 516A. What is
7 this? This is in evidence through the stipulation.

8 A. This is a subscriber sheet from Metro PCS for telephone
9 number (347)737-5264.

10 MR. JOHNSON-SKINNER: Zoom-in on the subscriber detail
11 portion in the middle there.

12 A. The subscriber is Lowell Fletcher.

13 Q. What was the activation date for this phone?

14 A. 9/13/2009.

15 MR. JOHNSON-SKINNER: Let's go to the seventh row of
16 Government Exhibit 501.

17 (Pause)

18 Q. The Leslie Pretty who is the subscriber of this phone?

19 A. Subscriber for this phone was Leslie Pretty.

20 Q. What kind of phone was this? Who was the provider?

21 A. I believe it was a Verizon. I would have to check my notes
22 but I believe it was a Veri -- excuse me -- I think it was a
23 Sprint.

24 Q. And in the stipulation I read yesterday, 1305, about the
25 phone records, Leslie Pretty was Rodney Johnson's mother; is

HBGAAROS1

Heintz - Direct

1 that right?

2 A. That's correct.

3 Q. As part of your analysis did you try to determine the main
4 cell site area for this phone?

5 A. Yes, sir.

6 MR. JOHNSON-SKINNER: Let's look at page five of
7 Government Exhibit 510.

8 Q. What does this show?

9 A. This is a map which those shows the main cell site area for
10 the Leslie Pretty phone or the Johnson phone. And the main
11 cell site area's in the upper west side of Manhattan in the
12 vicinity of 147 Street.

13 Q. So that red pin there is an address at 201 West 147 Street,
14 right?

15 A. That was Rodney Johnson's address.

16 Q. And the green circle above it, that's the cell site you
17 indicated as the main cell site area?

18 A. Yes, sir.

19 MR. JOHNSON-SKINNER: Go to the eighth row of
20 Government Exhibit 0501, Mike Tony.

21 Q. Who is the subscriber of that phone?

22 A. Mike Tony. It was a Nextel prepaid phone. Phone number
23 was 347-923-2806, known as the Johnson phone too.

24 MR. JOHNSON-SKINNER: Page six of Government Exhibit
25 510.

HBGAAROS1

Heintz - Direct

1 Q. What does this show?

2 A. This is a map that shows the main cell site area for the
3 Mike Tony phone or the Johnson Phone Two. It is also in the
4 vicinity of West 147 Street.

5 Q. And here it's the blue circle that's the cell tower; is
6 that right?

7 A. That's correct.

8 Q. As part of your analysis did you compare the locations of
9 the Johnson Phone One and Phone Two at various times?

10 A. Yes, I did.

11 Q. What, if anything, did you learn from doing that?

12 A. I noticed that on numerous dates both of these phones
13 appeared to be in the same locations. They would get phone
14 calls around the same time from each other and they would be in
15 similar locations. Also, I believe a Nextel phone had a number
16 in common with Rodney Johnson's girlfriend.

17 Q. And then looking at the chart 501, those Robert Macedonio
18 phone numbers, those are numbers that I read in that
19 stipulation yesterday?

20 A. That's correct.

21 Q. And the Khalil Abdullah phone is another one that I read
22 yesterday, right?

23 A. Correct.

24 MR. JOHNSON-SKINNER: I want to focus your attention
25 now on September 2009. Let's look at Government Exhibit 502.

HBGAAROS1

Heintz - Direct

1 Q. On September 10, 2009 did the Buckson phone exchange any
2 text messages with that McCleod Phone One and the Ingram phone?

3 A. Yes, sir.

4 Q. About how many text messages?

5 A. About seven.

6 Q. What's the first one?

7 A. The first one is at 7:11 p.m. and it's a text from the
8 Buckson phone to the McCleod phone.

9 Q. Did you prepare any maps related to cell site activity on
10 September 11, 2009, the next day?

11 A. September 11, yes, sir.

12 MR. JOHNSON-SKINNER: So we'll look at page seven of
13 Government Exhibit 510.

14 Q. What phone number does this refer to?

15 A. The map?

16 Q. Yes.

17 A. This is a map that shows the whereabouts of the McCleod
18 Thibedeaux Ingam phone from nine a.m. to ten a.m. on
19 September 11, 2009.

20 Q. And what are those different locations that have the text
21 boxes next to them?

22 A. Those are cell sites.

23 Q. Are those cell sites that this phone hit on that day?

24 A. Yes. These are cell sites that the phone hit between nine
25 a.m. and ten a.m.

HBGAAROS1

Heintz - Direct

1 Q. What's the first one that it hit during the time period
2 that you looked at?

3 A. The first one is nine 9:06 a.m. hitting the cell tower 120
4 Sector One.

5 Q. That's indicated in about the bottom middle of your screen?

6 A. Yes. That was the main cell site for the Thibedeaux phone
7 or McCleod Phone One. That's in the vicinity of the halfway
8 house that Brian McCleod lived in.

9 Q. What's the next location that the phone hit?

10 A. The next location is at 9:41 a.m. and also 9:45 a.m. The
11 phone has traveled north up into the Jamaica, Queens area.

12 Q. What's the next one after that?

13 A. At 9:54 and it ends -- I believe it's same call -- it ends
14 over in cell site 31 which is over in Sunnyside. So the phone
15 appeared to be moving west through Queens.

16 Q. By the way, looking at that call at the bottom, the one in
17 cell site 120, who was that call with?

18 A. That was a call -- that phone was in contact with the Jason
19 Williams phone.

20 Q. Let's go to the next page, page eight. What does this
21 slide show?

22 A. This is a map for September 11, 2009 for the Jason Williams
23 phone between nine a.m. and ten a.m. and it is in East New
24 York, Brooklyn. It's in the vicinity of Brian McCleod's
25 halfway house.

HBGAAROS1

Heintz - Direct

1 Q. OK. Let's go to the next page, page nine. What phone
2 first does this slide refer to?

3 A. This is the Thibedeaux Ingam McCleod Phone One.

4 Q. What date and time period are we looking at now?

5 A. September 11, 2009 between ten a.m. and 11:30 a.m.

6 Q. OK. And what's the first time of the call reflected on
7 there?

8 A. 10:07 a.m.

9 Q. The one on the bottom, right?

10 A. Yes, sir.

11 Q. Then we see activity from 10:13 to 10:30 a.m. at that
12 tower, a little bit north that's labeled the Queensborough
13 Correctional Facility?

14 A. That's correct.

15 Q. Have you ever been there by the way, to the Queensborough
16 Correctional Facility?

17 A. Yes, sir.

18 MR. JOHNSON-SKINNER: Let's put up what's already in
19 evidence Government Exhibit 685A.

20 Q. Is that a picture of that facility?

21 A. Yes, it is.

22 Q. OK. Let's go to Government Exhibit 510 page 10. What
23 phone does that relate to?

24 A. This is the Jason Williams phone. On September 11, 2009
25 between the hours of ten a.m. and 11:30 a.m.

HBGAAROS1

Heintz - Direct

1 Q. The same time period we were just looking at for that last
2 slide for the McCleod phone?

3 A. Yes, sir.

4 Q. Where does that show us about where, if anything, that
5 phone is?

6 A. This phone is over in the Long Island City area and it's in
7 the vicinity of the Queensborough Correctional Facility on Van
8 Dam.

9 Q. And it looks like there's activity at 10:28 a.m. about the
10 same as the time as the activity for the McCleod phone; is that
11 right?

12 A. Yes, sir.

13 MR. JOHNSON-SKINNER: OK. Let's look at Government
14 Exhibit 502 now, that chart of phone calls.

15 Q. On September 11, 2009 did the McCleod Phone One exchange
16 any calls with the Robert Macedonio Law Firm on that day?

17 A. Yes, sir.

18 Q. About when was it?

19 A. The McCleod Phone One at 11:03 a.m. called Macedonio Law
20 Firm.

21 Q. And then we see a call from the Macedonio cellphone at
22 11:06 back to that McCleod Phone One?

23 A. That is correct.

24 Q. And what's the thing in the second call and from the right,
25 the one where it says 1-31 at the top; what does that indicate?

HBGAAROS1

Heintz - Direct

1 A. Can you repeat that?

2 Q. Just looking at the headers of this chart and the numbers
3 on the right 1-31 and what's that column?

4 A. The call duration?

5 Q. The "call duration" you said?

6 A. Yes.

7 Q. So that call with the cellphone to the McCleod Phone One,
8 the duration was about three minutes and two seconds?

9 A. Yes, sir.

10 Q. OK. Looking at this same chart going ahead a little bit
11 now to September 24, 2009, did the Buckson phone communicate
12 with the McCleod Phone One at all on this day?

13 A. Yes, it did.

14 Q. What kinds of communications did it have?

15 A. Both text and voice calls.

16 Q. About how many calls and texts, approximately?

17 A. About eight.

18 Q. OK. Let's look now at Government Exhibit 510 page 11.
19 What phone number and date does this chart relate to?

20 A. This is for September 24, 2009. It's the McCleod Phone One
21 from ten a.m. to 12:30 p.m. and it's in the vicinity of 59
22 Street and Columbus Circle in Manhattan.

23 Q. And what does this chart show about what cell towers it's
24 hitting when? Is it hitting all the cell towers that had the
25 text boxes next to them?

HBGAAROS1

Heintz - Direct

1 A. Yes, sir. It's hitting these towers from 10:19 a.m.
2 through 12:22 p.m.

3 MR. JOHNSON-SKINNER: Let's look now at page 12 of
4 Government Exhibit 510.

5 Q. First, what phone does this slide relate to?

6 A. This is account Theresa Buckson phone for September 24,
7 2009, between the hours of 10 a.m. and 12:30 a.m.

8 Q. About the same time period that we were just looking at?

9 A. Yes, sir.

10 Q. And what does it show, if anything, about where this phone
11 was on that day and time?

12 A. This phone shows that it was in the vicinity of 59 street
13 and Columbus Circle.

14 Q. And the text box indicates that it had activity sometime
15 during the period of 10:43 to 11:23 a.m. in that location; is
16 that right?

17 A. That's correct.

18 MR. JOHNSON-SKINNER: Let's look at page 13 now of
19 Government Exhibit 510.

20 Q. What phone does this relate to?

21 A. This is the Jason Williams phone on September 24, 2009
22 between ten a.m. and 12:30 a.m.

23 Q. Same time again?

24 A. Yes, sir. This phone is in the vicinity of 59 Street and
25 Columbus Circle and cell sites 15398, 15392 and 15399.

HBGAAROS1

Heintz - Direct

1 Q. What was the exact time period for that activity as
2 reflected in that box?

3 A. From 11:12 a.m. through 12:07 a.m.

4 MR. JOHNSON-SKINNER: Let's full up now Government
5 Exhibit 513A.

6 Q. First what is this?

7 A. This is the subscriber sheet for the Stacy King phone, and
8 AT&T prepaid phone number (347)901-2165.

9 Q. When was this phone activated?

10 A. It was activated on 9/24/009.

11 Q. That was the same day we were just looking at in those
12 charts that had the three phones at about Columbus Circle?

13 A. Yes, sir.

14 Q. And what was listed as the subscriber's address when this
15 phone was activated?

16 A. 304 West 58 Street, New York, New York.

17 Q. Where is that in relation to the Columbus Circle?

18 A. Columbus Circle is 59. This is on 58 Street.

19 Q. Then you mentioned this before but let's look at Government
20 Exhibit 502 on September 25. What was the first communication
21 for that McCleod Phone Two or Stacy King phone?

22 A. First communication was at 2:59 a.m. to the Fletcher phone.

23 Q. Let's go ahead to the next day September 25, 2009. Look at
24 this chart. Did the Buckson phone communicate with the McCleod
25 Phone One on that day, September 25?

HBGAAROS1

Heintz - Direct

1 A. Yes, sir.

2 Q. Fair to say there are more than 20 texts or calls that day
3 between those two phones?

4 A. That is correct.

5 MR. JOHNSON-SKINNER: Let's look now at Government
6 Exhibit 510 page 15.

7 Q. What phone does this relate to?

8 A. This is the McCleod Phone Number One for September 25, 2009
9 from 7 p.m. to 8 p.m. and it's in the vicinity of Houston's
10 Restaurant.

11 Q. About what time does it have activity there?

12 A. 7:27 p.m.

13 MR. JOHNSON-SKINNER: OK. Let's look at page 16 now
14 of this slide.

15 Q. What phone does this relate to?

16 A. This is September 25, 2009. It's the Theresa Buckson
17 phone.

18 MR. JOHNSON-SKINNER: Zoom-in on this.

19 Q. Same time period?

20 A. 7 p.m. to 8 p.m. in the vicinity of Houston's restaurant.

21 Q. Just to orient the jury, the red pins are cell site towers?

22 A. That's correct.

23 Q. The Houston's Restaurant label you've drawn a back arrow to
24 approximately the location of Houston's?

25 A. That's correct.

HBGAAROS1

Heintz - Direct

1 Q. At what time period did this Buckson phone have
2 communications with cell towers that night in this area?

3 A. At 7:27 p.m., 7:30 p.m.

4 Q. Does that mean that the phone was only in that area for
5 three minutes that night?

6 A. You only get cell sites when there's activity on phones.

7 Q. Those are just the times that the phone was being used in
8 this area that night; is that right?

9 A. That is correct.

10 Q. Let's look at page 17 now of this exhibit. What phone does
11 this relate to?

12 A. This is September 25, 2009 from seven p.m. through 8 p.m.
13 This is the Jason Williams phone. This phone is in the
14 vicinity of Houston's Restaurant. There's activity on the
15 phone at 7:24 p.m. and it's in cell sites 13548 and it's 11979.

16 Q. That's the red pin that's at the end of that text box in
17 the middle of our screen; is that right?

18 A. That's correct.

19 Q. And the time there was 7:27 p.m. you said, right?

20 A. Yes, sir.

21 Q. I'm sorry. 24?

22 A. "24".

23 Q. Are you familiar, deputy, with the intersection of Mount
24 Eden Avenue and Jerome Avenue in the Bronx?

25 A. Yes, I am.

HBGAAROS1

Heintz - Direct

1 Q. I'll show you what's in evidence as Government Exhibit 141

2 A. Do you recognize that?

3 A. Yes, sir.

4 Q. Is that that intersection?

5 A. That's the intersection of Mount Eden and Jerome under the
6 "L" Line.

7 MR. JOHNSON-SKINNER: OK. Let's look at page 18 of
8 Government Exhibit 510.

9 Q. What phone number does this relate to?

10 A. This is the McCleod Phone Number One for September 26, 2009
11 between 11 p.m. and 11:30 p.m.

12 MR. JOHNSON-SKINNER: All right. Let's zoom if on
13 that.

14 Q. We see Mount Eden and Jerome over there on the left by that
15 blue circle; is that right?

16 A. That's correct.

17 Q. OK. And what's the first cell tower in this area that
18 McCleod Phone One hits that night during this time period?

19 A. The first cell tower is cell tower 758 which is the one in
20 the upper left-hand corner.

21 Q. And about what time does it hit that?

22 A. That is about 11:01 p.m.

23 Q. OK. Based on your experience is what's label as "95"
24 there, the Cross Bronx Expressway, is that within the range of
25 that cell tower at 758?

HBGAAROS1

Heintz - Direct

1 A. Yes.

2 Q. And then what's the next cell tower that that phone hits
3 that night?

4 A. The next tower is 743. That's east in the Bronx and that's
5 when the call ends. It was about a ten minute and 54 second
6 phone call.

7 Q. So the same call but it was passed between that one tower
8 on the left and the other tower on the right?

9 A. Correct. Which indicates to me that this phone during that
10 ten minute timeframe was traveling from west to east in the
11 Bronx.

12 Q. OK. Let's look at page 19 of Government Exhibit 510.
13 Whose phone does this relate to?

14 A. This is for September 26, 2009. It's Jason Williams phone
15 from 11 p.m. to 11:30 at 11:02 p.m. the Jason Williams phone is
16 in cell site 52032 which is in the vicinity of Park Avenue and
17 the Cross Bronx.

18 Q. Does it cover the Cross Bronx Expressway, the range of that
19 tower?

20 A. Yes, sir.

21 Q. That's about the same time period as the slide we were just
22 looking at for the McCleod Phone One, right?

23 A. That is correct.

24 MR. JOHNSON-SKINNER: Let's look at Government Exhibit
25 502 now, that chart of phone calls on September 27, 2009. Did

HBGAAROS1

Heintz - Direct

1 the Buckson phone communicate with the McCleod Phone One at all
2 that day?

3 A. Yes, it did.

4 MR. JOHNSON-SKINNER: Look at the page we're at now.

5 Q. Is it right that there is a text from the McCleod Phone One
6 to the Buckson phone at 3:28 p.m. on that day?

7 A. Yes, sir.

8 MR. JOHNSON-SKINNER: Let's go to the next page now.

9 Zoom in on the top part of these records.

10 Q. Starting at 5:54 p.m. what does it show there?

11 A. It shows the Buckson phone contacted the McCleod Phone
12 Number One with a text message.

13 Q. What happened next?

14 A. 5:58 p.m. the McCleod Phone Number One contacted the
15 Buckson phone with a text message, 5:59 the McCleod Phone One
16 contacted Buckson phone with a text message, 6:58 p.m. the
17 Buckson phone contacted the McCleod phone with a text message.

18 MR. JOHNSON-SKINNER: OK. Let's look now at page 20
19 of Government Exhibit 510.

20 Q. Whose phone does this relate to?

21 A. This is for September 27, 2009. This is Lowell Fletcher's
22 phone from 8 p.m. to 9:30 p.m. This phone during that
23 timeframe was in the vicinity of Mount Eden and Jerome Avenue.

24 Q. So the phone hit that cell tower there labeled "756", is
25 that right, on the left of our screen?

HBGAAROS1

Heintz - Direct

1 A. That's correct.

2 Q. And is Mount Eden between Inwood and Jerome within the
3 coverage area of that cell site?

4 A. Yes, sir.

5 Q. What times did it hit that tower?

6 A. 8:43 p.m., 8:53 p.m.

7 Q. Who is the phone communicating with?

8 A. This phone was communicating with the Stacy King phone.

9 Q. That's the McCleod Phone Two?

10 A. Yes, sir.

11 (Continued on next page)

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Hbgnros2

Heintz - direct

1 Q. Let's look now at page 21 of Government Exhibit 510.

2 What date and time period are we looking at here?

3 A. This is September 27, 2009. This is the McCleod phone No.
4 1 between the hours of 8 p.m. and 9:20 p.m. This phone is in
5 the vicinity of Mt. Eden and Jerome Avenue in the Bronx.

6 Q. About the same date and time we were looking at before?

7 A. Yes, sir.

8 Q. Now, just to orient us, the blue circle. That's Mt. Eden
9 and Jerome, right?

10 A. Yes, it is.

11 Q. What are these five red triangles with the text boxes
12 around them?

13 A. These are the various cell towers that this phone was in
14 contact with during the time frame.

15 Q. Remind us, what kind -- who is the provider for this phone,
16 McCleod phone 1?

17 A. McCleod phone 1 is a Metro PCS phone.

18 Q. Looking at that text box on the left, what does that list?

19 A. This is a list of various calls that were made by the
20 McCleod phone 1 during this timeframe while it was up in that
21 area.

22 Q. OK. Let's start first actually with the last thing in that
23 text box. It says at 9:18 p.m. in cell site 762 and 758
24 incoming from the Mike Tony phone, is that right?

25 A. That's correct.

Hbgnros2

Heintz - direct

1 Q. Where are cell sites 762 and 758?

2 A. 762 is at 1751 Jerome Avenue. 758 is at 1751 Jerome
3 Avenue. The reason being is, as I explained yesterday, that
4 when Metro PCS was rolling out these cell towers, they were
5 doing it fast because they were new customers coming into the
6 market what they were doing is they were putting them on top of
7 antennas and they were putting them on top on top of light
8 poles. The actual cell sites come back by the longitude and
9 latitude, but they are assigned to the same tower, so the
10 address will come up the same, even though they are different
11 locations. But they are actually plotted by the latitude and
12 longitude. So the cell site is known as 1751 Jerome Avenue,
13 but they are omni points, and they are scattered about that
14 area.

15 Q. Even though those two cell towers have the same address you
16 know exactly where the towers are because you know the latitude
17 and longitude, is that right?

18 A. Yes. As I was saying earlier, the cell sites that we get
19 from the carriers have the latitude and longitude, and that's
20 the basis for where these cell towers apply it when it's
21 inputted into the map. Not the actual address, but the
22 longitude and longitude that the cell tower supplies.

23 Q. That is where you put the pins in the map, right?

24 A. I don't put the pins in the map. The pins get generated
25 automatically when that is entered into the data program.

Hbgnros2

Heintz - direct

1 Q. Those two towers, that was for a call at 9:18 p.m. to the
2 Mike Tony phone, is that right?

3 A. That's correct.

4 Q. That's the last call that is listed during this time period
5 between 8:02 and 9:18, right?

6 A. Correct.

7 Q. For all those other calls between 8:02 and 9:11 p.m. what
8 towers was the McCleod phone 1 hitting off of during that time?

9 A. You want me to read all of these?

10 Q. Well, is it right that the phone number McCleod phone 1 was
11 hitting these three towers 756, 7571, and 7576 for all those
12 other calls?

13 A. Correct.

14 Q. It is later on that it is hitting all of these towers that
15 are a little bit farther east, right?

16 A. That is correct.

17 Q. OK. Let's look now at page 22 of Government Exhibit 510.

18 What phone does this relate to?

19 A. This is for September 27, 2009. It's the Stacy King phone,
20 or the McCleod 2 phone, between the hours of 8 p.m. and 9:20
21 p.m.

22 This phone is a AT&T Wireless prepaid. It is in the
23 vicinity of Mt. Eden and Jerome.

24 Q. Looking first at the text box on the left, 8:02 p.m. to
25 8:48 p.m., who is it communicating with, the Stacy King phone?

Hbgnsros2

Heintz - direct

1 A. There were three phone calls between this phone and the
2 Lowell Fletcher phone.

3 Q. And at that time it's hitting that cell tower that's down
4 there in the bottom left of this map, is that right?

5 A. Yes. It is hitting the tower that's down in an area like
6 170 and Jerome.

7 Q. Is the area around Mt. Eden and Jerome within the coverage
8 area of that tower?

9 A. Yes.

10 Q. And then what about at 8:53 p.m.?

11 What tower is it hitting then?

12 A. 8:53 it's in 3 -- it is in 51096.

13 Q. That is the one immediately to the left of the red pin that
14 is indicating Mt. Eden and Jerome?

15 A. That's correct.

16 Q. And what phone is it communicating with at 8:53 p.m.?

17 A. Lowell Fletcher phone.

18 Q. Let's just go back for one second to slide 21, the one we
19 were just looking at. We just looked at a call at 8:53 p.m.
20 between McCleod phone 2 and Lowell Fletcher. After 8:53 p.m.
21 what is the next call for the McCleod phone 1?

22 A. At 8:55 p.m., McCleod phone 1 calls the Grant phone or the
23 Emily Richardson subscriber.

24 Q. When it makes that call what cell site is it in?

25 A. 7562.

Hbgnros2

Heintz - direct

1 Q. That's the tower that is immediately to left of Mt. Eden
2 and Jerome?

3 A. That's correct.

4 Q. Let's go to page 23. Government Exhibit 510 now.

5 What phone does this relate to?

6 A. This is the Jason Williams phone for September 27, 2009,
7 between 8 p.m. and 9:20 p.m. This is in the vicinity of Mt.
8 Eden and Jerome in the Bronx.

9 Q. And what phone number is the Jason Williams phone
10 communicating with during that time that it's near Mt. Eden and
11 Jerome?

12 A. It's communicating with the Thibedeaux Ingam phone, which
13 would be the McCleod phone No. 1.

14 Q. Let's go to page 24 now of Government Exhibit 510.

15 What phone does this relate to?

16 A. This phone is the Emily Richardson phone or the Grant phone
17 for September 27, 2009 between 8 p.m. and 9:20 p.m.

18 Q. What location is this phone in during that time?

19 A. This phone is in the vicinity of Mt. Eden and Jerome Avenue
20 in the Bronx.

21 Q. Now, on those other maps we were looking at, we saw a lot
22 of cell towers. Why does this one only have a few green dots
23 on it?

24 A. AT&T Wireless and AT&T and Metro and Sprint, their networks
25 weren't back then as robust as Verizon. Verizon works off of

Hbgnros2

Heintz - direct

1 an 850 band frequency, which is a stronger signal, so they
2 didn't require as many towers in the area as the other carriers
3 did.

4 Q. So is Mt. Eden and Jerome Avenue within the coverage area
5 of that tower indicated by the green circle on the left?

6 A. Yes, sir.

7 Q. And what phones is the Derrick Grant phone communicating
8 with during that time period?

9 A. It's communicating with the Thibedeaux Ingam or the McCleod
10 phone 1 and also the Jason Williams phone.

11 Q. Let's look at page 25 of Government Exhibit 510.

12 What phone does this relate to?

13 A. This is the Leslie Pretty phone or the Johnson phone 1 on
14 September 27, 2009, between 8 p.m. and 9:20 p.m., and it is in
15 the vicinity of Mt. Eden and Jerome Avenue in the Bronx.

16 Q. Is it hitting actually that same tower that we just looked
17 at for the Derrick Grant phone?

18 A. Yes, sir.

19 Q. What phones is this Johnson phone communicating with during
20 that time?

21 A. It is communicating with the Thibedeaux Ingam phone or the
22 McCleod phone 1.

23 Q. Let's look at page 26 now of Government Exhibit 510.

24 Which phone does this relate to?

25 A. This is the Mike Tony phone or the Johnson phone 2 on

Hbgros2

Heintz - direct

1 September 27, '09, between 8 p.m. and 9:20 p.m., and this phone
2 is in the vicinity of Mt. Eden and Jerome Avenue during that
3 time frame.

4 Q. Who is it communicating with, that phone?

5 A. It is communicating with the Ingam phone or the McCleod
6 phone No. 1.

7 Q. So this map shows us that at 8:49 p.m., this phone calls
8 the Ingam phone, is that right?

9 A. 8:49 and 8:56 p.m.

10 Q. Let's just go back for one minute to the previous slide.
11 Can we just zoom in on that box.

12 Is it right that the McCleod phone 1 or the Ingam
13 phone called the Johnson phone 1 at 8:45 p.m.?

14 A. Yes, sir.

15 Q. And then we saw that call back from Johnson phone 2 to the
16 McCleod phone at 8:49 p.m., right?

17 A. That is correct.

18 Q. Let's go to page 27 of Government Exhibit 510.

19 Now, first, what day and time period are we looking at
20 now?

21 A. This is September 27, '09. This is the McCleod phone No. 1
22 from 9:20 p.m. to 10:30 p.m. This phone is up in the area of
23 West 147th Street.

24 Q. OK. Let's look at the map.

25 So now after the period we were just looking at, now

Hbgnsros2

Heintz - direct

1 the McCleod phone 1 is hitting a tower near 147th Street,
2 right?

3 A. That's correct.

4 Q. Is 147th Street within the coverage area of that tower,
5 that address on 147th?

6 A. Yes, it is.

7 Q. Let's look at page 28 of Government Exhibit 510.

8 What phone are we looking at here?

9 A. This is the Jason Williams phone for September 27, '09,
10 between 9:20 p.m. and 10:30 p.m. This phone is in the vicinity
11 of West 147th Street in Manhattan.

12 Q. The same area we were just looking at.

13 A. Yes, sir.

14 Q. Who was it communicating with during that time period?

15 A. This phone is in communication with the McCleod phone No.
16 1.

17 Q. Let's look at page 29 of this the exhibit. What phone are
18 we looking at here?

19 A. This is the Johnson phone No. 2, the Mike Tony phone, on
20 September 27, '09 between the hours of 9:20 p.m. and 10:30
21 p.m., and this phone is in the vicinity of West 147th Street.

22 Q. OK. Did you look at the records for the Buckson phone to
23 determine where it was on September 27, 2009 during about the
24 time of the murder of Lowell Fletcher?

25 A. Yes, sir.

Hbgnros2

Heintz - direct

1 Q. Let's look at Government Exhibit 511B, on page 30 to 31.

2 Let's start at September 27, 2009 at 5:48 p.m.

3 MR. JOHNSON-SKINNER: If you could highlight that. I
4 think it's line 951, a couple of lines below that you can go
5 to.

6 Q. So first, remind us, what records are we looking at here?

7 A. These are the cell phone records for the AT&T Theresa
8 Buckson phone.

9 Q. What is that line 9/27/09 5:48 p.m., what, if anything,
10 does that show us about the location of the phone?

11 A. If you look all the way to the far right, you will have
12 cell site and the lat. That's the 11992 and the 15615. That
13 is actual cell site. The latitude and longitude would be the
14 negative 73 and then the 40. That is the latitude and
15 longitude where the actual cell site is located where it would
16 plot on the map. Negative 73 with a 40 is the New York City
17 area.

18 Q. That is at 9/27/09 at 5:48 p.m.?

19 A. Correct.

20 Q. What is the next time you have any cell site location
21 information for this phone available?

22 A. The next cell site information is on 9/28/09 at 0842 a.m.,
23 which is, based on the latitude and longitude, which is the
24 actual cell site address, that phone is in latitude and
25 longitude of negative 80 and 25. That corresponds to the Miami

Hbgros2

Heintz - direct

1 area of Florida.

2 Q. OK. So Miami, Florida, on 9/28/09 at 8:42 a.m.?

3 A. Right.

4 Q. All right. I want to direct your attention now to October
5 1, 2009.

6 Are there any phone calls for this phone on October 1,
7 2009.

8 MR. JOHNSON-SKINNER: And we can look at the next
9 page.

10 A. There are no phone calls, but I believe there was a text
11 message on the 1st.

12 Q. Do you have cell site information for text messages?

13 A. No, sir.

14 Q. Remind us why not.

15 A. Because back in 2009 the cell sites for texts were not
16 stored for a long period of time, and by the time we requested
17 these records they were already purged from their system.

18 Q. Thinking just about October 1, 2009, based on the phone
19 information, do you know one way or the other where the phone
20 was at that time, the Buckson phone?

21 A. I had no way of telling where that phone was for the 1st.

22 Q. When is the next time you do have location information for
23 this phone?

24 A. The next time is on the 2nd.

25 Q. Is that at 10:17 a.m. in line 978?

Hbgnros2

Heintz - direct

1 A. That is correct.

2 Q. Looking at the latitude and longitude, where was the phone
3 at that time?

4 A. Based on the latitude and the longitude, the negative 73
5 and the 40, it's back in the New York area.

6 Q. Looking just at the most recent time we do have
7 information, 9/30/09 at 9:33 p.m., the line right above that,
8 was it still in Miami at this point?

9 A. Yes.

10 Q. And then 10/2/09 back in New York?

11 A. Right.

12 Q. Let's look at page 30 of Government Exhibit 510.

13 Whose phone does this relate to?

14 A. This is Khalil Abdullah's phone on October 1, 2009. It is
15 in the vicinity of 125th Street and Mobay Restaurant.

16 Q. Let's look at the map. So let's start first with the cell
17 tower indicated on the left and looking at that text box.

18 The first call during that time is at 9:42 p.m., is
19 that right?

20 A. Correct.

21 Q. What cell tower does it hit?

22 A. It is in cell tower 217.

23 Q. That is the one on the far left?

24 A. Correct.

25 Q. Near about Amsterdam and 128th?

Hbgnros2

Heintz - direct

1 A. Correct.

2 Q. Is that -- is Mobay in the coverage area of that tower?

3 A. It is not the main serving cell, no.

4 Q. It is a little farther away from Mobay, right?

5 A. That's correct.

6 Q. A little bit west?

7 A. That's correct.

8 Q. What is the next information you have for that phone?

9 A. At 10:14 p.m. the phone is in cell tower 137, sector 3.
10 That tower is located off of Lenox Avenue and about 131st
11 Street.

12 Q. Does the area of that tower cover Mobay Restaurant?

13 A. Yes, sir.

14 Q. By the way, did you look at the main cell site area for the
15 Khalil Abdullah phone?

16 A. Yes, I did.

17 Q. Just generally, where was it?

18 A. It was over in, I think close to New Jersey over by Fort
19 Lee.

20 MR. JOHNSON-SKINNER: OK. Let's look at page 31 of
21 Government Exhibit 510.

22 Q. First, what phone are we looking at here?

23 A. This is the Jason Williams phone for October 1, 2009,
24 between 10:59 and 11:15 p.m.

25 Q. About the same time period we were just looking at, right?

Hbgnros2

Heintz - direct

1 A. Yes.

2 MR. JOHNSON-SKINNER: Let's zoom in on this map.

3 Q. What is the first call shown on this map?

4 A. I have a different slide here. It is out of order. The
5 first call is at 9:38 p.m. It is in the vicinity of 29th
6 Street.

7 Q. OK. First, what's that -- do you see LaGuardia Airport on
8 this map?

9 A. LaGuardia Airport is to the right of that text bubble.

10 Q. The airport indicated there above the highway on the --

11 A. Right. Where it says Long Island, over --

12 Q. Yes. Do you recognize that highway that runs right below
13 LaGuardia Airport?

14 A. It's the Grand Central.

15 Q. That cell site that Jason Williams' phone hits at 9:38
16 p.m., does that cover the Grand Central Parkway?

17 A. Yes, sir.

18 Q. Based on -- how long have you lived in New York City,
19 Detective Heintz?

20 A. At the time, I was living -- 35 years.

21 Q. Can you take Grand Central Parkway to get to LaGuardia
22 Airport?

23 A. Sure.

24 Q. What is the next call that is shown on this map?

25 A. The next call is at 10:46 p.m., and it's in cell site

Hbgnros2

Heintz - direct

1 24368. That cell tower is up in Edgewater, New Jersey, on
2 River Road.

3 Q. What is the coverage area for that cell site tower?

4 A. Like I was saying yesterday in my prior testimony, there
5 are different things that amplify cell phone signals, and water
6 is one of them. Typically, especially in this part of
7 Manhattan and New Jersey, phones can contact cell towers on
8 both sides of the river, depending upon where they are. The
9 phone could be in New Jersey and hit a tower on the New York
10 side that is right on the river or vice versa.

11 Q. I don't know if it's going to work, but try indicating on
12 the screen about where 125th Street is in Harlem on this map.
13 Try touching the screen and see if it works. No? OK. I'm
14 going touch it and you tell me if it's about right.

15 Is that about 125th Street?

16 A. Yeah. If you see where that text bubble is, that's the
17 Grand Central, and it dumps into the Triboro, which goes right
18 across to 125.

19 Q. Looking at that text bubble on the right, following the
20 Grand Central up, that's the Triboro Bridge, right?

21 A. Correct.

22 Q. Then it dumps over into Manhattan. What street does that
23 come onto?

24 A. One of the exits is 125.

25 Q. Following 125th Street across Manhattan, the area on the

Hbgnros2

Heintz - direct

1 far west side of Manhattan on 125th Street, is that within the
2 coverage area of that River Road cell tower?

3 A. Yes, sir.

4 Q. Based on your time living in New York City, if you were
5 actually on the highway, on Grand Central Parkway where that
6 cell tower is on the bottom right, about how long would it take
7 to get to Manhattan?

8 MR. TOUGER: Objection, your Honor.

9 THE COURT: Overruled.

10 Just about how long would it take if you were to
11 drive -- if you are on that highway -- to Manhattan.

12 A. From the Grand Central into Manhattan, the west side of the
13 Manhattan.

14 Q. Or even the east side?

15 A. To the east side? 15 -- 10 or 15 minutes --

16 Q. OK.

17 A. -- to get to the bridge.

18 Q. It depends on the traffic, right?

19 A. It depends on the traffic the time of day.

20 Q. This is at 9:38 p.m. is when that cell phone is down there?
21 Is that right?

22 A. That's correct.

23 MR. JOHNSON-SKINNER: Let's look at page 32 of
24 Government Exhibit 510.

25 Q. What phone is this first?

Hbgnros2

Heintz - direct

1 A. This is the Jason Williams phone, October 1, 2009, from
2 10:59 p.m. through 11:15 p.m.

3 Q. A little bit later than the time period we were just
4 looking at, right?

5 A. That's correct.

6 Q. What cell towers does the phone hit here?

7 A. At 10:59 and 11:15 p.m. it hit cell tower 26063.

8 MR. JOHNSON-SKINNER: OK. And then let's just go back
9 to page 1 of this exhibit. If you could blow that up.

10 Q. This exhibit indicated the main cell site areas for the
11 Theresa Buckson phone, is that right?

12 A. That's correct.

13 Q. That cell site at the top, 26061 through 26069, is that the
14 same cell site that we were just looking at the Jason Williams
15 phone hit on October 1, 2009?

16 A. Correct. This particular phone service provider, AT&T,
17 back in 2009 it had two different types of protocols that it
18 utilized. It utilized a protocol called GSM and a protocol
19 called UMTS. They were two different technologies, and each
20 one of those technologies had an 850 megahertz band and a 1900
21 megahertz band. So the phone could go back and forth between
22 technologies, and also between frequencies.

23 Each frequency on each technology has a separate cell
24 site number, but they are all located at that same address, and
25 they go from 26061 through 26069, depending upon what frequency

Hbgnros2

Heintz - direct

1 and technology that phone was on during that call.

2 Q. That's why all of those numbers are -- but they are all at
3 that location right there, right?

4 A. They are all located at that location.

5 Q. West End and 65th Street?

6 A. Yes.

7 MR. JOHNSON-SKINNER: OK. Let's look now at
8 Government Exhibit 502, page 6. That's the phone chart
9 information.

10 Q. I'm going to direct your attention to October 2, 2009.

11 Did the Buckson phone communicate with the McCleod
12 phone 1 at all on that day, October 2?

13 A. Yes, it did.

14 Q. About how many communications did it have?

15 A. Approximately 12.

16 Q. Let's go to page 33 of Government Exhibit 510.

17 What date and time are we looking at here?

18 A. This is the McCleod phone No. 1 on 10/2/2009. And it's
19 between the hours of 10 a.m. and 12 p.m., and it's in the
20 vicinity of Columbus Circle in Manhattan.

21 Q. Let's look at the map.

22 What time is it in that area?

23 A. 11:13 and 11:48.

24 Q. OK. Do you see the cell tower at the top, 726?

25 A. Yes, sir.

Hbgnros2

Heintz - direct

1 Q. Broadway and about 75th Street?

2 A. Yes.

3 Q. What is the coverage area of that cell tower?

4 A. The coverage area on that tower, based upon where it is on
5 Broadway and based upon the fact that, you know, on Broadway as
6 you're going southbound there's numerous high buildings that
7 just line Broadway, that tower is right on Broadway. So the
8 coverage tower on that -- the coverage tower could be as far
9 down as the 50s.

10 Q. It would look right down Broadway to Columbus Circle,
11 right?

12 A. Right. It's a radio frequency, and a lot of times under
13 elevated lines, subway lines, if you have -- like up in the
14 Bronx, for instance, on the Grand Concourse there's nothing but
15 apartment buildings, and if you have a tower that is on the
16 Grand Concourse, that energy can channel straight down between
17 those buildings, so the coverage is a little bit further.

18 Q. And this McCleod phone 1 hit these other towers that are a
19 little bit closer to Columbus Circle during that period?

20 A. That's correct.

21 MR. JOHNSON-SKINNER: Let's go to the next slide, page
22 34.

23 Q. What phone are we looking at here?

24 A. This is the Theresa Buckson phone from 10 a.m. to 12 p.m.
25 on October 2, 2009. It is in the vicinity of Columbus Circle.

Hbgnros2

Heintz - direct

1 Q. What time period does it hit there?

2 A. It is there at 10:23 a.m., and it also there at 11:02 a.m.

3 Q. It is hitting that cell tower that is right on Columbus
4 Circle?

5 A. That's correct.

6 Q. Let's go to page 35.

7 What phone are we looking at here?

8 A. This is the Jason Williams phone for October 2, 2009,
9 during the time frame 10 a.m. through 12 p.m., and that phone
10 is in the vicinity of Columbus Circle.

11 MR. JOHNSON-SKINNER: Let's just look at the map
12 briefly.

13 Q. About what time is the activity there?

14 A. At 10:48, there is a communication with tower 23344.

15 Q. It is a little bit to the west of Columbus Circle, right?
16 It's 10th Avenue and about 60th -- 58th Street?

17 A. That's correct.

18 MR. JOHNSON-SKINNER: OK. Let's go to page 36 of this
19 slide.

20 Q. What phone are we looking at here?

21 A. This is the McCleod phone No. 1 for October 2, 2009,
22 between 12:25 p.m. and 2:05 p.m., and it is up in the South
23 Bronx area.

24 Q. This is a little bit after the time period we just looked
25 at at Columbus Circle, right?

Hbgns2

Heintz - direct

1 A. Yes, sir.

2 Q. Do you know what, if anything, is at 82 Lincoln Avenue
3 that's indicated there at the bottom?

4 A. New York State parole office.

5 Q. The McCleod phone 1 hit this cell tower 7195?

6 A. Yes.

7 MR. JOHNSON-SKINNER: Let's now go to page 37 of this.

8 Q. What phone are we looking at here?

9 A. This is the McCleod phone No. 1 for October 2, 2009,
10 between 2 p.m. and 3 p.m., and it is in the vicinity of West
11 147th Street.

12 Q. This is a little bit after that time we were just looking
13 at the Bronx parole office, right?

14 A. That's correct. At 2:28 p.m. and 2:42 p.m., there were --
15 there was activity on this phone which put it in sector 1 of
16 cell site 316.

17 Q. Let's look now -- by the way, is the coverage area of that
18 tower within -- is 201 West 147th Street within the coverage
19 area of that tower?

20 A. Yes, sir.

21 MR. JOHNSON-SKINNER: Let's look at page 38 of this
22 exhibit.

23 Q. What phone are we looking at here?

24 A. This is the Johnson phone No. 1, the Leslie Pretty phone,
25 on October 2, 2009 between 2 p.m. and 3 p.m. And this phone is

Hbgnros2

Heintz - direct

1 in the vicinity of West 147th Street.

2 Q. The same time period we were just looking at for the
3 McCleod phone?

4 A. Yes, sir.

5 MR. JOHNSON-SKINNER: Just a few last things.

6 Q. I just want to show you now what is Government Exhibit
7 511A.

8 MR. JOHNSON-SKINNER: Can we just zoom in first to the
9 top.

10 Q. What are we looking at here?

11 A. This is a subscriber sheet from AT&T Wireless for the
12 Theresa Buckson phone.

13 Q. OK. Looking about in the middle of the page, if we could
14 blow that up, do you see where it says MS ISDN active?

15 A. Yes.

16 Q. What does that mean?

17 A. That is the time that this account or this phone number was
18 active with the carrier. Usually there is further customer
19 notes which will explain that further.

20 Q. OK. Just first, before we do that, what was the end date
21 of the activity period for this phone number, the Buckson phone
22 number?

23 A. This phone number appeared to end on October 2, 2009.

24 Q. If we could just look a little bit further down on the
25 page.

Hbgnros2

Heintz - cross

1 What does this reflect?

2 A. This is the status change or the history of the phone
3 number. And the first line says "customer request" and the
4 second line "customer request" on 10/2/09. So this appears to
5 me that the customer requested to turn that number off.

6 Q. Have you ever shown any of the cell phone records in this
7 case or the location information that you worked on to any of
8 the cooperating witnesses?

9 A. No, sir.

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

11 THE COURT: Thank you. Folks, we are going to take
12 our morning break.

13 MR. TOUGER: Your Honor, I'm going to be very short.
14 We can probably finish, if you want.

15 THE COURT: OK.

16 CROSS EXAMINATION

17 BY MR. TOUGER:

18 Q. Good morning, sir.

19 A. Good morning, sir.

20 Q. Would you agree with me that you can't pinpoint exact
21 locations from cell site data?

22 A. Exact locations, no.

23 Q. It can vary from across the rivers, as you said, 20 blocks
24 on Broadway, right?

25 A. The vicinity of the cell tower, yes.

Hbgnros2

Heintz - cross

1 Q. And the vicinity could range from across the river to 20
2 blocks, right?

3 A. Depending upon the geographical area, yes.

4 THE COURT: Excuse me.

5 Is that true all the time or is that true on
6 occasions?

7 THE WITNESS: It is true on occasions, as far as how
8 far a tower goes out. It all depends upon the environment.

9 BY MR. TOUGER:

10 Q. There are many conditions?

11 A. There are different variables, yes.

12 Q. During your whole entire investigation in this case, were
13 you ever given that Mr. Rosemond lived in the area of 63rd and
14 West End Avenue?

15 A. Yes, sir.

16 Q. And so it's not unusual that his phone was concentrated in
17 the area where he lived?

18 A. Correct.

19 Q. I think you testified on direct that during the period from
20 May 5, 2009, to August 22, 2009, the Buckson phone which you
21 testified about had 51 times it was hit in that area?

22 A. On that one particular slide, yes.

23 Q. Yes. So if we're about a three A half month period, that
24 phone was used 51 times in the area where he lived?

25 A. I believe there was another slide that showed 26

Hbgnros2

Heintz - cross

1 additional.

2 Q. So 75 approximate times that that phone was used in that
3 time period.

4 A. For voice calls.

5 Q. Yeah. That's --

6 A. Voice calls.

7 Q. Did you ever find any communication in all your
8 investigation between the Buckson phone and the phones that you
9 have targeted to Rodney Johnson?

10 A. No, sir.

11 Q. And did you ever find any phone calls in your entire
12 investigation between the Buckson phone and the Emily
13 Richardson phone which you targeted to Derrick Grant?

14 A. No, sir.

15 Q. Now, there is communication between the Thibedeaux phone --
16 Which you have designated to Mr. McCleod, right?

17 A. Yes.

18 Q. -- and the Buckson phone on September 11, correct?

19 A. Yes, sir.

20 Q. And this is all about '09, just so we are clear?

21 A. 2009, correct.

22 Q. And the next time those two phones get together isn't until
23 September 15, 2009, the am I correct?

24 A. What do you mean "get together"?

25 Q. Either text or telephone.

Hbgnros2

Heintz - cross

1 A. Yes, sir.

2 Q. Were you ever asked by the prosecution to verify a meeting
3 between the Stacy King phone and the Buckson phone in the area
4 of Central Park?

5 THE COURT: A meeting?

6 MR. TOUGER: That the Stacy King phone and the Theresa
7 Buckson were together in the area of Central Park.

8 A. I was never asked specific phones. I was given dates and I
9 was asked to see if any of these phones were in certain areas
10 on certain dates that were brought through with the
11 investigation.

12 Q. Was there any time where you found that the Buckson phone
13 and the Thibedeaux -- the Stacy King phone, excuse me, the
14 Buckson phone and the Stacy King phone were together near
15 Central Park?

16 A. I do not believe so.

17 Q. And am I correct in saying that you verified that the
18 Buckson phone was in Miami Florida as of September -- before
19 September 29? On September 28 I believe?

20 A. Yes, sir.

21 Q. Excuse me.

22 A. I think it was the 29th.

23 Q. The 29th.

24 A. Yes.

25 Q. The next detectable event, meaning the next telephone call

Hbgnros2

Heintz - cross

1 or a text on the Buckson phone wasn't until October 2, 2009?

2 A. That is correct.

3 Q. Would I be correct in saying that on September 27, there
4 are no calls between the Rodney Johnson phones and the Lowell
5 Fletcher phones?

6 A. On the 27th between the Rodney Johnson and the Lowell
7 Fletcher?

8 Q. Right.

9 A. I don't believe there are any calls between Johnson and
10 Fletcher.

11 Q. And there are no text messages either?

12 A. No, sir.

13 Q. Would I also be correct in saying that on September 27,
14 2009, there is no evidence that the Leslie Pretty phone, which
15 is the Rodney Johnson phone, had any contact with the Jason
16 Williams phone?

17 A. I would have to check the records here.

18 Q. Would you do so, sir?

19 A. Sure. What was the date again, sir?

20 Q. September 27, 2009.

21 A. The two phones in question? I'm sorry.

22 Q. The Jason Williams phone and the Leslie Pretty phone, which
23 is the Rodney -- you've targeted as the Rodney Johnson phone.

24 A. On this chart there are no calls.

25 Q. Right. Would I also be correct in saying that there's no

Hbgnros2

Heintz - cross

1 contact between the Rodney Johnson phone and the Emily
2 Richardson phone on September 27?

3 A. Again, I would have to refer to the slide.

4 Q. Go ahead.

5 A. There's no contact between those phones.

6 Q. And the Emily Richardson phone is the Derrick Grant phone?

7 A. That is correct.

8 Q. Finally, there is no contact between the phone you
9 designated to Brian McCleod and the Leslie Pretty phone on that
10 date also, correct?

11 A. Again, can I check my records?

12 Q. Go right ahead.

13 A. That is correct.

14 Q. Would I also be correct in saying that there's no contact
15 between the Rodney Johnson phone and the Buckson phone?

16 A. For that date?

17 Q. Any date.

18 THE COURT: He can't answer as to any date because he
19 looked at records only for a finite period of time.

20 Q. In the time period that you investigated.

21 A. Again, I would have to check all the dates on this chart.

22 THE COURT: Anything else, Mr. Touger?

23 Oh, you're waiting on the witness?

24 MR. TOUGER: I'm waiting for the answer.

25 THE COURT: Yes.

Hbgnros2

Heintz - cross

- 1 A. For the calls on this chart, no, sir.
- 2 Q. Would I be also correct in saying that there is no contact
3 between the Leslie Pretty phone -- excuse me, between the
4 Buckson phone and the Emily Richardson phone?
- 5 A. Again, on this chart?
- 6 Q. Yes.
- 7 A. Sure. For the calls on this chart, no.
- 8 Q. Finally, referring to the Stewart phone and the Buckson
9 phone, I believe you testified that there were in the entire
10 part of your investigation -- that three-month period, right?
- 11 A. That is the time frame for the records.
- 12 Q. Right. There were 367 phone -- excuse me, communications
13 between the Stewart phone and the Buckson phone.
- 14 A. That is correct.
- 15 Q. And the vast majority of -- 360 of those were text
16 messages, correct?
- 17 A. I believe most of them, with the exception of about 11.
- 18 Q. Would I also be correct that of the 11 phone calls, seven
19 or eight of them had zero length in time?
- 20 A. The zero for AT&T Wireless means, if you look at the actual
21 calls, you go further over in the call detail records, there is
22 a designation that says M2M. That means mobile to mobile. As
23 I testified yesterday, the phone companies keep track of
24 records for billing purposes --
- 25 Q. Right.

Hbgnros2

Heintz - cross

1 A. -- so that people don't go over their minutes.

2 AT&T Wireless phones that talk to each other are not
3 billable calls. They don't care how long an AT&T Wireless
4 phone talks to another AT&T Wireless phone because they don't
5 bill the customer.

6 In this particular case the Stewart phone and the
7 Buckson phone are two AT&T phones, so those are actual phone
8 calls, because M2M means there is a phone call that's
9 connected, a voice call, but they do not document the seconds
10 or the minutes because they don't care about the billing.

11 Q. Thank you for anticipating my next question.

12 My final question in that area is you have no idea how
13 long those phone calls lasted?

14 A. That I do not.

15 Q. It could have lasted second; it could have lasted 20
16 minutes?

17 A. It lasted enough for AT&T to determine that it was a voice
18 call that was connected.

19 Q. That is it? That is all you know?

20 A. Yes, sir.

21 Q. Are some durations of seven or eight seconds, though, of
22 phone calls between those two phone numbers, correct?

23 A. Again, for those calls where there's durations, you will
24 see an M2M and there will be a DIR or a VMB. VMB means it was
25 sent to voicemail. So it will document that short duration for

Hbgnros2

Heintz - redirect

1 that handoff to the voice mail platform. If it says M2M DIR
2 that means that the phone was on and the person didn't accept
3 the call.

4 Q. Again, thank you for anticipating my next question.

5 The final question is, the three phone calls that had
6 seven or eight seconds, from your expert opinion two people did
7 not talk to each other?

8 A. Correct. Based upon the information given for those
9 particular calls.

10 Q. Right. So the only calls where two people could possibly
11 have spoken to each other were those seven or eight of the zero
12 duration?

13 A. That is correct.

14 MR. TOUGER: Nothing further, your Honor.

15 THE COURT: All right.

16 Is there redirect?

17 REDIRECT EXAMINATION

18 BY MR. JOHNSON-SKINNER:

19 Q. He was asking about those seven or eight calls.

20 Were there also text messages between the Stewart
21 phone and the Buckson phone.

22 A. There are over 349, I believe.

23 MR. TOUGER: No further questions.

24 THE COURT: I just want to clarify something in my own
25 mind, please.

Hbgnros2

Heintz - redirect

1 The time period during which you looked at calls began
2 with August 19 and ended with October 3, is that correct?

3 THE WITNESS: Depending on the phone. There were
4 various phones and different dates.

5 THE COURT: I see.

6 Were there any that were earlier than August 19 that
7 you looked at?

8 THE WITNESS: That I looked at, no.

9 MR. TOUGER: Your Honor --

10 MR. JOHNSON-SKINNER: Could I ask a clarifying
11 question about that?

12 THE COURT: You will get your chance.

13 Sit down, please.

14 THE WITNESS: That I looked at during the whole course
15 of the investigation?

16 THE COURT: I'm sorry.

17 Had you finished your answer?

18 THE WITNESS: I was trying to clarify your question.

19 THE COURT: All right.

20 THE WITNESS: You are talking about the whole course
21 of the investigation?

22 THE COURT: Let's take it one step at a time.

23 Government Exhibit 502, the call chart, starts with a
24 call on August 19 and ends with a call on October 3.

25 Is that the universe from a time period point of view

Hbgnros2

Heintz - redirect

1 that you looked at with respect to those phones that you have
2 talked about here this morning?

3 THE WITNESS: The phones that I spoke about this
4 morning, that was the time frame, yes.

5 THE COURT: So, just to pick two names at random off
6 this, if there was a call from the McCleod phone 1 to the
7 Williams phone on August 14, 2009, you don't know. It is not
8 on the chart, it is not within the time period you looked at
9 for those phones, is that accurate?

10 THE WITNESS: Yes.

11 This chart was prepared by the prosecutor's office on
12 the dates that they were interested in.

13 Again, without having the records in front of me, I
14 looked at calls from early in the summer of 2009 on some
15 phones, some phones, different dates.

16 THE COURT: All right.

17 Do counsel want to inquire further?

18 MR. JOHNSON-SKINNER: Just to clarify one thing.

19 REDIRECT EXAMINATION

20 BY MR. JOHNSON-SKINNER:

21 Q. You said that chart Government Exhibit 502 was prepared by
22 the government, you said?

23 A. Yes, sir.

24 Q. Did you review that chart against the phone records to make
25 sure it was all accurate?

Hbgnros2

Heintz - redirect

1 A. Yes, sir.

2 Q. And that chart reflects phone calls between phones relevant
3 in this case for a certain time period, right?

4 A. That's correct.

5 Q. But, for example, did you look at other phone records, for
6 example, to look at the main cell site area for certain phones
7 that were outside that time period?

8 A. During this investigation, there were phones that were
9 developed as the investigation went along. So there were
10 different timeframes that we received records from some of --
11 because some of the accounts might not have been established at
12 the same time as the other one. They might have been
13 established earlier or later, so there is a general time frame.
14 So, some of them might have been before and some of them might
15 have been afterwards, depending upon the time frame that the
16 records were requested.

17 Q. For example, if we look at page 1 of Government Exhibit
18 510 --

19 MR. JOHNSON-SKINNER: Could you zoom in on that again.

20 Q. For example, to look at the main cell site area for this
21 Buckson phone, you looked at records back through at least May
22 2009, right?

23 A. That is correct.

24 MR. JOHNSON-SKINNER: OK. That's it.

25 MR. TOUGER: That is what I wanted to verify.

Hbgnros2

Heintz - redirect

1 THE COURT: Just hold on a minute, Mr. Touger.

2 MR. TOUGER: Sure.

3 THE COURT: The other question that I neglected to ask
4 you but that was in my mind was this:

5 You were asked at least some questions, and I think it
6 was in the context of whether two particular phones in the time
7 period you looked at were in the vicinity of Central Park.

8 Do you remember that?

9 THE WITNESS: Yes.

10 THE COURT: Is my understanding correct that you could
11 have determined from the records that a phone was in the
12 vicinity of Central Park on whatever the time period in
13 question was if and only if that phone made a call from that
14 location or was called at while it was at that location, is
15 that right?

16 THE WITNESS: That is correct. I can only tell when
17 there was a communication with that phone and that phone was
18 talking to the strongest cell tower.

19 THE COURT: So, does it follow that even if two people
20 with two different phones, each one with a separate phone, that
21 were phones of interest here were standing in Central Park
22 talking to each other even for a protracted period of time,
23 that would have shown up on the phone billing records only if
24 there was a telephone call connected to both phones while they
25 were in the same place, not one call, but a call to each of

Hbgnros2

Heintz - redirect

1 them, or by each of them?

2 THE WITNESS: Correct.

3 For instance, some of these calls -- I mean, when you
4 look at them, when you are looking at two phones, you have
5 records of both phones. Sometimes you will see on a case when
6 you are looking at an outgoing call from one phone, you will
7 see that it won't show as an inbound on the other.

8 That could be simply that the person started to dial
9 and stopped the phone call. And the originating carrier is
10 going to capture that initial call. However, if it didn't go
11 through the network, the terminating number will not capture on
12 the billing records.

13 THE COURT: But just to draw a box around it and let
14 the lawyers ask whatever they want, if person A has cell phone
15 A and person B has cell phone B, and the two of them are
16 standing in Central Park together --

17 THE WITNESS: Yes.

18 THE COURT: -- from the phone records, you couldn't
19 tell that either phone was in Central Park or that vicinity
20 during that period of time unless that particular phone A made
21 or received a call, and you couldn't tell that they were both
22 there at that time unless both of them made and received calls
23 while they were there together?

24 Is that right?

25 THE WITNESS: Correct. Both phones would have to have

Hbgnros2

Heintz - recross

1 been on some type of communication with the network, whether it
2 be a voice call a text call or a data session.

3 THE COURT: Thank you.

4 Mr. Skinner, anything?

5 MR. JOHNSON-SKINNER: Nothing from me.

6 THE COURT: Mr. Touger?

7 MR. TOUGER: Very briefly.

8 RE CROSS EXAMINATION

9 BY MR. TOUGER:

10 Q. I just want to clarify.

11 You looked at the Buckson phone from May 5, 2009,
12 through August 22, 2009 also, right?

13 A. I think it was September 25.

14 Q. Right. But I am saying from May 5. You started looking at
15 the Buckson phone from May 5, 2009?

16 A. Correct.

17 Q. Not on August 5?

18 A. May 5.

19 Q. The 70 -- I think you said 79 phone calls were from May 5,
20 2009, to your ending date?

21 A. Phone calls, correct.

22 Q. Yes. Along with what the judge was just asking you about,
23 when you were testifying about the different phones, when you
24 testified about Mr. McCleod's phone going to the area of the
25 Mobay Restaurant and the area of Houston's Restaurant, there

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Heintz - recross

1 were text messages during those meetings prior to that or phone
2 calls prior to that between the McCleod phone and the Theresa
3 Buckson phone, correct?

4 MR. JOHNSON-SKINNER: Objection to form.

5 THE COURT: Rephrase it, please.

6 BY MR. TOUGER:

7 Q. You were asked to look at certain locations the Mobay
8 Restaurant location.

9 Do you remember that?

10 A. Yes, sir.

11 Q. And the Houston's Restaurant location.

12 Do you remember that?

13 A. Yes, sir.

14 Q. And you were asked to look at those locations on a specific
15 date.

16 Do you remember that?

17 A. Yes.

18 Q. And you were asked to look at the Buckson phone and the
19 McCleod phone communicating with each other on those dates,
20 correct?

21 MR. JOHNSON-SKINNER: That misstates the testimony,
22 Judge.

23 THE COURT: I will let the witness answer.

24 A. I was asked -- I was given specific --

25 Q. I will withdraw that question and ask you this question.

Hbgnros2

Heintz - recross

1 Did you find that the Buckson phone and the McCleod phone
2 communicated with each other on those dates?

3 A. Which dates, sir.

4 Q. The dates in the Mobay Restaurant and the dates of the
5 Houston restaurant location?

6 A. I would have to look at the records and the dates. If you
7 give me the two dates, sir.

8 Q. I believe -- October 1, sir, for the Mobay. And on
9 September 25 for Houston's.

10 A. You are asking the Buckson phone and which phone?

11 Q. And the McCleod phone.

12 A. On October 1?

13 Q. On October 1 and September 25.

14 THE COURT: What is the question about them?

15 MR. TOUGER: Did they communicate with each other.

16 THE COURT: On either date or on both dates?

17 MR. TOUGER: On both dates.

18 A. On 10/1 at 6:20 p.m. there is a text message between these
19 two phones.

20 Q. On September 25, is there communication?

21 A. Yes, sir.

22 MR. TOUGER: Nothing further, your Honor.

23 MR. JOHNSON-SKINNER: No questions, Judge.

24 THE COURT: OK. The witness is excused.

25 Thank you.

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Heintz - recross

1 THE WITNESS: Thank you.

2 (Witness excused)

3 THE COURT: Mr. Skinner?

4 MS. HANFT: Your Honor, at this time we have two
5 additional stipulations.

6 THE COURT: All right.

7 MS. HANFT: The first stipulation:

8 The parties agree that, if called to testify, Officer
9 James Gonzalez of the New York City Police Department would
10 testify as follows:

11 Since early 2006 Officer Gonzalez has been assigned to
12 the traffic enforcement unit in the 44th Precinct of the New
13 York City Police Department.

14 In the evening on September 26, 2009, Officer Gonzalez
15 conducted a traffic stop of a vehicle bearing New Jersey plate
16 No. WKB 675 in the vicinity of Jerome Avenue and the Cross
17 Bronx Expressway in the Bronx, New York.

18 After stopping the vehicle, Officer Gonzalez issued a
19 traffic summons to a passenger of the vehicle identified as
20 Brian McCleod for not wearing his seat belt. McCleod was
21 seated in the front passenger's seat of the vehicle. The
22 driver of the vehicle was wearing his seat belt.

23 Officer Gonzalez did not observe any firearms or other
24 weapons in the vehicle.

25 According to the traffic summons written by Officer

Hbgnros2

Heintz - recross

1 Gonzalez, the stop occurred at approximately 11:59 p.m. on
2 September 26, 2009.

3 Officer Gonzalez cannot recall whether or not anyone
4 besides McCleod and the driver were in the vehicle during the
5 traffic stop.

6 Officer Gonzalez also does not recall what, if
7 anything, was discussed with McCleod during the traffic stop.

8 It's further stipulated and agreed that this
9 stipulation as Government Exhibit 1355 is admissible in
10 evidence as a government exhibit at trial.

11 And the government offers Government Exhibit 1355.

12 THE COURT: Received.

13 (Government's Exhibit 1355 received in evidence)

14 MS. HANFT: Finally, it is agreed between the parties
15 that, if called to testify, parole officer Dennis Kilcoyne of
16 the New York State Department of Corrections and Community
17 Supervision would testify as follows:

18 Since 2006, Parole Officer Kilcoyne has been assigned
19 to the parole office located at 82 Lincoln Avenue in the Bronx,
20 New York.

21 In 2009, Parole Officer Kilcoyne supervised
22 approximately 50 to 60 individuals, known as parolees, who had
23 been released on parole by the New York State Parole Board from
24 prisons located in New York State.

25 One of the parolees whom Officer Kilcoyne supervised

Hbgnros2

Heintz - recross

1 in 2009 was an individual named Brian McCleod.

2 On August 10, 2009, Brian McCleod was released on
3 parole from a prison in New York State.

4 On August 26, 2009, Parole Officer Kilcoyne made a
5 home visit to Brian McCleod at the halfway house where McCleod
6 was living on New Lots Avenue between Jerome and Warwick
7 Streets in Brooklyn New York.

8 On September 16, 2009, Parole Officer Kilcoyne made
9 another home visit to Brian McCleod at the halfway house on New
10 Lots Avenue.

11 On October 2, 2009, Brian McCleod made a parole office
12 visit to Parole Officer Kilcoyne at the parole office at 82
13 Lincoln Avenue in the Bronx, New York.

14 At this office visit McCleod was given permission to
15 travel to Maryland so that he could have his parole supervision
16 transferred to Maryland.

17 This office visit on October 2, 2009 was McCleod's
18 only parole office visit at 82 Lincoln Avenue after September
19 27, 2009, and it was the last time Parole Officer Kilcoyne met
20 with McCleod.

21 Following Brian McCleod's October 2, 2009, office
22 visit at 82 Lincoln his parole supervision was transferred to
23 Maryland.

24 It is further stipulated and agreed that this
25 stipulation as Government Exhibit 1365 is admissible in

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Heintz - recross

1 evidence as a Government Exhibit at trial.

2 The government offers Government Exhibit 1365, as well
3 as Government Exhibit 54, which was previously offered subject
4 to connection, your Honor.

5 THE COURT: That was the photograph of Dr. Buckson?

6 MS. HANFT: Correct.

7 THE COURT: Received. Both.

8 (Government's Exhibits 54 and 1365 received in
9 evidence)

10 THE COURT: OK.

11 MS. HANFT: One moment, your Honor.

12 At this time the government rests.

13 THE COURT: All right. Thank you.

14 Members of the jury, I am going to have you take a
15 break for what I think will be a very short period. Go back
16 into the jury room, please.

17 (Jury not present)

18 THE COURT: Please be seated, folks.

19 Let's hold the motion for a minute.

20 Is there going to be a defense case?

21 MR. TOUGER: No, your Honor. The defense will not --

22 THE COURT: I can't understand whatever came after
23 "No, your Honor."

24 MR. TOUGER: No, your Honor. The defense will not be
25 presenting any evidence.

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Heintz - recross

1 THE COURT: All right.

2 Mr. Rosemond, I remind you of our conversation at the
3 beginning of the trial. You have the right to testify if you
4 wish to do so, regardless of whether Mr. Touger agrees with
5 such a decision. You have the right to his advice about
6 whether you should testify. He's obliged to have given it to
7 you.

8 Without telling me what he said, have you been advised
9 by Mr. Touger with respect to his views on whether you should
10 testify?

11 It is a yes-or-no question.

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Do you have any need for any
14 further discussion with him on that subject?

15 THE DEFENDANT: Not at all.

16 THE COURT: OK.

17 Understanding that the decision is yours alone to
18 make, do you wish to testify in this case in your defense?

19 THE DEFENDANT: No, I don't.

20 THE COURT: All right. I'm going to bring the jury
21 back. I will reserve the defense motion until after they
22 leave. No sense holding them. Then I will hear any motion
23 that the defense would like to make.

24 Bring the jury back, please.

25 (Jury present)

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Heintz - recross

1 THE COURT: OK.

2 Mr. Touger, does the defense wish to present any
3 evidence?

4 MR. TOUGER: The defense rests, your Honor.

5 THE COURT: Thank you.

6 Members of the jury, that concludes the presentation
7 of evidence in this case. You are now off until 9:30, Tuesday
8 November 28. I remind you that you are not to discuss this
9 case with anybody, not among yourselves, not over the
10 Thanksgiving turkey, not at all.

11 I'm sure all your relatives are going to want to know
12 where you have been for the last two weeks and what's going on
13 and all of that. You've got to resist the temptation.

14 When you come back on the 28th you will hear closing
15 arguments, and, depending on how long they take, you will
16 probably receive my instructions and hopefully get the case to
17 decide in the afternoon sometime on November 28. And if it
18 takes longer, it takes longer.

19 Oh, yes. Andy is reminding me, quite properly, to
20 remind you don't look at any press reports. Don't look at
21 anything on the internet. You heard all those instructions
22 before. They still apply. They apply to all of you.

23 I know that somebody has a travel commitment, I think
24 it's Alternate No. 4, at the end of the week of November 27. I
25 wouldn't worry too much about it at the moment. Beyond that I

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Heintz - recross

1 can't say.

2 OK. I hope you all have a great Thanksgiving. Enjoy
3 the holiday, eat plenty of good turkey, and have a good time.

4 (Jury not present)

5 THE COURT: Mr. Touger?

6 MR. TOUGER: Mr. Edelstein will be taking care of the
7 motions, your Honor.

8 MR. EDELSTEIN: Your Honor, at this time --

9 THE COURT: Go to the lectern, please.

10 MR. EDELSTEIN: Ah.

11 Your Honor, at this time, the defendant moves for a
12 judgment of acquittal under Rule 29 on the basis that the
13 government has not presented sufficient evidence of intent to
14 commit a murder for hire to go to the jury.

15 Briefly, your Honor, the government presented evidence
16 of a years-long feud between these two teams, the Czar team and
17 G-Unit, in which many, many shooting incidents occurred. Both
18 sides were shooting up cars, houses. They were shooting at
19 people.

20 There has been evidence of well over a hundred bullets
21 fired. And, according to the government's witnesses, none of
22 these bullets were fired with intent to kill. There is a
23 custom and practice among these teams that the government
24 proved of committing nonfatal shootings.

25 So, as to any given shooting, unless there's something

Hbgnros2

Heintz - recross

1 that sets it apart, there is a built-in reasonable doubt of
2 whether there was any intent to kill.

3 THE COURT: Let me ask you a question.

4 Is there any evidence that any of the prior shootings
5 was in retaliation for a personal assault on a minor family
6 member of somebody on either side?

7 MR. EDELSTEIN: Well, Judge, there was evidence of a
8 number of incidents that occurred after the assault, including
9 house shootings and an attempted assault on Chris Lighty or a
10 relative of his, which occurred after the --

11 THE COURT: So I deduce from your answer, since Chris
12 Lighty was an adult who ran G-Unit and a house is not a minor
13 child of one of the protagonists, that the answer is no?

14 MR. EDELSTEIN: Your Honor, what --

15 THE COURT: Is the answer no?

16 MR. EDELSTEIN: I believe the question was whether any
17 of these actions were taken in retaliation for an assault of a
18 minor child. Is that correct, Judge?

19 THE COURT: Yes.

20 MR. EDELSTEIN: I would submit that the answer is yes,
21 because various incidents were committed by people associated
22 with Czar subsequent in time to the assault on James Rosemond,
23 Jr., and could therefore be taken as being in retaliation for
24 that, even if those actions were directed at adults or at
25 houses.

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Heintz - recross

1 THE COURT: OK. I see. In other words, in your
2 parlance, a house is a minor child?

3 MR. EDELSTEIN: No, that a shooting of a house that is
4 done after a minor child is assaulted could be retaliation.

5 THE COURT: Yes, of course.

6 MR. EDELSTEIN: For the assault on the minor child.

7 THE COURT: I am having the same problem here I had
8 the other day. I ask a question and you answer a question that
9 I didn't ask. You just turned the question around to say what
10 you want to say. That's fine. But as a matter of advocacy it
11 doesn't get you anywhere at all, because I'm telling you what's
12 on my mind giving you an opportunity to address it, and you
13 don't want to do it.

14 MR. EDELSTEIN: Your Honor, if you clarify the
15 question.

16 THE COURT: Yes, sir.

17 MR. EDELSTEIN: Because I understood the question to
18 be --

19 THE COURT: Yes, sir.

20 MR. EDELSTEIN: OK.

21 THE COURT: The assertion here is that Fletcher and
22 G-Unit attacked, slapped, roughed up Rosemond's 14-year-old
23 kid.

24 MR. EDELSTEIN: Yes.

25 THE COURT: You had said that there was this long

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Heintz - recross

1 history of nonfatal shootings earlier, and I think your words
2 were unless there's something to set this one apart there is
3 built-in reasonable doubt. Your words pretty much verbatim,
4 not exactly, but pretty much, right?

5 MR. EDELSTEIN: Yes, Judge.

6 THE COURT: I put to you that there is evidence that
7 sets this one apart. What sets this one apart is that this was
8 a personal assault on Rosemond's 14-year-old son, and I'm
9 asking you if there's any evidence of a personal assault on
10 anybody else's 14-year-old or comparable aged child that was
11 followed by a nonfatal shooting or something of that nature?

12 MR. EDELSTEIN: OK. No. The answer to that is no.

13 THE COURT: OK.

14 MR. EDELSTEIN: There were no other children who were
15 assaulted.

16 THE COURT: Thank you for answering the question.

17 Let's go on from there.

18 MR. EDELSTEIN: However, what I would point out is
19 that after James Rosemond, Jr., was assaulted, the pattern of
20 nonfatal shootings did continue. There were nonfatal shootings
21 subsequent to that date. So I would submit that that doesn't
22 set this shooting of Lowell Fletcher apart.

23 Because the shooting of Lowell Fletcher was not the
24 only shooting that occurred after the June 2007 assault, and
25 all of the other shootings that occurred after the 2007 assault

Hbgnros2

Heintz - recross

1 were nonfatal and were not intended to be fatal. So that is
2 not the *ma nishtanah*, Judge. That's not how this shooting is
3 different from all other shootings.

4 What we have here, and I would also point out, just
5 going through the evidence that the government has presented at
6 the trial and going through, you know, briefly the points that
7 the government has emphasized in their cross, I don't think
8 that any of that suffices to set the shooting apart enough to
9 prove an intent to kill.

10 To start with, the shooting is conducted with a .22,
11 you know, the so-called quiet, a .22 pistol with a silencer.
12 There is evidence from Mohammed Stewart that James Rosemond
13 said he didn't like that .22 because it's too small to do
14 anything unless you shoot a guy in the head.

15 Here the actual shooting was not conducted in the
16 head. It wasn't conducted at a pointblank range. Lowell
17 Fletcher was shot from 15 feet away, according to the medical
18 examiner and according to the witness who observed.

19 THE COURT: Through the heart and it killed him.

20 MR. EDELSTEIN: Yes. There were five shots, one of
21 which was fatal, and that one was a lucky shot because it
22 clipped the aorta. A shot fired with an intent to kill would
23 be a shot, you know, with this pistol.

24 According to Mr. Stewart's testimony, he said, you
25 know, that this defendant didn't like this pistol because this

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Heintz - recross

1 pistol won't kill anyone unless you shoot him from close up,
2 shoot him in the head.

3 THE COURT: Believe me, I think there's plenty of
4 evidence here and common sense to suggest that although a .22
5 pistol may not be the weapon of choice for killing a person at
6 a distance, it is more than adequate to the task, as proved in
7 this case.

8 I don't see why hitting somebody in the heart is any
9 more of a lucky shot than hitting him in the head. It all
10 depends on where you aim and whether you are a good shot.

11 MR. EDELSTEIN: Judge, there was evidence that this
12 defendant had other guns including much heavier .45s, had a
13 machine gun. What we are looking at is not whether a .22 is
14 capable --

15 THE COURT: But the evidence of the planning. To have
16 the victim brought to the scene, obviously at close distance.
17 The plan, according to the evidence which the jury could
18 believe, was to have Derrick Grant step out of the dark recess
19 on Mt. Eden Avenue as the guy walked by. That was the plan.

20 MR. EDELSTEIN: OK. Speaking in the area of planning,
21 Judge, the government has emphasized, well, this is a carefully
22 planned attack, there was a backup team.

23 Now, there are a couple of responses I would have to
24 that.

25 First of all, there was planning on many of the other

Hbgnros2

Heintz - recross

1 shootings as well. There was evidence that this defendant had
2 a whole intelligence network going in terms of people feeding
3 him information on where G-Unit people were, where their houses
4 were, where they were doing video shoots. He went out
5 surveille,d the scenes to find their cars, to find locations
6 where they were doing a shoot.

7 There was evidence of a number of other incidents in
8 which there were multiple people, such as the shooting on 126th
9 and Madison in which there was this defendant, there was Khalil
10 Abdullah, and Khalil Abdullah called two other guys, so there
11 were four.

12 There was the whole setup with the shooting of Tony
13 Yayo's mother's house, where we have one guy driving and
14 another guy shooting from a truck, which shows evidence -- you
15 know, indication that this was planned in advance and set up in
16 advance.

17 So the fact that they are doing planning, getting
18 information and setting this thing up, does not set this apart
19 from the other shootings.

20 The government is going to argue also that Rodney
21 Johnson was the backup man. Well, we just saw in the phone
22 records that there's no evidence in the few days prior to the
23 shooting or the day of that Rodney Johnson's phones are
24 communicating with Mr. Rosemond's phone or with Jason Williams
25 or with Derrick Grant.

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Heintz - recross

1 There's a call to Brian McCleod, but that is
2 afterwards. That's after it's complete.

3 He's in the vicinity, but there is no testimony from
4 anyone as to what he's doing there or what he's there for.

5 THE COURT: My recollection of the testimony is that
6 he and another person were sitting in a car somewhere near the
7 corner of Mt. Eden and Jerome, right?

8 MR. EDELSTEIN: They were, yes.

9 THE COURT: Late at night.

10 MR. EDELSTEIN: And there's no evidence that they were
11 armed at that time, I mean although there's evidence that he
12 had a gun later on at his apartment. There is no evidence of
13 any communication between him and either Mr. Rosemond or any of
14 the other alleged coconspirators that would explain what he's
15 doing there or that he's there to do anything more than
16 observe. So I would submit that this isn't something that the
17 jury can find sets this apart to make an intent to kill.

18 Judge, there's also evidence concerning words that
19 were used. "Hit him so fast and so hard."

20 Judge, earlier in that very same conversation that was
21 testified to by Brian McCleod, there's evidence that
22 Mr. Rosemond used the word "hit" to refer to all of the
23 nonfatal Violator shootings that had taken place between these
24 groups over the years.

25 So if a code if "hit" is a code that is understood by

Hbgnros2

Heintz - recross

1 the parties in the vernacular, then we, you know, have the key
2 to the code. We've got the Rosetta Stone in that earlier
3 element of the same conversation where "hit" means shoot
4 without intent to kill.

5 THE COURT: Did any witness testify that there was an
6 established meaning of the word "hit" and it meant nonfatal
7 shooting?

8 MR. EDELSTEIN: Well, there was no testimony either
9 way as to the established meaning of the word "hit." But
10 certainly.

11 THE COURT: Ergo it is a perfectly rational argument
12 that the jury can accept or not that the word is sufficient to
13 cover both fatal and nonfatal.

14 MR. EDELSTEIN: Well, without evidence that the word
15 "hit" had ever been used in the past by this defendant or by
16 any of these people for a nonfatal shooting, and the only
17 evidence concerning the word "hit" is that it was used for a
18 nonfatal shooting, then I would submit that, no, the jury could
19 not draw any conclusions that "hit" means kill.

20 And then let's go to Khalil Abdullah --

21 THE COURT: Maybe it didn't. Maybe it meant attack.
22 Who knows?

23 MR. EDELSTEIN: Well, if it meant attack, then this
24 defendant has to be acquitted going.

25 Very briefly, Judge, finally, the fact that the

Hbgnros2

Heintz - recross

1 defendant paid for it, there is evidence that he paid for other
2 things that he did not authorize, specifically the Violator
3 shootings, where in fact he was upset with Mohammed Stewart for
4 doing it, but nevertheless paid a considerable amount.

5 When we are talking about the amounts that are paid
6 here, there's evidence that he paid Rodney Johnson -- not
7 Rodney Johnson, Brian McCleod a kilogram of cocaine, with a
8 street value in the 30s, but which cost him \$21,000, split
9 three ways, and he had previously paid \$12,000 to shoot up a
10 house, he paid \$50,000 to Brian McCleod for cleaning up the
11 alleged stash house.

12 So, again, this is not an amount of money or the fact
13 of payment, none of that inexorably points to kill. So,
14 Judge --

15 THE COURT: Let me ask you another question.

16 There is evidence that would permit the jury to
17 conclude, is there not, that by the time Rosemond pays the
18 money two things are true: A, he knows Fletcher is dead; and,
19 B, that's what he's paying for at that point. Whatever he knew
20 before, the jury could conclude that, right?

21 MR. EDELSTEIN: A jury could conclude that, yes.

22 THE COURT: OK. Why isn't that alone enough?

23 MR. EDELSTEIN: Because the government has to show
24 that the intent existed prior to Lowell Fletcher's death.

25 THE COURT: I put to you the following hypothetical.

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Heintz - recross

1 Maybe it's hypothetical, maybe it isn't.

2 Rosemond's hands were, vis-a-vis a specific intent to
3 murder, clean at the end of the hit him as hard as whatever,
4 hard-and-fast conversation. That's not what he meant. He
5 meant nonfatal shooting. Let's just assume that.

6 If the jury accepts the testimony of McCleod that
7 McCleod at any rate thought what he had in his mind was kill,
8 misunderstanding, let's just suppose. He has the conversation
9 with Grant. By the time he finishes his conversation with
10 Grant, there is clearly an understanding, or at least the jury
11 could find an understanding between Grant and McCleod that they
12 are going to kill Fletcher in the belief that the \$30,000 that
13 Rosemond has promised is for the "hit".

14 There is now a conspiracy. At some point Jason
15 Williams becomes a part of the conspiracy.

16 There's a conspiracy. As charged in Count One, it is
17 a conspiracy to travel or use a facility of interstate commerce
18 with the intent that a murder be committed in consideration for
19 the receipt of and/or a promise to pay something of value.

20 The jury could find that as among those two or three
21 people, couldn't they?

22 MR. EDELSTEIN: Correct, Judge.

23 THE COURT: All right.

24 Now, the deed is done. Along comes Rosemond.

25 McCleod says, How about the money?

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Heintz - recross

1 Rosemond, knowing that Fletcher is dead, pays him the
2 money for what they did, which was to murder.

3 Now, doesn't he at that point, putting aside
4 everything else for the sake of argument, become a member of
5 the conspiracy to commit a murder for hire?

6 MR. EDELSTEIN: Judge, would I submit not, because at
7 that point the murder has already been committed.

8 Any conspiracy between these other three individuals
9 has achieved its goal. Lowell Fletcher is dead, you can't join
10 the conspiracy that has --

11 THE COURT: Well, but the goal, you see, arguably is
12 not just the murder. Indeed, it doesn't even require the
13 murder. It is a conspiracy to violate the murder-for-hire
14 statute, which does not require the killing to occur. It
15 requires doing certain things with the intent that somebody be
16 killed, and those things are, to put it into the terms of the
17 evidence of this case, use a cell phone and an exchange of
18 value for the killing or a promise of value for the killing.

19 MR. EDELSTEIN: Judge, I would submit that the
20 murder-for-hire statute does not prohibit payment for killings
21 that have already been committed.

22 THE COURT: Got some cases?

23 Do you have any law for me on that?

24 MR. EDELSTEIN: Not at the moment, Judge. I would be
25 happy to elaborate on this at the charge conference.

Hbgnros2

Heintz - recross

1 THE COURT: Look, let's just put that to one side for
2 the moment, because it's not indispensable to deciding this
3 motion, but it's something that everybody ought to think about,
4 because I have been thinking about it.

5 I am even not sure that it affects the charge, but
6 it's worth thinking about.

7 Anything else?

8 MR. EDELSTEIN: No, Judge. I would just argue that on
9 those grounds and on all other grounds conceivable the Court
10 should enter a judgment of acquittal.

11 THE COURT: Thank you.

12 Does the government have anything to say?

13 Mr. Enzer?

14 MR. ENZER: Your Honor, I think the defense argument
15 simply proves why this case should be submitted to the jury for
16 them to decide these issues. The argument the defense made is
17 really not an argument that we don't have enough to go to the
18 jury. It's just a presentation. It illustrates that there are
19 questions of fact the jury can decide.

20 Let me briefly summarize why we think if you accept
21 the evidence, as the Court must give every favorable inference
22 to the government at this point, let me summarize what I think
23 our affirmative story is on why we've proven intent enough for
24 it to go to the jury.

25 Then I will try to address some of the points that the

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Heintz - recross

1 defense has made.

2 First, you have Rosemond's statements of intent, his
3 statement to Khalil Abdullah in late August 2009 or early
4 September 2009 at a barbershop.

5 Rosemond says to Abdullah, My man Slim, my friend Slim
6 is going to line Lowell Fletcher up, because these dudes ain't
7 going to be happy until they go to a funeral.

8 That statement we think demonstrates that the intent
9 here was to kill Fletcher.

10 We have Rosemond's statement to Mohammed Stewart in a
11 discussion about how the feud with G-Unit would end. I believe
12 the substance of it was, This isn't going to end until they're
13 carrying a coffin.

14 You have Rosemond's statement during his meeting with
15 McCleod when he makes the \$30,000 offer: I have \$30,000 for
16 anyone to bring him to me, because I'm going to hit him so fast
17 and so hard he's not going to know what hit him.

18 The jury is entitled we are entitled to argue to the
19 jury and the jury can infer based on the evidence, based on the
20 statement, the actions that follow, the payment, etc., the
21 planning, that what that meant was I want him to be killed.

22 And you have Rosemond's statement after the fact when
23 he meets with McCleod around Thanksgiving of 2009. He says,
24 this is deja vu all over again, this is what happens when you
25 take a soul.

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Heintz - recross

1 THE COURT: This is what happens?

2 MR. ENZER: This is what happens when you take a soul.
3 This is deja vu all over again. This is what happens when you
4 take a soul.

5 A statement, obviously it's after the murder, but it
6 is a window into what Rosemond's state of mind was, what he
7 thought he was doing. He thought this entire time what he was
8 doing was taking a soul.

9 You have the planning, the actions that the defendant
10 took. He has a meeting with McCleod where he learns that
11 McCleod has a line on Fletcher.

12 He has another meeting with McCleod. This is the
13 meeting at Whole Foods. He begins the meeting by questioning
14 McCleod about, How reliable is this line?

15 He wants to know is this a reliable guy. Can I get
16 Fletcher to where I need him to be? He makes that offer.

17 In that initial discussion, in coded language,
18 Rosemond agrees to McCleod's suggestion to recruit Derrick
19 Grant as the shooter.

20 Then you have a series of events of extensive
21 planning. Rosemond dispatching McCleod and Jason Williams to
22 check, just to put eyes on Fletcher in Queensboro on September
23 11, 2009.

24 You have Rosemond telling McCleod, Here's money. Get
25 a special phone a phone to use only to communicate with

Hbgnros2

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1 Fletcher.

2 And, by the way, are you sure you got this? Because
3 if you don't have this, I got somebody who can take care of
4 this.

5 This was McCleod's testimony.

6 McCleod gets a special phone, the Stacy King phone,
7 the phone he's using to use to lure Fletcher to the ambush and
8 shooting.

9 After that, you have a meeting at Houston's where
10 Rosemond gives McCleod an address and asks him to scout an
11 initial location as a possible spot for the event.

12 (Continued on next page)

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HBGAAROS3

1 MR. ENZER: Then Rosemond sends McCleod, Jason
2 Williams and Grant to pick a spot for the murder the day before
3 the murder. He's kept apprized of what's going on through text
4 messages on the day of the event. The team, McCleod, Jason
5 Williams and Derrick Grant go there and they carry out the deed
6 and there's a backup team. How do we know it's a backup team?
7 Khalil Abdullah testified that Rosemond during a subsequent
8 conversation at Mobay Restaurant told Abdullah that he had sent
9 Rodney Johnson to Mount Eden as a backup. And we know they
10 were there. We know Rodney Johnson was there with Shawn
11 Williams. The cell sites show Rodney Johnson was there.
12 McCleod testified that he was there. And Jason Williams
13 testified that he learned that Rodney Johnson was there after
14 the fact.

15 And we know that Rodney Johnson had a gun while he was
16 there. McCleod testified that right after the murder he saw
17 Rodney Johnson pass a gun to Shawn Williams after they broke up
18 after events that night. So there was a lead team and a backup
19 team. And there was only one way Rodney Johnson ends up there.
20 The way he ends up there, it must have been Rosemond who sent
21 him there. Rodney Johnson works for Rosemond. He is a part of
22 Rosemond's drug enterprise.

23 The defense in their argument said there were no
24 communications between Rosemond's phone and the Buckson phone
25 and Rodney Johnson. But there was testimony from several

HBGAAROS3

1 witnesses, Rosemond had multiple phones. He also had
2 Blackberries with encrypted communication. The Buckson phone
3 is not one of the encrypted phones. We would expect that
4 Rosemond had other devices to use to talk to Rodney Johnson.
5 We just didn't capture them during our investigations.

6 Then afterwards, after the deed is done Rosemond is
7 informed through coded texts, Jason Williams tells Rosemond in
8 a coded text something like, It's done. And what's significant
9 here is Jason Williams does not say in his text Lowell Fletcher
10 is dead. Lowell Fletcher has been murdered. His testimony
11 establishes he didn't say that. Nonetheless, Rosemond
12 understood he tells Jason, Get rid of that. In other words,
13 get rid of the murder weapon. If he hasn't had a phone -- at
14 this time Rosemond is in Miami. He has not had a phone -- he
15 has not had a voice phone conversation or an in-person meeting
16 to be told that Fletcher is dead and yet in this and only in
17 this incident he tells Williams to get rid of the gun. That's
18 the only shooting where Rosemond instructs anyone to get rid of
19 a weapon. And either that day or the next day, Rosemond sends
20 a message to Khalil Abdullah, The bitch is out of here.

21 How would he know that the bitch is out of here, that
22 Fletcher is dead, unless he understood going into all of this
23 planning that the goal of it was to murder Fletcher and the
24 answer is, he must have intended and known that Fletcher was
25 going to be killed and certainly there's enough evidence for

HBGAAROS3

1 that question to go to the jury.

2 And planning here is dramatically different from the
3 planning of the other violent acts of that the Court heard
4 testimony about. Yes, there are other shootings and violent
5 acts. But none of them involve the extensive planning involved
6 in this incident or the number of participants or the size of
7 the payment for it. All of them pale in comparison to this.

8 In addition, some of those other incidents are good
9 contracts against this one. For example, Rosemond didn't want
10 Lighty killed. So he made clear, he specifically said, Make
11 sure you don't kill the man. That was Stewart's testimony on
12 cross-examination. He never gave an instruction like that to
13 McCleod or to any of the other participants in this murder who
14 carried out the murder. He never said, Just shoot him in the
15 leg. Make sure he is not dead. Instead, he makes quite clear
16 that he wants something done to the guy and he has his driver
17 bring a .22 caliber with a silencer.

18 And then his actions afterwards there is no indication
19 that Rosemond was angry or upset that the murder had been
20 carried out. We heard testimony in situations where Rosemond
21 felt the people who worked for him had gone too far. He made
22 clear that he wasn't happy with them. For example, I believe
23 defense counsel just pointed out an example where Rosemond had
24 a conversation with Mohammed Stewart after he did a shooting
25 for The Game following the hot 97 incident. And Stewart was

HBGAAROS3

1 paid. He wasn't paid by Rosemond. That was inaccurate. He
2 was paid by The Game, not Rosemond.

3 But Rosemond talked to Stewart. He explained to him
4 he shouldn't have done that. And he made clear, You need to
5 know your value. You should not be doing things like this
6 unless you're going to get something for it. There is no
7 indication that Rosemond was angry or upset, that he thought
8 that any of the people involved in this went too far. Instead,
9 the evidence shows that after the murder he was jubilant and
10 bragged about it. He says, The bitch is out of here, to Khalil
11 Abdullah. He gets picked up at LaGuardia Airport on October 1,
12 '09. Jason Williams drives him. And the evidence shows he
13 took him to Mobay Restaurant. Rosemond met briefly there with
14 Khalil Abdullah and Teddie Coleman. And Rosemond has now been
15 given an in-person update from Jason about what happened and
16 he's bragging about it to Khalil Abdullah and that's how Khalil
17 Abdullah learned the statements that he testified about from
18 the defendant. That shows, I think, that this is what he
19 wanted. This is what he intended.

20 And then you have the payment. He provided a kilogram
21 of cocaine worth 30,000 in the street. That's the most he's
22 ever paid for any violent act. It's substantially larger than
23 the payments he provided for less serious acts. The defense
24 says that's 21,000 in costs to him. If we want to get into
25 economics, he is losing both the cost of what he paid for the

HBGAAROS3

1 cocaine and the opportunity costs of the profit he would get
2 for selling it. So I don't understand that argument.

3 But going back to the big picture here, I think the
4 real point is there is more than enough here to let this
5 question go to the jury. We take seriously the Court's
6 suggestion about whether Rosemond could have joined the
7 conspiracy at the moment he paid. I don't know the answer to
8 that. I recall the case of Frampton, Second Circuit. I'm
9 going to have to look at it after the Court's remarks. I'm not
10 sure, your Honor, that he can join the conspiracy that late. I
11 don't know one way or the other. We're going to have to look
12 at that question. We're not relying on that to put this case
13 to the jury. We're not relying on that to say that --

14 THE COURT: OK. Look, if the government's not relying
15 on it I'm going not going to put anybody to the work of doing
16 the research.

17 MR. ENZER: We're going look at it because if that
18 theory works I think it's an argument we'll want to make in
19 closing but for purposes of the decision --

20 THE COURT: So you are not disavowing it.

21 MR. ENZER: We are not disavowing it, judge. I cannot
22 tell you here as I stand here that that works under the law.
23 I'm not sure. Candidly, my thought going into this is that the
24 agreement has to be -- However, I am going to look at it.

25 THE COURT: Well, the reason I asked of this because,

HBGAAROS3

1 the reason it occurred to me to be more precise is that years
2 ago I had a conspiracy case. I believe it was a conspiracy to
3 commit mail fraud --

4 Is that right, Rachel?

5 -- called United States Benussi, B-E-N-U-S-S-I, and
6 the defendant was seeking judgment of acquittal on the theory
7 that the statute of limitations had expired. And what had
8 happened was some sort of the securities something that
9 contemplated the receipt by the defendant or a co-conspirator
10 of some warrants for security and the receipt of the warrants
11 occurred more than five years before the indictment came down.
12 But some of the warrants were then sold after the indictment,
13 less than five years before the indictment was sold. And the
14 holding in the case ultimately was that as long as deriving the
15 economic benefit of the conspiracy was within the general scope
16 of the conspiracy then what mattered is the last act that
17 derived economic benefit which was the sale of the warrants
18 which was less than five years before.

19 So that then put me in mind of the possibility here
20 that there was a conspiracy to engage in murder-for-hire that
21 did not at the beginning involve Rosemond or at least the jury
22 couldn't find beyond a reasonable doubt that it had involved
23 him at the beginning but that there came a point where he paid
24 for it. And by paying for it furthered the accomplishment of
25 the goal which was a murder-for-hire, not necessarily a murder

HBGAAROS3

1 but an agreement to do a murder in exchange for something of
2 value. That's the thought.

3 MR. ENZER: Understood, judge. And I think we are
4 going to look at it seriously but for purposes of this
5 decision, we're not relying on that.

6 THE COURT: OK. But just so Mr. Touger isn't misled,
7 I understand you to be reserving the possibility of arguing
8 that. And if you are going to do that, he is entitled to
9 advance word. And I think it would serve both your interests
10 unless you disavow it between now and the time of -- to brief
11 the issue so that I can make a most informed judgment about it
12 because I'm sure that Mr. Touger is going to object and so I'm
13 going to have to rule on that.

14 MR. ENZER: How about we brief it in advance of the
15 charge conference on Monday?

16 THE COURT: Yes. I think that's appropriate and long
17 enough in advance for me to look at it.

18 MR. ENZER: Sure.

19 THE COURT: So Saturday afternoon, OK? Exchange
20 briefs.

21 MR. ENZER: Sounds good, your Honor.

22 THE COURT: Nobody's obliged to submit a brief but if
23 you are going to do it, I want it by Saturday afternoon.

24 MR. ENZER: You got it, judge.

25 MR. TOUGER: I tend to try to keep Shabbat. Saturday

HBGAAROS3

1 afternoon is a difficult time for me. So could we have Sunday
2 morning.

3 THE COURT: Sure. So we'll make it 10:30 on Sunday.

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

5 MR. ENZER: That's fine, judge.

6 THE COURT: You'll file it on ECF AND then I can see
7 it.

8 MR. ENZER: I don't think the Court needs me to
9 respond to the arguments defense counsel has made but I can if
10 you want me to.

11 THE COURT: No. I think I've heard plenty. The
12 motion is denied. There's just an abundance of evidence which
13 if credited by the jury would establish every element on each
14 of the four counts of the indictment. It's just, I mean there
15 are obviously credibility issues all over this case but the
16 evidence if accepted by the jury is more than enough.

17 MR. TOUGER: Your Honor, just one question to clarify
18 that case, the Benussi. Am I correct that the fact that the
19 Court was saying that Benussi joined conspiracy before the
20 statute of limitations expired?

21 THE COURT: I don't want to freestyle. My
22 recollection is, yes, but don't rely on that. It's a long time
23 ago.

24 MR. TOUGER: I was just asking if that was --

25 THE COURT: The key point that I have in mind is that

HBGAAROS3

1 in a sense the payment was viewed as in furtherance of the
2 conspiracy and late enough to make the indictment timely.
3 That's the key.

4 MR. TOUGER: The key point I'm trying to make, your
5 Honor, is that that conspiracy, the individual joined the
6 conspiracy before the statute of limitations.

7 THE COURT: He may well have.

8 MR. TOUGER: So therefore --

9 THE COURT: And this question is slightly different.
10 This question more than slightly but not wildly. This question
11 is suppose, as indeed Mr. Edelstein agreed, there's sample
12 evidence that there was a conspiracy to commit murder-for-hire
13 that did not yet involve Mr. Rosemond. Did the payment with
14 knowledge of the debt and with the payment being specifically
15 for the shooting that resulted in death make him a member of
16 the conspiracy or the jury could so find anyway? That's the
17 question.

18 MR. TOUGER: I don't want to argue the facts at this
19 point, your Honor, but there's testimony from Jason Williams
20 that he didn't know there was going to be a shooting or a
21 murder.

22 THE COURT: Of course you're arguing the facts.

23 MR. TOUGER: I'm just saying the fact that you said
24 Jason Williams joined the conspiracy is disputable. And also
25 that there's actually a conspiracy at all is disputable because

HBGAAROS3

1 all three people, McCleod --

2 THE COURT: So you are taking back the concession your
3 colleague made or trying.

4 Look, Jason Williams' testimony is both here and
5 there. He testified as I remember and used the word "murder".
6 I don't remember what you're referring to you. May be right.
7 You may be wrong. It's the facts. The bottom line here is
8 that I, at least, think that there's certainly evidence
9 sufficient to conclude that at least those other guys were part
10 of the conspiracy to commit murder-for-hire and that it dates
11 back to, I think the conversation was at Whole Foods and
12 immediately thereafter.

13 OK. I thank you.

14 And we'll have the charge conference at two on Monday.
15 You can pick up the draft charge from my chambers 11 o'clock
16 Monday.

17 (Adjourned to Monday, November 20, 2017 at two p.m.)
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INDEX OF EXAMINATION

Examination of:	Page
JOHN HEINTZ	
Direct By Mr. Johnson-Skinner1205
Cross By Mr. Touger1255
Redirect By Mr. Johnson-Skinner1263
Redirect By Mr. Johnson-Skinner1265
Recross By Mr. Touger1269

GOVERNMENT EXHIBITS

Exhibit No.	Received
5101208
1370, 520 and 5211212
13731217
13551273
54 and 13651275

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HBKAAROSF

Charge Conference

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 20, 2017
2:00 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13
14 APPEARANCES

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)

24 (Charge conference; two p.m.)

25 THE COURT: Good afternoon.

HBKAAROSF

Charge Conference

1 Let's mark the draft charge court exhibit number in
2 order. What is that, Andy?

3 COURTROOM DEPUTY: "I".

4 THE COURT: And the proposed verdict form court
5 Exhibit J.

6 Have you all had the verdict form? So we'll start
7 with the charge.

8 Are there any objections from the beginning to page
9 six, line 18?

10 MS. HANFF: None for the government, your Honor.

11 MR. EDELSTEIN: Up to page six, line 18 to -- non for
12 the defendant.

13 THE COURT: Page six, line 19 through page nine line
14 18.

15 MS. HANFF: No, your Honor.

16 MR. EDELSTEIN: Yes, your Honor.

17 THE COURT: OK.

18 MR. EDELSTEIN: From the lectern or from here, judge?

19 THE COURT: Lectern, please.

20 MR. EDELSTEIN: At page seven, line 23 after the
21 sentence that ends "before or after he or she joined", based on
22 the authorities cited in the letter brief we submitted
23 yesterday, we would request additional language stating that in
24 the case of the murder-for-hire conspiracy the latest time that
25 a person can join is the time of the victim's death.

HBKAAAROSF

Charge Conference

1 THE COURT: What does the government have to say to
2 that?

3 MS. HANFF: Your Honor, it's our view that that
4 statement that counsel just made in fact overstates the law.
5 As we made clear in our letter, we are not relying on any
6 argument that the defendant here joined the conspiracy after
7 the murder by virtue of the payment. That said, we think that
8 your Honor's proposed charge fairly encompasses what I think
9 defense counsel wants to state which is simply that in this
10 case the defendant must have joined the conspiracy that has as
11 its object the murder and must have done it with the same
12 unlawful purpose in that case. And our view is that's well
13 encompassed within your Honor's instructions about having the
14 unlawful purpose of the conspiracy, joining the conspiracy with
15 the intent to accomplish the conspiracy's goal.

16 THE COURT: Well, specifically, Mr. Edelstein, what
17 are you relying on? Why does it matter in light of the fact
18 that the government's not going to argue the point?

19 MR. EDELSTEIN: The reason why we submit it matters,
20 judge, is that it was something -- this was a theory that the
21 Court developed on its own without any prompting or argument
22 from the parties. Which means that a juror or jurors might
23 develop that same theory on its own, that a juror might decide
24 that even if Mr. Rosemond was not a member of the conspiracy at
25 the time Lowell Fletcher was killed he became one when he paid

HBKAAAROSF

Charge Conference

1 for it. I would submit that if one person can think that up
2 spontaneously then so can a member of the jury.

3 THE COURT: I'm sure that every member of the jury is
4 familiar with the Venussi case and has been on the bench for 23
5 years.

6 MR. EDELSTEIN: I'm sure that there are no members of
7 the jury who have been on the bench for even 23 minutes.

8 THE COURT: Well, there was a little irony intended.

9 MR. EDELSTEIN: But, your Honor, I would submit that
10 one doesn't have to be a judge or familiar with the Venussi
11 case for that theory or something like it come up doing the
12 discussion. Especially since I'm sure that even if the
13 government doesn't make a specific argument, the payment is
14 going to be mentioned in the summations of both parties and
15 there has been evidence of it.

16 THE COURT: Well, you know the problem is that I doubt
17 that I agree with your statement that no one can join a
18 conspiracy to commit murder-for-hire after death. I don't
19 actually believe to the extent I've looked at them in light of
20 the fact that the government disavowed reliance on any such
21 theory that your cases really support your argument.

22 MR. EDELSTEIN: Well, I would submit certainly the
23 Davis case which finds that a, quote/unquote, post-murder
24 payment does not satisfy Frampton where there was no prior
25 agreement to exchange a murder for a thing of value.

HBKAAROSF

Charge Conference

1 THE COURT: No prior agreement by anyone? Are you
2 telling me that that's what the case says?

3 MR. EDELSTEIN: Well, judge, we're not talking
4 about --

5 THE COURT: Just answer my question please.

6 MR. EDELSTEIN: No. I'm not saying that is what the
7 case is.

8 THE COURT: OK. Well, that's the problem with the
9 argument. Here, the theory that I articulated the other day
10 was the possibility that there was indeed an agreement between
11 and among two or more of Slim and D and Jason Williams that
12 involved a payment. And that it was conceivable that your
13 client joined that conspiracy by making the payment with
14 knowledge that that's what it was for.

15 Now if you are telling me that your best case is Davis
16 and that Davis doesn't involve those facts, I don't see that
17 your request is supported by your cases and I seriously
18 question whether the language you want me to add is an accurate
19 statement of the law.

20 MR. EDELSTEIN: Well, your Honor, I would submit just
21 briefly that my argument doesn't relate to whether anyone can
22 join the conspiracy by making such an agreement that's related
23 to when Mr. Rosemond who is the only person on trial might join
24 that conspiracy.

25 THE COURT: So this is an argument unique to

HBKAAROSF

Charge Conference

1 Mr. Rosemond? It's not a proposition of law that would apply
2 generally? It's a proposition of law that you've made up
3 that's specific to Mr. Rosemond; is that it?

4 MR. EDELSTEIN: No, judge. What I am saying is or
5 what I am arguing is that this proposition of law applies to
6 everybody. However, Mr. Rosemond is the only one on trial.

7 THE COURT: Well --

8 MR. EDELSTEIN: And Mr. Rosemond is the only one who
9 the jury will have to make a decision as to when he joined the
10 conspiracy.

11 THE COURT: All right. I have your point. I'm not
12 going to give the language. I do not view it as an accurate
13 statement of the law and I view it as also entirely immaterial
14 in view of the fact that nobody's going to argue it.

15 Next? Anything else on that section?

16 MR. EDELSTEIN: Yes. Page nine, lines 8 to 12, Time
17 of Conspiracy. We would go that the language be added there
18 that stating that the conspiracy must have been formed and
19 existed reasonably close or was substantially similar to time
20 of the date of the indictment which the Court actually included
21 elsewhere in the charge on page 33, but we would request that
22 that charge be included in page nine as well.

23 THE COURT: What's the government's view?

24 MS. HANFF: Your Honor --

25 THE COURT: It's also not what I said at page 33 but

HBKAAROSF

Charge Conference

1 aside from that.

2 MS. HANFF: The government doesn't have any specific
3 objection to that but it seems unnecessary in light of the fact
4 that what the language is here and the language your Honor used
5 later in the charge having to do with substantial similarity.

6 THE COURT: Yes. Well, I'll tell you what. I'll use
7 the substantial similarity language here and I'll also put an
8 "S" on the end of the word "date" in line 12 which was intended
9 in the first place. So I'll repeat the sentence that starts on
10 line 13 starting at line 11 on page 9. And the line 13 that I
11 refer to is an page 33.

12 OK. Anything else on that section, Mr. Edelstein?

13 MR. EDELSTEIN: Not from the defense, judge?

14 THE COURT: All right. Page nine, line 15 through
15 page 12, line 16.

16 Government?

17 MS. HANFF: No, your Honor.

18 THE COURT: Mr. Edelstein?

19 MR. EDELSTEIN: No, your Honor.

20 THE COURT: Thank you.

21 Page 12, line 17 through page 14, line five.

22 Government?

23 MS. HANFF: Yes, your Honor. Page 13 where your Honor
24 discusses the third element "receipt for anything of value",
25 the government would request a statement that the law does not

HBKAAAROSF

Charge Conference

1 require that there be an understanding as to any precise amount
2 of money or drugs. We think that that goes without saying.
3 But in any event, there was some effort it appears by defense
4 counsel to argue somehow that any confusion about the amount of
5 money that was promised at various points may in some way
6 detract from the proof. And the government has reviewed the
7 case of U.S. v. Babylonia which is 854 F.3d 163 and that case
8 we think makes it very clear that there need not be a precise
9 agreement as to the amount of money. In fact that case is
10 related to the Davis case that defense counsel cited in their
11 letter.

12 THE COURT: Do you have a problem with that,
13 Mr. Edelstein?

14 MR. EDELSTEIN: Well, judge, we have no intention of
15 arguing that there has to be a precise agreement as to the
16 amount of money. And in that case as the government says, it
17 goes without saying, I would submit it doesn't need to be said.

18 THE COURT: All right. Line 23 will be changed to
19 read:

20 "Anything of value includes, for example, any amount
21 of money drugs or other property".

22 Anything from the defense on that section?

23 MR. EDELSTEIN: Yes. In that same instruction, page
24 13, lines 20 to 22, I would again argue that there should be
25 language stating that the mutual agreement must be formed

HBKAAROSF

Charge Conference

1 before the time of the victim's death.

2 THE COURT: Government?

3 MS. HANFF: Your Honor, for the same reason we opposed
4 previously we oppose this proposed instruction. In addition,
5 of course, the language is a mutual agreement understanding or
6 promise. To me that implies, of course, that that
7 understanding agreement or promise would have had to be reached
8 before the completion of any offense. So the government
9 submits that it's again unnecessary language and language that
10 would possibly confuse a juror.

11 THE COURT: Yes. I think it's adequately covered by
12 the instruction.

13 Page 14, line seven through page 17, line five.

14 Government?

15 MS. HANFF: No, your Honor.

16 THE COURT: Defense?

17 MR. EDELSTEIN: Yes, your Honor. On page 15 no
18 specific line but with regard to the language regarding the
19 defendant willfully and knowingly associated himself in some
20 way with the crime on the basis of the United States v.
21 Shulman, S-H-U-L-M-A-N 624 F.2d 384, 387, Second Circuit 1980,
22 I would submit that this language should state that the
23 voluntary association with the crime must take place before the
24 crime is completed on the basis of the statement in Shulman, "A
25 person cannot be found guilty of aiding and abetting a crime

HBKAAROSF

Charge Conference

1 that already has been completed."

2 THE COURT: Well, it's your same point again.

3 MR. EDELSTEIN: It is, your Honor.

4 THE COURT: Overruled.

5 Anything else on that section from either side?

6 MS. HANFF: No, your Honor.

7 THE COURT: All right. Page 17, line six. Take that
8 through page 18 line 3.

9 Government?

10 MS. HANFF: Not from the government.

11 MR. EDELSTEIN: Nothing, your Honor.

12 THE COURT: Thank you. 18 line, six through 22, line
13 15.

14 MS. HANFF: Your Honor, the government has one request
15 it deals with, page 19, line seven and it's simply a
16 clarification point. The government would request that on line
17 seven your Honor insert language that at any point during the
18 period from March 20, 2007, our concern is that perhaps the
19 language which is of course the language in the indictment but
20 indictment language is different suggests that the defendant
21 need have knowingly possessed or carried a firearm during that
22 entire period as opposed to at some point during that period?

23 THE COURT: Mr. Edelstein.

24 MR. EDELSTEIN: No objection.

25 THE COURT: Essentially, what you want is that it

HBKAAROSF

Charge Conference

1 should read "that for all or part of period from"; is that
2 right?

3 MS. HANFF: My suggestion, your Honor, was first that
4 at any point "during the period from at least on or about".

5 THE COURT: "From any point during the period", OK.
6 Anything else on that section from either side?

7 MS. HANFF: That section under where, your Honor?

8 THE COURT: Page 22 line 15.

9 MS. HANFF: Nothing else from the government.

10 MR. EDELSTEIN: Nothing else, your Honor.

11 THE COURT: Page 22, line 17 through page 25, line 17.

12 MS. HANFF: Nothing from the government.

13 MR. EDELSTEIN: Your Honor, on page 24, lines 12 to 13
14 the language stating "the conspiracy to commit murder-for-hire
15 of members of a rival music business", I'm aware that is what
16 the indictment says but I don't believe that the government
17 intends to argue that anyone other than Lowell Fletcher was the
18 object of that conspiracy. And I would submit that it would be
19 clarifying to say "Lowell Fletcher" instead of "members of a
20 rival music management business" because the jury might
21 otherwise speculate that somebody else might be the object.

22 THE COURT: Ms. Hanff?

23 MS. HANFF: Your Honor, we believe that there's
24 evidence in the record that certain other members of a rival
25 group were targets at certain points. Of course, as charged in

HBKAAROSF

Charge Conference

1 the indictment, it is our view that it's conspiracy to commit
2 murder-for-hire of a member of the rival rap music business
3 which resulted in the death of Lowell Fletcher, we would
4 certainly be fine with that but substituting the Lowell
5 Fletcher we don't think would be an accurate characterization
6 of the charge.

7 THE COURT: I think that's right.

8 MR. EDELSTEIN: We would accept that compromise.

9 THE COURT: Which compromise?

10 MR. EDELSTEIN: That Ms. Hanff suggests.

11 THE COURT: In other words, that the conspiracy that
12 murder-for-hire of members of a rival music management business
13 resulted in the death of Lowell Fletcher?

14 MR. EDELSTEIN: Yes, your Honor.

15 THE COURT: That's your language, Ms. Hanff?

16 MS. HANFF: That was a suggested compromise, your
17 Honor.

18 THE COURT: OK. I'll make that change.

19 OK. Anything else up to page 26, line 10?

20 MS. HANFF: No, your Honor.

21 MR. EDELSTEIN: No, your Honor.

22 THE COURT: Page 26, line 13 through page 31, line 15.
23 Government?

24 MS. HANFF: On page 27 this is just likely a
25 typographical error on line two and I believe it should say

HBKAAROSF

Charge Conference

1 "Section 1111".

2 THE COURT: You are absolutely correct.

3 Anything else on that section?

4 MS. HANFF: No, your Honor.

5 MR. EDELSTEIN: No, judge.

6 THE COURT: OK. Page 31, line 17 through page 32,
7 line 12.

8 MS. HANFF: Nothing from the government.

9 MR. EDELSTEIN: Nothing from the defense.

10 THE COURT: Do you want a venue instruction? Seems
11 like a waste of time.

12 MS. HANFF: Your Honor, we'd like to keep it in just
13 for the record.

14 MR. EDELSTEIN: We would waive it, your Honor.

15 MS. HANFF: OK. That's fine.

16 THE COURT: It's out.

17 Page 33 line 10, that last piece on variance and
18 dates.

19 Anything on that section, Ms. Hanff? I doubt it.

20 MS. HANFF: No, your Honor.

21 THE COURT: Mr. Edelstein?

22 MR. EDELSTEIN: No, your Honor.

23 THE COURT: OK.

24 The section on trial process is sort of longish so --
25 no, it's not. Anything on the section headed "Trial Process"?

HBKAAROSF

Charge Conference

1 MS. HANFF: On page 38, your Honor.

2 THE COURT: Mr. Edelstein?

3 MR. EDELSTEIN: Yes. On page 36, your Honor.

4 THE COURT: But we're only going to 35 now.

5 MR. EDELSTEIN: No, your Honor.

6 THE COURT: OK. Pointing 36 to 41, line six.

7 MS. HANFF: Your Honor, on page 38, line 4, the
8 government would request that instead of such interests in the
9 outcome "creates a motive", that it be replaced with such
10 interest in the outcome "may create a motive".

11 THE COURT: Mr. Edelstein, on that point?

12 MR. EDELSTEIN: I would have no objection to that.

13 THE COURT: OK. Anything else on this section?

14 MS. HANFF: No, your Honor.

15 MR. EDELSTEIN: Yes. On page 36 at the bottom we as
16 requested in the defense's pretrial requests to charge we would
17 request language from United States v. Glen 312 F.3d 58 stating
18 that if the evidence gives equal or nearly equal circumstantial
19 support to a theory of guilt and a theory of innocence, then
20 guilt is not proven beyond a reasonable doubt.

21 THE COURT: Ms. Hanff?

22 MS. HANFF: -- there is a fulsome explanation of
23 reasonable doubt in this charge and that's not necessary and
24 again potentially confusing to a juror.

25 THE COURT: Let me take a look at the case.

HBKAAROSF

Charge Conference

1 MR. EDELSTEIN: The jump cite is page 70, judge.

2 THE COURT: Thank you.

3 You said 312 F.3d 58.

4 MR. EDELSTEIN: And jump cite is page 70 U.S. v. Glen.

5 THE COURT: And you are asking that this go where,

6 Mr. Edelstein?

7 MR. EDELSTEIN: The bottom of page 36 in the

8 instruction on direct and circumstantial evidence.

9 THE COURT: It's got nothing to do with circumstantial
10 evidence. That's the first point or at least it's not uniquely
11 relevant to circumstantial evidence. What it really is is an
12 attempt to give content to the reasonable doubt standard.
13 That's what it really is.

14 Now, the real question is whether the charge on
15 reasonable doubt is adequate. And charge on reasonable doubt
16 requires proof of such a convincing character that a reasonable
17 person would not hesitate to rely and act upon it in the most
18 important of their own affairs and it instructs that if they
19 have a reasonable doubt, they're to acquit.

20 Now that's the standard charge on this subject; isn't
21 it, Mr. Edelstein?

22 MR. EDELSTEIN: It is the standard charge but I would
23 submit that this specific language from Glen would also, would
24 provide fuller context.

25 THE COURT: Well, do you have a case that says the

HBKAAROSF

Charge Conference

1 failure to give this language is error?

2 MR. EDELSTEIN: I do not, judge.

3 THE COURT: Well, I'll tell you why. We have a whole
4 week to think about it. You should proceed on the assumption
5 that I'm not going to give it but I'll think about it and if
6 you have any other law to submit that you can get in by next
7 Monday, I'll consider it.

8 MR. EDELSTEIN: Thank you, your Honor.

9 THE COURT: OK. All right. Anything else on this
10 section?

11 MS. HANFF: Not on this section, your Honor.

12 THE COURT: Mr. Edelstein.

13 MR. EDELSTEIN: No, your Honor.

14 THE COURT: Where did we leave off? I think we were
15 at page 41, right?

16 MR. EDELSTEIN: "38", judge.

17 THE COURT: I think I had asked you to consider
18 through page 41, line five or six. Anything else on this
19 section? No.

20 MR. EDELSTEIN: No, judge.

21 THE COURT: Page 41, line seven through page 45,
22 government?

23 MS. HANFF: No, your Honor.

24 MR. EDELSTEIN: No, your Honor.

25 THE COURT: OK. Page 46 to the end.

HBKAAROSF

Charge Conference

1 MS. HANFF: Nothing specific to that section, your
2 Honor, but there are two additional requests that the
3 government has. I'm not sure when your Honor wants to take
4 those up.

5 THE COURT: Take them up now.

6 MS. HANFF: In the government's proposed request to
7 charge we had a charge that read "request number 34" regarding
8 stipulations because there were quite a number of stipulations
9 in this case. The government would request that as submitted,
10 the Court give that charge. And I'm happy to read it aloud.

11 THE COURT: Well, the reason I didn't do it, of
12 course, is because I instructed them during the course of the
13 trial and I'm trying to hold this charge to a limit that would
14 permit maximum understanding but I understand your point.

15 Mr. Edelstein.

16 MR. EDELSTEIN: I don't have any objection to that
17 charge being given. I'll leave it to the Court's discretion.

18 THE COURT: All right. We'll give that.

19 MS. HANFF: And then, your Honor, so in proposed
20 request about particular investigative techniques not required,
21 there's been some suggestion again from defense counsel that
22 perhaps the government should have gotten phone records in a
23 particular case or travel records and so that standard charge
24 we believe is appropriate here.

25 THE COURT: Mr. Edelstein?

HBKAAROSF

Charge Conference

1 MR. EDELSTEIN: No objection, judge.

2 THE COURT: All right. I will in substance give those
3 two charges.

4 MS. HANFF: Thank you, your Honor.

5 THE COURT: OK. Anything else?

6 MR. EDELSTEIN: Yes. One further request from the
7 defense which is that the Court charge falsus in uno.

8 MS. HANFF: We oppose, your Honor.

9 THE COURT: Because it's not good for your case.
10 Because?

11 MS. HANFF: Your Honor's language I think makes the
12 most sense. I think it's what the majority of courts do, which
13 is to say that you can take or leave certain assertions from a
14 witness and I think that's in keeping with common sense as well
15 as with the law.

16 THE COURT: I'll give my usual falsus in uno
17 instruction. That takes care of it.

18 MR. EDELSTEIN: Nothing further from the defense,
19 judge.

20 THE COURT: OK. Now you have had the verdict sheet,
21 Court Exhibit J or any objections to it?

22 MS. HANFF: Your Honor, may I -- your Honor's ruling
23 on falsus in uno is it as it is in the charge?

24 THE COURT: As it is in the charge? I thought the
25 whole point was that I was being asked to give something that's

HBKAAAROSF

Charge Conference

1 not in the charge.

2 MS. HANFF: Correct, your Honor. I misunderstood.
3 So, your Honor is adding an additional change.

4 THE COURT: Yes. And I've given it probably a hundred
5 times in the last 23 years. I'm sure you will find it.

6 MS. HANFF: Understood, your Honor.

7 THE COURT: OK. The gist of it is that if you
8 conclude that somebody has deliberately lied to you, you can
9 reject the person's testimony entirely or take from it whatever
10 you think merits credit. And the mere fact that somebody has
11 lied on one point doesn't mean they've lied on every point.
12 That's the gist.

13 MS. HANFF: Understood.

14 Thank you, your Honor.

15 THE COURT: OK. Verdict form.

16 Government, have any problems?

17 MS. HANFF: No objections, your Honor.

18 THE COURT: Defense?

19 MR. EDELSTEIN: Yes, judge. We submit there should be
20 language stating that if the jury doesn't convict the defendant
21 of Count One it should not consider Count Three and that if it
22 does not convict the defendant of Count Two, it should not
23 consider Count Four.

24 Those are included in the Court's charge but we
25 believe they should also be in the instructions on the verdict

HBKAAROSF

Charge Conference

1 sheet.

2 THE COURT: What am I missing? Aren't they in the
3 italics right after Count Two and right after Count Three in
4 addition to being in the charge?

5 MR. EDELSTEIN: Well, no, judge. At the top of the
6 page it states "If and only if you unanimously find the
7 defendant guilty of Count Two, murder-for-hire, then answer the
8 question directly below" which is the special verdict regarding
9 resulting in the death of Lowell Fletcher and then stating "If
10 you did not unanimously find the defendant guilty of Count Two,
11 then do not answer the question below and go directly to Count
12 Three". And then it gives the jury the instruction to consider
13 Count Three without saying that it should only consider that
14 count if it has previously found the defendant guilty of Count
15 One. And then similarly it allows the jury to go to Count Four
16 after considering Count Three without telling them that they're
17 only to do that if they have previously convicted him of Count
18 Two.

19 THE COURT: I see your point.

20 MS. HANFF: Your Honor, we don't have an objection to
21 that. Again, it's in the charge.

22 THE COURT: Yes. So the specific point relates to the
23 instruction that appears right after Count Three should convey
24 that they're to answer Count Three if and only if they've
25 convicted on Count One and then a parallel point with respect

HBKAAROSF

Charge Conference

1 to Count Four.

2 MR. TOUGER: -- go before Count Three, your Honor.

3 THE COURT: Yes. OK. All right. We'll clean that
4 up.

5 OK. Anything else?

6 MS. HANFF: Your Honor, may we have one additional
7 moment?

8 (Pause)

9 MS. HANFF: Your Honor, that's it.

10 MR. TOUGER: Your Honor, totally different subject.
11 Mr. Rosemond -- and we had gone over this with Mr. Enzer on
12 Thursday -- I believe his CorrLinks account for some reason
13 there's built in three-day delay.

14 THE COURT: His what?

15 MR. TOUGER: The e-mail account that inmates have in
16 jail. It inmates are able to e-mail other individuals
17 including their lawyer. At this point there seems to be like a
18 three-day delay in his CorrLinks account. I talked today
19 Mr. Enzer and he says he has not requested it. Mr. Rosemond
20 has talked to the head of security over at the MCC. They said
21 they have no idea why this is happening, that it's not coming
22 from them.

23 I would just ask if Mr. Enzer could contact the MCC
24 and tell them he has no objection to Mr. Rosemond getting his
25 e-mails the same way every other inmate gets them.

HBKAAROSF

Charge Conference

1 MS. HANFF: Your Honor, the government is happy to
2 reach out. The government has no connection nor knowledge to
3 this delay.

4 THE COURT: OK. Current estimates on how long you'll
5 be summing up?

6 MS. HANFF: On closing, an hour and a half to two
7 hours and on rebuttal, 30 to 45 minutes, your Honor.

8 THE COURT: Mr. Touger?

9 MR. TOUGER: I'm hoping for the hour range, your
10 Honor.

11 THE COURT: OK all right.

12 MS. HANFF: Your Honor, one additional thing. As
13 we've done previously, the government intends to submit a
14 letter regarding transcript errors. We'll circulate it to
15 defense counsel right after this conference and we hope to
16 submit it to your Honor by tonight. The parties or the
17 government is just interested in making sure we know precisely
18 what transcripts we are working from as we prepare the
19 summations.

20 THE COURT: Maybe can you stipulate to it and file it
21 electronically because I'm going out of town and I won't see
22 anything until next Monday if it's not on line.

23 MS. HANFF: Understood, your Honor.

24 MR. TOUGER: Fine, your Honor.

25 THE COURT: We're OK. We are just figuring out the

HBKAAROSF

Charge Conference

1 logistics of ECF for the weekend which I think is fine.

2 OK. I wish everybody a good holiday.

3 Thank you.

4 (Adjourned to Tuesday, November 28, 2017 at 9:30 a.m.)

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Hbsnros1

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 28, 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)

Hbsnros1

1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everybody.

3 I hope everyone is filled with turkey and otherwise in
4 good form. There was an open issue or two regarding the charge
5 on which I have now made up my mind.

6 Mr. Edelstein, I am adopting in substance your request
7 for an instruction that the conspiracy in Count One could not
8 be joined after the death of the intended victim.

9 I will read it to you.

10 "In the case of a conspiracy to commit murder for hire
11 that results in death, however, the latest time at which a
12 person can join the conspiracy is the time of the victim's
13 death."

14 Satisfactory to both sides?

15 MR. JOHNSON-SKINNER: No objection, your Honor.

16 MR. EDELSTEIN: Yes, your Honor.

17 THE COURT: OK. With respect to your
18 more-probable-than-not request -- do you remember what I am
19 referring to?

20 MR. EDELSTEIN: I do, your Honor.

21 THE COURT: I am not giving it.

22 The Court of Appeals has repeatedly cautioned district
23 judges not to ad lib on the definition of reasonable doubt.
24 Among other things, in a case called *United States v. Ivic*, 700
25 F.2d 51, the Court of Appeals had this to say, "Although

Hbsnros1

1 creativity by district judges in enlightening juries is
2 generally to be encouraged, a century's experience has
3 confirmed the wisdom of the Supreme Court's observation that
4 attempts to explain the term reasonable doubt do not usually
5 result in making it any clearer to the minds of the jury.
6 Chief Judge Coffin of the First Circuit has pointedly observed
7 that appellate courts have repeatedly cautioned that attempts
8 to explain reasonable doubt seldom clarify the concept and may
9 flirt with an impermissible reduction of the prosecution's
10 burden of proof and has wisely warned against personal
11 variations and needless departures from standard formulations.
12 At worst such variations may be prejudicial to a defendant. At
13 best, they add needlessly to the work of appellate courts,
14 while being of no real benefit to the jury."

15 I would note also that the Second Circuit does not
16 require that any definition of reasonable doubt be given at
17 all.

18 So what you are getting is in substance Sand
19 Instruction 4-2, which has been repeatedly upheld, and that's
20 that.

21 OK. Now, I just want to bring to the attention of the
22 lawyers that, given where we are, you ought to be aware of some
23 matters with respect to the jury.

24 You may remember that long ago Juror No. 10 sent us a
25 note advising us that the juror needs to be at something

Hbsnros1

1 starting at 11 o'clock on November 30 and can't get out of it.

2 Now, with respect to that, one possibility is to find
3 out how much of November 30 one would lose if she remained on
4 the jury.

5 The second and comparable problem is that alternate
6 No. 4 gave us a note, which was Court Exhibit G, saying that
7 she has travel plans for November 30 through December 3.

8 Now, what I do not want to happen here if it can
9 possibly be avoided is what happened in the recent Menendez
10 trial, which is to say we wind up with a deliberating jury on
11 November 30 and either have to break until the following week,
12 yet again which is a conceivable outcome here, or seat an
13 alternate in the middle and restart deliberations. I don't
14 think that is in anybody's interest.

15 Now, give me your latest view on how long the
16 summation are going to be.

17 MR. JOHNSON-SKINNER: The government's closing will be
18 two hours. The rebuttal will be 45 minutes.

19 THE COURT: Mr. Touger.

20 MR. TOUGER: Hour and a half.

21 THE COURT: All right.

22 If you keep to those times and if we limit the lunch
23 break to an hour and take no more than 30 minutes of break, we
24 are going to be here for eight hours today, at which point the
25 jury could get the case around 6 o'clock tonight. My

Hbsnros1

1 inclination, given the situation, is to seriously consider
2 holding them into the evening so that they can begin
3 deliberating.

4 Any thoughts, comments on that situation I will
5 entertain now, because I think we're still down a juror or two?

6 MR. TOUGER: I would think that we should just get rid
7 of Juror No. 10 and put an alternate in since I believe we have
8 two alternates even taking out the one alternate who has to
9 travel. Then we have a full day on November 30 no matter what.
10 I would hate to have the jury thinking we have to come to a
11 verdict by November 30 at 11 o'clock or otherwise --

12 THE COURT: I will not put a deadline on them. That
13 is clear.

14 MR. TOUGER: If Juror No. 10 hasn't come to a verdict,
15 then we would have having that situation at the Menendez trial,
16 where we are putting in an alternate after a day of
17 deliberations. It seems to me we should just start out with an
18 alternate and get rid of Juror No. 10?

19 THE COURT: What is the government's view?

20 MR. JOHNSON-SKINNER: Judge, we don't think that juror
21 needs to be eliminated right now. We think the Court's idea of
22 asking the jury what is going on on November 30 at 11 is a good
23 one. That would might us a more information about what the
24 limitation is.

25 THE COURT: Rachel, would you go back and tell Andy if

Hbsnros1

1 Juror No. 10 is here please send Juror No. 10 in and I will see
2 Juror No. 10 and counsel at the sidebar.

3 Thank you, Officer.

4 OK. Let's go to the sidebar.

5 (Juror No. 10 present)

6 (At sidebar)

7 THE COURT: This is about Thursday if we get that far.

8 JUROR NO. 10: Yes.

9 THE COURT: Just remind me, you are Ms. Blacklaw?

10 JUROR NO. 10: I am Elizabeth Handler.

11 THE COURT: I'm sorry I was thinking about a rule book
12 by Black Law.

13 What is the situation for Thursday?

14 JUROR NO. 10: Thursday I have a school fundraiser
15 that I am in charge of.

16 THE COURT: A school fundraiser?

17 JUROR NO. 10: Correct. I can get people to do
18 portions of it, but it starts at 5:30.

19 THE COURT: At 5:30?

20 JUROR NO. 10: But I am supposed to set up.

21 THE COURT: Can somebody else set up, if we are
22 still --

23 JUROR NO. 10: We can do that.

24 THE COURT: If we are still in session obviously.

25 JUROR NO. 10: Correct.

Hbsnros1

1 THE COURT: On Thursday your problem starts at -- how
2 long does it take you to get to the school?

3 JUROR NO. 10: About 4.

4 THE COURT: I understand. OK.

5 We will let you know where we are.

6 JUROR NO. 10: OK.

7 THE COURT: OK.

8 MR. TOUGER: I couldn't hear. She doesn't need to
9 leave until 4 o'clock on Thursday.

10 THE COURT: Doesn't need to leave until 4 o'clock on
11 Thursday. Thank you. Go on back to the jury room.

12 (Continued on next page)

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Hbsnros1

1 (In open court)

2 (Juror No. 10 not present)

3 THE COURT: OK.

4 Now, what are the views of counsel in light of the
5 fact that we know that Juror No. --

6 MR. TOUGER: That makes that easier, your Honor.

7 THE COURT: I know it makes it easier.

8 What would you like me to do?

9 MR. TOUGER: We might as well keep her as long as we
10 break at 4 o'clock on Thursday.

11 THE COURT: OK.

12 Agreed?

13 MR. JOHNSON-SKINNER: Yes, Judge.

14 THE COURT: OK. All right. That takes care of that.

15 Now, given the tight schedule today, we are going to
16 provide the jurors with lunch. We are not going to release
17 them over the lunch hour because they have a way of not getting
18 back when they're supposed to be back, at least not all of
19 them, and we'll try to adhere to the tight schedule we have.

20 MR. TOUGER: I understand the Court's schedule. The
21 Court wants to sum, charge, and have the jury deliberate today?

22 THE COURT: Yes.

23 MR. TOUGER: OK. I mean, since we don't have the push
24 on Thursday, I don't really see the necessity of keeping them
25 for such a long time period.

Hbsnros1

1 THE COURT: I have learned that life is uncertain.

2 MR. TOUGER: No doubt.

3 THE COURT: No doubt. Absolutely. I know just what
4 you are talking about.

5 MR. TOUGER: There is no doubt about that, your Honor.

6 THE COURT: I want the whole case fresh in their mind
7 when they start, and they will have it notwithstanding the
8 break, thanks to your summations and they will have the law and
9 they will at least get started and see where they are.

10 I am going to tell them I am going to hold them at
11 least until 7, but not later than 8, and we will just resume
12 tomorrow if there is no verdict.

13 OK. Do we have the whole jury?

14 THE LAW CLERK: All the jurors are here. They are
15 just filling out menus.

16 THE COURT: They are filling out lunch menus.

17 (Jury present)

18 THE COURT: Good morning everyone.

19 JURORS: Good morning.

20 THE COURT: I hope you all had a wonderful
21 Thanksgiving and had a lot of great turkey and apple pie or
22 whatever it is you like.

23 OK.

24 Let me talk to you a little bit about the schedule
25 from this point on. We are going to hear closing arguments

Hbsnros1

1 today. It is my intention as of now that, if we keep to the
2 schedule that we are on, I will instruct you today, and you
3 will get the case late in the day.

4 I am going to ask you to stay at least until 7 if you
5 have not reached a verdict, and possibly as late as 8.

6 Andy, am I right that if they stay until eight they
7 get transportation home?

8 (Pause)

9 THE COURT: If I were to keep you to 8, we will order
10 cars to take you home.

11 We will get you dinner if that happens. There will be
12 a phone installed in the jury room so that you will have access
13 to a phone over the lunch break to call whoever you have to
14 call in light of that schedule.

15 I did warn everybody at the beginning of the trial
16 that there was a possibility that late in the trial we would
17 sit late, and here we are.

18 Now, that is not to suggest a verdict has to be
19 reached at any particular time. I am just bearing in mind the
20 fact that the case has taken longer for a variety of reasons in
21 calendar days than we expected at the beginning, and it is
22 getting into a difficult season. So I'm trying to make sure
23 that you have a full opportunity to deliberate.

24 Tomorrow will be a full day if you have not reached a
25 verdict today. In all likelihood, though not with certainty,

Hbsnros1

Summation - Mr. Johnson-Skinner

1 we may break a little early on Thursday if there is no result
2 by the late afternoon, but that is up in the air, and we'll go
3 from there.

4 Please, please, please take seriously my statement
5 that in discussing the schedule that goes out a couple of days
6 all I am trying to do is to provide against contingencies. I
7 am not suggesting anything about how long you will take, how
8 long you should take, or how short a time you should take much
9 that is totally up to you. Not my business. I am just
10 planning the schedule.

11 OK. With that, we are now going to hear closing
12 argument, and I will note that the defendant has been present
13 throughout this morning.

14 Closing argument.

15 Mr. Skinner.

16 MR. JOHNSON-SKINNER: "Those dudes ain't gonna be
17 happy until they're carrying a coffin."

18 That's what James Rosemond said to Mohammed Stewart
19 about how his feud with G-Unit would end.

20 "Those dudes ain't gonna be happy until they're going
21 to a funeral."

22 That's what James Rosemond said to Khalil Abdullah
23 during a conversation about how Brian McCleod had a line on
24 Lowell Fletcher, who had assaulted Rosemond's son.

25 "That bitch is out of here."

Hbsnros1

Summation - Mr. Johnson-Skinner

1 That's what James Rosemond said to Abdullah after he
2 knew his plan had worked and Fletcher was dead.

3 "I can finally sleep."

4 That's what Rosemond said to Stewart when he knew he
5 had his revenge and his feud with G-Unit was over.

6 That man, James Rosemond, planned, ordered, and paid
7 for the murder of Lowell Fletcher. Because there was a
8 funeral, because Fletcher was in the coffin, he had his
9 revenge, his feud was over, and he could finally sleep.

10 The feud between Rosemond and G-Unit, it started as a
11 music industry dispute, but in March 2007, G-Unit members,
12 including Lowell Fletcher, assaulted Rosemond's 14-year-old
13 son.

14 For Rosemond, they had gone too far. He became
15 focused on a revenge-driven and sleep-depriving vendetta.
16 Instead of shootings at office buildings and cars, he targeted
17 real people and their families, just like his family had been
18 targeted.

19 Fletcher was arrested shortly after the assault on
20 Rosemond's son and served about two years in jail, but Rosemond
21 never forgot about what he did. So when Brian McCleod, Slim,
22 came home from prison and told Rosemond he had a line on
23 Fletcher, Rosemond set in motion his plan to get his revenge
24 and to kill Fletcher, a plan that violently and permanently
25 ended his feud with G-Unit on September 27, 2009.

Hbsnros1

Summation - Mr. Johnson-Skinner

1 When Fletcher left his sister's house that day, he
2 thought he was going out for a night after coming home from
3 prison. He had no idea that when he got off the train in the
4 Bronx a team of killers was waiting for him and that one of
5 them had a .22-caliber gun with a silencer. Fletcher had no
6 idea that he would be shot five times in the back and in the
7 arm.

8 He had no idea that he would die after lying shot half
9 off the curb on that street in the Bronx. He never met the
10 good Samaritan who stopped her car full of kids and tried to
11 save his life, and he didn't know that his sister was going to
12 get one of the worst phone calls of her life and leave her job
13 in tears.

14 Fletcher also had no idea that James Rosemond had been
15 waiting two years to get his revenge; that Rosemond had sent
16 his team of killers to murder him. He didn't know that
17 Rosemond sent his old friend from prison as the lure man, his
18 personal chauffeur as a getaway driver, one of his gun guys as
19 the trigger man, and one of his drug dealers as the backup
20 shooter that night.

21 He had no idea that Rosemond had put a \$30,000 bounty
22 on his head.

23 But you know who is responsible for that murder. You
24 know why Fletcher died. You know that James Rosemond is guilty
25 of hiring a crew of his own trusted men to kill Fletcher, that

Hbsnros1

Summation - Mr. Johnson-Skinner

1 he sent his gun with a silencer to the scene, that he paid
2 thousands of dollars for the murder after it was done.

3 Three weeks ago we told you that we would prove to you
4 that Rosemond ordered, planned, and paid for the murder of
5 Lowell Fletcher as part of his violent feud with G-Unit, and
6 that is exactly what the evidence has shown.

7 Before I go any further, I want to give you a brief
8 roadmap of what I will talk about today. I am going to talk
9 about three things:

10 First, I am going to go over what is really in dispute
11 in this case.

12 Second, I am going to talk about the evidence that you
13 have seen and heard, evidence including the feud before the
14 slap, the violence after the slap on his son, and the murder of
15 Fletcher and how that evidence shows the defendant intended
16 that murder.

17 And, third, I will remind you of the charges and go
18 over how the government has proven the elements of the charged
19 crimes, why the defendant is guilty.

20 So now that we've reached the end of case, what's in
21 serious dispute here?

22 Based on everything defense counsel conceded in his
23 opening, the answer is not much. Now, defense counsel has no
24 burden. It's the government's burden, and we embrace it. But
25 let's focus on what's really in dispute.

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Defense counsel conceded in his opening that there was
2 a violent feud between G-Unit and Rosemond.

3 He conceded that Fletcher assaulted Rosemond's son.

4 He conceded that Rosemond was deeply upset by that
5 assault and was seeking revenge for it.

6 He conceded that Rosemond's associates were offered
7 \$30,000 to bring Fletcher to Rosemond.

8 And he conceded that Fletcher died.

9 There also can be no serious dispute that when
10 Fletcher was killed, when he was shot to death by the
11 .22-caliber gun, four of Rosemond's closest associates were at
12 the murder scene: Brian McCleod, Slim; Jason Williams, his
13 driver; Derrick Grant, D; and Rodney Johnson, Toree.

14 There can't be any serious dispute that Fletcher was
15 shot and killed by Grant, and that McCleod lured Fletcher
16 there, and that Jason Williams was the getaway driver that day
17 and that Johnson was waiting in a car nearby.

18 There can't be any real dispute that all of those men
19 agreed and conspired with each other to shoot and kill Fletcher
20 that night.

21 I will discuss the evidence in more detail later, but
22 McCleod and Jason Williams admitted to that before you on the
23 witness stand.

24 You heard how Grant let off seven shots with a gun
25 with a silencer and that five of them hit Fletcher. There can

Hbsnros1

Summation - Mr. Johnson-Skinner

1 be no real dispute that the four Rosemond associates at the
2 murder scene had no motive of their own to kill Fletcher except
3 for their association with Rosemond, who had an obvious motive
4 to get revenge on Fletcher for what Fletcher did to his son.

5 There can be no serious dispute that Rosemond
6 participated in numerous meetings and conversations with
7 McCleod in advance of Fletcher's murder. McCleod testified
8 about that. His testimony was confirmed and was corroborated
9 by the testimony of Jason Williams, Khalil Abdullah, from the
10 phone records you saw, and from the cell site evidence you saw.
11 That showed Rosemond at the in-person meetings and in those
12 phone conversations with McCleod in the days and weeks before
13 Fletcher's murder.

14 So what's really in dispute here?

15 Defense counsel said in his opening the one major gap
16 in the government's case is that there was "no evidence" to
17 prove that Rosemond intended Fletcher to be killed instead of
18 shot or injured.

19 He said the question would be under what circumstances
20 did he die and who intended Fletcher's death?

21 Well, now you have heard all the evidence. You know
22 there is no gap in the government's case. You know who
23 intended Fletcher's death. James Rosemond.

24 You know that he led the plot to kill Fletcher, that
25 he ordered it, planned it and paid for it.

Hbsnros1

Summation - Mr. Johnson-Skinner

1 And you know he wanted a funeral as a result of his
2 actions. He wanted Fletcher to die. That's why he's guilty.

3 Now, before we go through all that evidence, since we
4 had some time apart, I want to remind you about the cooperating
5 witnesses in this case: Mohammed Stewart, Khalil Abdullah,
6 Jason Williams and Brian McCleod.

7 First, Mohammed Stewart, Tef.

8 Stewart knew Rosemond since he was about 20 years old,
9 and he was living with his mother in the same building as
10 Rosemond. Rosemond was about 15 years older than Stewart.
11 Stewart was one of Rosemond's enforcers, his Swiss knife as
12 Khalil Abdullah put it.

13 He told you about working in Rosemond's drug business,
14 and he told you about doing multiple shootings for and with
15 Rosemond as part of the G-Unit feud. Stewart testified about a
16 conversation where Rosemond told him, "Those dudes ain't gonna
17 be happy until they're carrying a coffin."

18 And then Stewart told you about how Rosemond called
19 him back to New York after Stewart had moved to Atlanta, how
20 Stewart saw Fletcher's obituary, and how Rosemond told him, "I
21 can finally sleep."

22 Next, Khalil Abdullah.

23 Abdullah was the defendant's number two man in his
24 drug business. He also took part in some of the violence you
25 heard about. He told you about Rosemond telling him that

Hbsnros1

Summation - Mr. Johnson-Skinner

1 McCleod was in touch with Fletcher, and he could line him up
2 after he got home from prison, and that McCleod was doing that
3 "because those dudes won't be happy until they go to a
4 funeral." Abdullah testified about the message he got from
5 Rosemond after Fletcher's murder that "that bitch is out of
6 here." He also told you about Rosemond recounting the murder to
7 him in detail a few days after the murder at that meeting in
8 Harlem outside the restaurant.

9 Next, Jason Williams.

10 He started as Rosemond intern at the music business in
11 about 2001. Williams was about 19 years old then. Like
12 Stewart he was about 15 years younger than Rosemond. Williams
13 was eventually promoted to Rosemond's personal driver. He ran
14 errands for Rosemond, including in the drug business, and he
15 drove Rosemond and others to shootings as part of the feud with
16 G-Unit.

17 Rosemond handpicked Williams to be part of the murder
18 crew. He sent Williams to the scene of the murder with
19 Rosemond's .22-caliber gun with a silencer, and he had Williams
20 get rid of the gun after the murder was done.

21 Last, this is Brian McCleod, Slim.

22 McCleod was Rosemond's friend whom he met in prison in
23 about 1997. McCleod worked at Czar, Rosemond's music company
24 in the early 2000s keeping an eye on things for Rosemond. He
25 also helped with the drug business, and in 2004 McCleod was

Hbsnros1

Summation - Mr. Johnson-Skinner

1 arrested after Rosemond asked him to go clean out one of
2 Rosemond's drug stash houses. McCleod spent five years in
3 prison for Rosemond before getting out in 2009.

4 By the time of Fletcher's murder, Slim knew Rosemond
5 for about 12 years. Doing that time in jail is where McCleod
6 first located Fletcher, and because he had been loyal to
7 Rosemond, he never cooperated with the police against him,
8 Rosemond felt he could trust McCleod to play a key role in his
9 plot to kill Fletcher. McCleod was the lure man and he
10 coordinated the murder directly with Rosemond.

11 Now, I want to talk to you about what those witnesses
12 told you what all the other evidence in this case showed about
13 how Rosemond intended Fletcher's murder.

14 You can't understand why Fletcher was murdered without
15 understanding the background that came before the murder.
16 Context matters. The context for Fletcher's murder was the
17 ongoing violent feud between Rosemond and G-Unit that developed
18 into a conspiracy to kill a member of G-Unit.

19 Let me take a moment to remind you about the people
20 you heard about in this trial on each of the side feud.

21 On one side was Rosemond; his enforcer, Mohammed
22 Stewart; his personal driver, Jason Williams; his drug business
23 partner, Khalil Abdullah.

24 You also heard about other Rosemond associates who
25 worked or hung out at his office, people like Brian McCleod,

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Teddy Coleman, and Derrick Grant.

2 You heard about members of his drug crew, like Derrick
3 English, Little D; Jonathan Brown; Rodney Johnson, Toree; and
4 Brian James, B-Love.

5 You heard about one of the artists that Rosemond
6 managed in his music business, The Game.

7 On the other side was G-Unit. G-Unit was a music crew
8 made of 50 Cent, Tony Yayo, and other rappers. The manager for
9 G-Unit -- like Rosemond was the manager for The Game -- was
10 Chris Lighty. He had his own music management company called
11 Violator Records.

12 G-Unit's muscle, like Rosemond had Stewart, was a man
13 named Baja, a road manager for G-Unit. Fletcher was also
14 another road manager for G-Unit.

15 During this trial you heard about the many shootings
16 and acts of violence that were part of this feud, most of which
17 were ordered by and paid for by the defendant.

18 Now there's too many of them. I'm not going to go
19 through all of them. I'm just going to start with the
20 incidents before Rosemond's son was slapped. These incidents
21 showed you that, even before his family was attacked, Rosemond
22 was willing to use violence as part of this feud.

23 So let's start with the first one.

24 The first shooting you heard about was done by Derrick
25 Grant at the front door of Violator Records. There's Violator

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Records.

2 McCleod testified that Grant told him that he shot at
3 Violator, and Rosemond was going to pay Grant for that
4 shooting. And you know the shooting happened because you have
5 a stipulation that in January 2003, an NYPD officer responded
6 to Violator's offices and saw shell casings from a bullet,
7 bullet holes, and broken glass. It's stipulation 1380. You
8 can ask for any of these stipulations in the jury room.

9 So the same shooter, Derrick Grant, who ended the feud
10 with G-Unit by killing Lowell Fletcher, he did one of the first
11 shootings. Then McCleod told you about the time Rosemond told
12 him that he himself shot at Chris Lighty's car because Lighty
13 wasn't returning his calls.

14 Here's a stipulation about how an NYPD officer saw
15 bullet holes in a truck near Violator's offices after that
16 incident in February 2003. So you know McCleod was telling the
17 truth about that.

18 Mohammed Stewart told you about the next incident.
19 That is at Hot 97 radio station. There is a picture of it.

20 He told you he went to Hot 97 to back up The Game, who
21 was there to confront 50 Cent. Stewart saw a shooting outside
22 the door, aimed at The Game's people outside.

23 Stewart talked to The Game afterwards, who was upset
24 and said he wanted to go some happen. So, Stewart called his
25 friend, his friend came and retaliated by shooting at

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Violator's offices.

2 You know that happened, too. You have these two
3 stipulations first about how an NYPD detective found a person
4 shot outside of Hot 97 that day, and then a second one about
5 how another detective found shattered glass and bullet holes at
6 Violator Records.

7 Now, Stewart told you straight up Rosemond didn't
8 order him to do that shooting. But remember what Stewart said
9 about talking to Rosemond about it, that Rosemond lectured him
10 afterwards. Not because you shouldn't be shooting at office
11 buildings, but because he did it for free. Let The Game's guys
12 do that. Rosemond told him to know his value and told him he
13 would get him money from The Game for that, and Rosemond
14 eventually got Stewart \$2,000 Stewart told you.

15 Now, compare that to the murder of Fletcher.

16 Did you hear any evidence about Rosemond lecturing
17 anyone after the murder for doing something out of turn? No,
18 because in that case, they did what Rosemond wanted.

19 Next, the Apollo Theater shooting.

20 Stewart and Abdullah both told you about this. They
21 told you that Tony Yayo and members of G-Unit approached
22 Rosemond at the theater and asked about The Game. Stewart told
23 you there was an altercation, and he and Rosemond left the
24 theater.

25 He told you he saw Rosemond talking to Abdullah

Hbsnros1

Summation - Mr. Johnson-Skinner

1 outside the theater, and Stewart told you later that Rosemond
2 came back and said they shot at Yayo's Bentley.

3 Abdullah told you that Rosemond made a call to inside
4 the Apollo to find out where was Yayo and learned he was in the
5 Bentley. Abdullah told you that he told Rosemond he would take
6 care of it right now. And Abdullah called his friend to bring
7 some guns and shoot up Yayo's car.

8 Abdullah and Rosemond were waiting together in a
9 nearby car when that shooting happened.

10 You know Abdullah and Stewart were telling you the
11 truth about that because you have a stipulation about a person
12 being shot near the Apollo that night.

13 Now, I want to fast forward to March 20, 2007, the day
14 Rosemond's rivalry with G-Unit changed from shootings at
15 buildings and cars to something more personal and serious.

16 There's no dispute that Jabulani Rosemond, the
17 defendant's son, was assaulted that day by members of G-Unit
18 and that Jabulani identified Yayo and Fletcher as the people
19 who attacked him.

20 You have this stipulation about an NYPD's detective's
21 investigation of that assault and that Yayo and Fletcher were
22 arrested afterwards. You heard from Rafael Maldonado, that
23 parking lot attendant across the street, who gave you an
24 eyewitness account of the slap of Rosemond's son.

25 Abdullah testified that Rosemond told him that Yayo

Hbsnros1

Summation - Mr. Johnson-Skinner

1 and others had grabbed his son, acted like they had a gun, and
2 smacked him.

3 Stewart told you what happened that day, too, that he
4 was called down to Rosemond's office, and Rosemond and Jabulani
5 were there. Jabulani was crying and Rosemond was angry.

6 Stewart told you that he went outside with Rosemond
7 down to 25th Street, remember where Violator's offices were,
8 across the street from Czar's offices, Rosemond's company.
9 Stewart saw Lighty's brother, and he persuaded Rosemond to let
10 him attack Lighty's brother.

11 Now, Stewart told you at first Rosemond didn't agree
12 that a family member of G-Unit should be attacked. But Stewart
13 pointed out that Rosemond's own family had been attacked. So
14 Rosemond nodded his head, and he passed a razor blade to
15 Stewart, and his enforcer took care of the rest.

16 You know, in the defense opening defense counsel
17 promised you that you would hear about a lot of incidents where
18 Rosemond was attacked and he just walked away, turned the other
19 cheek he said.

20 Now, again, defense has no burden. The burden of
21 proof always rests with us. But when the defense makes
22 arguments in opening and cross-examination, you can and should
23 scrutinize those arguments.

24 The defense promised in the opening that the evidence
25 would show that Rosemond instructed Stewart not to attack

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Lighty's brother. Now you have heard the evidence, and you
2 know that's just wrong.

3 Stewart testified that Rosemond initially didn't want
4 to attack Lighty's brother, but then Stewart said the gloves
5 should come off, and Rosemond agreed, and he nodded his head
6 and passed the razor. That is at transcript 186 to 187.

7 And Abdullah's testimony backs Stewart up. Abdullah
8 said that Rosemond told him he sent, sent Tef down the block,
9 and Tef cut somebody in the face.

10 That's at 506.

11 Rosemond didn't turn the other cheek in that incident,
12 and he didn't turn the other cheek after the Apollo incident
13 either.

14 You heard that Rosemond initially said after the
15 Apollo incident, "I want to handle it later," and Abdullah
16 said, "I'll handle it now."

17 "Handle it later" is what Rosemond said. That's what
18 you heard about Rosemond doing in this case. Handling it
19 later. That's not turning the other cheek. That's being smart
20 and waiting for the best time to strike.

21 That's revenge as a dish best served cold, like how
22 Rosemond waited for two years for Fletcher to get out of jail
23 after serving time for assaulting his son, and then hit him so
24 hard and so fast he didn't see it coming, because Rosemond
25 couldn't turn the other cheek after the assault on his son. An

Hbsnros1

Summation - Mr. Johnson-Skinner

1 attack on his son was not something he was going to stand for.

2 From that moment forward, Rosemond's feud with G-Unit
3 was no longer about cars and office buildings. It was about
4 attacking G-Unit members and their families and putting someone
5 in a coffin.

6 Stewart told you on the stand about how Rosemond's
7 attitude changed after the assault on his son. Stewart
8 testified that Rosemond was always upset. He spoke to Stewart
9 almost every day about strategy for getting back at G-Unit.
10 Stewart told you that Rosemond told him about all the nights of
11 sleep that Rosemond had lost.

12 And Brian McCleod told you the same thing, using
13 almost the same language, that Rosemond said he couldn't sleep
14 since the assault on his son.

15 There's the transcript cites for both of those.

16 So let's talk about Rosemond's response to that
17 assault, the conspiracy to murder members of the G-Unit that
18 resulted in Fletcher's death.

19 You heard about a shooting Rosemond did personally
20 just one month after the slap on his son in April 2007. This
21 is Tony Yayo's mother's house. All four cooperating witnesses
22 told you about this shooting, and they corroborated each other.

23 Abdullah told you he went to a banquet with Rosemond
24 where Rosemond told him he had a line on Yayo's mother's house
25 and was going to go clap it up.

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Abdullah told you that Rosemond left the banquet with
2 Jason Williams. Abdullah told you that later that night
3 Rosemond came back to the banquet and told him the shooting
4 went well. He fired 30 bullets at the house with what Abdullah
5 called Rosemond's Mac with a silencer.

6 Jason Williams told you about that shooting too. He
7 told you he drove Rosemond to Yayo's mother's house, that
8 Rosemond reached out the window of the car and did a drive-by
9 shooting of the house with the same Mac machine gun with a
10 silencer.

11 You remember Williams' testimony about the noise the
12 gun made. He said it sounded like a roulette wheel when
13 Rosemond was firing it.

14 Stewart told you about that shooting, too.

15 Rosemond told Stewart that he went to the house, to
16 Yayo's mother's house, where he waited. He waited, he said,
17 for Yayo's sister to walk in with her baby. Rosemond told
18 Stewart he saw that bitch go in and he shot up the house with a
19 .45-caliber gun. That is at transcript 215 to 216.

20 That gun is the same gun that Abdullah and Williams
21 described as the Mac machine gun. You saw how they all told
22 you it was about the same size, about a foot and a half long.

23 Finally, McCleod told you that when he met with
24 Rosemond in Central Park later on, after McCleod got out of
25 jail, Rosemond told him he put shoots into Yayo's mother's

Hbsnros1

Summation - Mr. Johnson-Skinner

1 house.

2 How else do you know about the shooting?

3 Well, Valerie Bernard, that's Tony Yayo's sister, she
4 took that stand. And even though she was so scared she didn't
5 want to say the name of her child, she told you about how she
6 was in the house with her two-year-old daughter and that she
7 usually eats dinner in the kitchen. But that night she decided
8 to go upstairs. And while she was up there, she heard rapid
9 gunshots into the house.

10 She threw her daughter to the floor, she covered her
11 up, and she called 911. When she finally got up, she saw
12 bullet holes through the front door of her house into her
13 kitchen where she usually would have been with her daughter.

14 Last, you have Sergeant Burt Antoine, who told you he
15 responded to that house, and he recovered shell casings, which
16 Detective Fox told you were .45-caliber shell casings, the same
17 caliber as that gun, and he told you that Yayo's mother sister
18 and daughter were actually in the house when Sergeant Antoine
19 arrived.

20 So, was Stewart right about Rosemond telling him that
21 he waited for the sister and the baby to go into the house?
22 Stewart wasn't there, remember. He heard this from Rosemond.

23 How else would Stewart know that Ms. Bernard and her
24 daughter were actually in the house unless Rosemond really told
25 him that?

Hbsnros1

Summation - Mr. Johnson-Skinner

1 That's one way you knew Stewart was telling you the
2 truth about that.

3 Rosemond's next main target was Baja, the enforcer for
4 G-Unit. Stewart told you that Rosemond offered him money to
5 shoot at Baja's house and Baja's sisters house shortly after
6 the slap on the son.

7 So Stewart got his friend Life to shoot at Baja's
8 house in Staten Island. And Rosemond paid Stewart \$12,000 for
9 that.

10 Now let's pause on that price Rosemond paid, \$12,000
11 for Stewart getting one other person to shoot at a house.

12 We'll come to it later. But you know that Rosemond
13 offered at least \$30,000 for the murder of Fletcher. That's
14 almost three times the amount of money he paid for a shooting
15 at a house.

16 That's important. The amount of money alone is
17 evidence of Rosemond's intent. He didn't intend a nonfatal
18 shooting or a shooting at a house. He intended something more
19 serious and more expensive, a murder.

20 Stewart told you that he sent his friend Life to shoot
21 at Baja's sister's house also, and he had him use Rosemond's
22 .22-caliber gun with a silencer.

23 Stewart heard from Rosemond that the shooting didn't
24 actually happen, even though Life said it did. So Rosemond
25 wasn't going to pay him for that.

Hbsnros1

Summation - Mr. Johnson-Skinner

1 That is because Rosemond was a businessman. He only
2 pays you when you do what he wants, like he paid the members of
3 the murder crew who carried out the murder of Lowell Fletcher
4 that he wanted done.

5 Jason Williams told you about that shooting at Baja's
6 sister's house, too, that he drove Stewart's friend there.
7 Williams didn't know his name, but that's the friend Life.

8 Williams said the friend got out of the car with a gun
9 with a silencer, just like Stewart told you. And when the guy
10 came back to the car he said he actually did shoot a bystander
11 in the foot. That's more corroboration for what Stewart said.

12 You heard about the car Jason Williams drove that day,
13 his Nissan. You heard that after the assault on Rosemond's son
14 that's when Rosemond asked Jason Williams to get a stash box or
15 a hidden compartment installed in that car, the same stash box
16 that would hold the .22-caliber gun on the night of the murder.

17 Stewart told you about another attempted shooting at
18 Baja's house that Rosemond personally participated in. Stewart
19 testified that he met Rosemond one night at Baja's house.
20 Stewart said Rosemond gave him the same big .45-caliber gun.
21 Stewart ran around the back of the house, but he saw a girl in
22 the window, so he didn't shoot.

23 When Stewart came back to Rosemond, Rosemond was
24 disappointed and angry saying, "Don't be wasting my time." In
25 other words, don't be wasting my time by not shooting, even if

Hbsnros1

Summation - Mr. Johnson-Skinner

1 a young girl is in the house.

2 That is powerful evidence that the G-Unit feud had
3 changed after the assault on Rosemond's son. Rosemond wasn't
4 interested in excuses. He wanted results. It is also
5 important evidence again about what Rosemond does when you
6 don't do what he wants.

7 He has no problem telling his men when he's not happy.
8 You will hear there is no evidence of him being upset or
9 telling anyone he's not happy about his crew killing Lowell
10 Fletcher.

11 Stewart also told you about his conversations with
12 Rosemond about killing Baja, about how Rosemond wanted to see
13 how much it would cost to put a hit on Baja.

14 Rosemond told Stewart to see if he can get guys
15 Stewart knew in Brooklyn to kill Baja for \$20,000. Stewart
16 spoke with the guys in Brooklyn, and then he reported back to
17 Rosemond that they're willing to kill Baja but they'd asked for
18 \$75,000.

19 Stewart testified that Rosemond told him, nah, that
20 was too much money. Notice Rosemond didn't say to Stewart:
21 No, I am not having any of those G-Unit guys killed. You got
22 me wrong.

23 He told him it was too expensive.

24 That conversation is important evidence about
25 Rosemond's state of mind and his joining a conspiracy to have

Hbsnros1

Summation - Mr. Johnson-Skinner

1 members of G-Unit killed.

2 Here he is talking to Stewart about how much money it
3 would take to kill Baja. You can ask for that testimony in the
4 jury room. It's pages 219 to 221.

5 And, again, look at the amount of money. The amount
6 of money Rosemond offers for Fletcher's murder remember is at
7 least \$30,000. That's \$5,000 more than the \$25,000 here he
8 wanted to pay to have Baja killed.

9 So the fact that the money is about the same, that's
10 another way you know that Rosemond intended Fletcher to be
11 killed.

12 You also heard about the time Rosemond was staking out
13 a 50 Cent video shoot in New Jersey, and he Stewart and
14 Williams followed a car with Chris Lighty in it.

15 Stewart told you that Rosemond tried to get the
16 .45-caliber gun out of the car when they were stopped at a toll
17 booth next to Lighty's car. Stewart told you the gun went off
18 as Rosemond was trying to get it. And Williams told you too
19 that when Rosemond reached for the gun it jammed, and it went
20 off in the car.

21 You know Stewart and Williams were telling you the
22 truth because they both told you the same things about that
23 incident.

24 You heard from Stewart and Abdullah about Rosemond
25 plotting to have Lighty shot on other occasions.

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Now, the cooperating witnesses they told you straight
2 up that Rosemond didn't want Lighty killed.

3 You heard about the instruction he gave Abdullah:
4 "Give him a leg shot."

5 And both Abdullah and Stewart told you that Rosemond
6 said almost the same words, "Don't kill the man," when he was
7 giving instructions of violence against Lighty.

8 Two things about that.

9 First, does that mean that Rosemond didn't want a
10 member of G-Unit dead?

11 No. It tells you that Lighty was not the same to
12 Rosemond as Baja and Fletcher and Yayo. Lighty wasn't
13 identified as part of the group of people that assaulted his
14 son, like Fletcher and Yayo were.

15 And Abdullah told you Lighty was a, quote, square.
16 His father was in law enforcement. He wasn't a street guy like
17 Baja. He owned his own music company.

18 For Rosemond, killing Lighty would not be the same as
19 killing a street guy, someone who Rosemond saw as a gang banger
20 in the Bronx, like Fletcher.

21 Second, it tells you that Rosemond had no problem
22 making crystal clear to his men when he wanted someone shot but
23 not killed. "Don't kill the man."

24 Ask yourselves, since Rosemond had a whole murder team
25 in place to kill Fletcher, since he asked them to scout

Hbsnros1

Summation - Mr. Johnson-Skinner

1 locations with no cameras, since he sent his gun with a
2 silencer to the scene, since he asked McCleod to get an
3 untraceable Stacy King phone to only use with Fletcher, since
4 he offered McCleod at least \$30,000, if Rosemond didn't intend
5 his crew to kill Fletcher, that he just wanted him injured,
6 don't you think he would have said something clear like, "Don't
7 kill the man."

8 All of these incidents that occurred after the assault
9 on Rosemond's son, where Rosemond and his crew are shooting at
10 G-Unit members and their families, this is how you know that
11 the feud changed, that Rosemond wanted revenge for the assaults
12 on his son and that he wanted a G-Unit member dead.

13 On September 27, 2009, he achieved that goal. So now
14 I want to turn to the events that led to Fletcher's murder.

15 McCleod told you he was released from prison on August
16 10, 2009 after serving five years from jail for cleaning out
17 Rosemond's drug stash house.

18 You heard evidence that over the years that McCleod
19 was in jail Rosemond had put money into McCleod's prison
20 account. McCleod told you he had received the money, and Jason
21 Williams told you he put the money into the account for
22 Rosemond. And you saw the stipulation that showed you that
23 Williams and Rosemond and Czar Enterprises, Rosemond's
24 business, put money into McCleod's account.

25 Rosemond was loyal to McCleod, just like McCleod had

Hbsnros1

Summation - Mr. Johnson-Skinner

1 been loyal to Rosemond by not cooperating against him after he
2 was arrested at that drug stash house.

3 McCleod told you that two days after he came home on
4 August 12, he went to Rosemond's office at 25th Street.
5 Rosemond wasn't there, but McCleod spoke to him on the phone.

6 Rosemond told him he didn't want to meet at the studio
7 because it was under a lot of surveillance. Rosemond told
8 McCleod there was something for him at the office, and he
9 should use it to get a phone and then call Rosemond immediately
10 with the number. And McCleod picked up an envelope with about
11 \$5,000 from Rosemond's secretary.

12 The next day, it is August 13 now, using some of that
13 money, McCleod told you he went to a Metro PCS store, where he
14 purchased a cell phone using the name Iraqius Thibedeaux, named
15 after an old army buddy of his. You know that's true because
16 here's the subscriber information for that phone McCleod
17 purchased on 8/13/2009.

18 Now McCleod told you he didn't spell out the name for
19 the store clerk, so you know why it ended up as the Thibedeaux
20 Ingam phone.

21 Here's the main cell site area for that phone, where
22 he most often went to sleep at night and woke up in the
23 morning, right near where McCleod told you he was living at the
24 time in Brooklyn.

25 So that's McCleod's first phone when he was out of

Hbsnros1

Summation - Mr. Johnson-Skinner

1 jail, or the Ingam phone or the McCleod phone 1 in our charts.

2 About a week later McCleod told you he had his first
3 face-to-face meeting with Rosemond.

4 McCleod thought this meeting was on August 17, but if
5 you look at the phone records you will see that Rosemond and
6 McCleod they actually first had their phone calls on the Ingam
7 phone on August 19. So was it the 19th instead of 17th?

8 Probable. But, either way, you know the meeting happened from
9 the phone records.

10 Now, by now you know that the phone Rosemond used to
11 talk to McCleod, listed here as the Buckson phones, that's
12 Rosemond's phone. The phone was bought and paid for by
13 Dr. Theresa Buckson, who testified that she gave Rosemond an
14 AT&T iPhone as a present. Stewart told you that Rosemond had
15 multiple phones, including a BlackBerry and an iPhone, and you
16 heard Deputy Heintz testify that the main or the most common
17 cell area where that phone went to sleep and woke up, it was
18 right here on the West Side of Manhattan, near West End and
19 60th Street. Dr. Buckson and Jason Williams both told you that
20 that's where Rosemond lived at the time in 2009.

21 Defense counsel even brought out from Deputy Heintz
22 that Rosemond lived at 63rd and West End Avenue, and therefore
23 it wasn't unusual for his phone to be concentrated there.

24 Deputy Heintz also told you that that phone, it only
25 hit once or twice in the Maryland or Washington, D.C. area,

Hbsnros1

Summation - Mr. Johnson-Skinner

1 which is where Dr. Buckson told you she lived at the time.

2 Look at the people that the Buckson phone communicated
3 with.

4 Deputy Heintz told you it contacted Mohammed Stewart,
5 Brian McCleod, people who told you they didn't recognize
6 Dr. Buckson's picture, but who you know committed crimes with
7 Rosemond. That's because that Buckson phone, it was one of
8 Rosemond's multiple phones at the time.

9 Now, back to that first meeting between McCleod and
10 Rosemond in Central Park.

11 McCleod told you that he met Rosemond -- if we go to
12 the next slide -- here in Central Park.

13 McCleod told you he saw Jason Williams in a car
14 nearby. And you heard testimony about Rosemond having other
15 meetings near Central Park. Stewart told you that he met
16 Rosemond near Central Park, and that makes sense, given what
17 you know about where Rosemond lived, that he wanted to meet in
18 Central Park.

19 During this meeting McCleod told you that Rosemond
20 warned him there was a totally different climate now than when
21 McCleod had first gone to jail.

22 Rosemond said every law enforcement agency was looking
23 at it. And Rosemond told McCleod about the G-Unit feud and
24 that he was going to war with these clowns.

25 Rosemond told McCleod that he had shot at cars at the

Hbsnros1

Summation - Mr. Johnson-Skinner

1 Apollo and that he had 70 shots sent into Yayo's mom's house.

2 That is when McCleod told the defendant for the first
3 time about his line on Lowell Fletcher. McCleod explained to
4 you why he had a way to contact Fletcher. Fletcher had been in
5 the same jail as him at Mohawk, and he was bragging about
6 attacking Rosemond's son in jail.

7 McCleod had a friend still in the jail, Kevin Chung,
8 who could reach out to Fletcher, who was a Blood gang member
9 like Fletcher, and who had the same lawyer as Fletcher, and
10 McCleod knew that Fletcher was coming home soon, so he might be
11 able to reach out to him.

12 McCleod told you Rosemond was very interested in this
13 information, and McCleod testified what Rosemond did next. He
14 got quiet, and he told McCleod that he hadn't been able to
15 sleep since "they touched my boy."

16 (Continued on next page)

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HBSAAROS2

Summation - Johnson-Skinner

1 MR. JOHNSON-SKINNER: This is in August 2009, ladies
2 and gentlemen. The slap on his son was in March 2007. This is
3 more than two years later. Rosemond was still focused on that
4 assault, still lost sleep over it. That tells you how
5 important the event was to him. It also tells you he was still
6 frustrated. None of his other nonfatal shootings were not this
7 satisfying. That's more evidence that this was different. He
8 intended here to murder Fletcher. McCleod also testified that
9 Rosemond said he wished he had known McCleod had a line on
10 Fletcher because Rosemond had \$10,000 for someone to mark or
11 scar Fletcher in prison. At the end of this meeting Rosemond
12 gave McCleod more money, another \$5,000. Rosemond told McCleod
13 the money was more payment for staying loyal to Rosemond over
14 all these years.

15 You heard about McCleod's lying of Fletcher from other
16 witnesses too. Abdullah told you about another conversation he
17 had with Rosemond outside a barbershop sometime shortly after
18 McCleod had come home. In that conversation Rosemond told
19 Abudllah that McCleod had been in jail with Fletcher and that
20 he was going to stay in touch with him to possibly line him up
21 when he got home. He said because these dudes ain't gonna be
22 happy until they go to a funeral. That's at page 526. Ask for
23 this testimony in the jury room.

24 Ladies and gentlemen, pay attention to this
25 conversation between Rosemond and Abdullah, shows Rosemond

HBSAAROS2

Summation - Johnson-Skinner

1 Rosemond's state of mind. Look at the context. Since the
2 assault on his son Rosemond had been doing shootings and paying
3 others to do shooting. There had been retaliation back.
4 Stewart told you about Baja trying to put money on Stewart's
5 head. Stewart told you about those guys in the white van
6 shooting at him and about Rosemond being ambushed by 50 Cent's
7 entourage.

8 And you know from McCleod that Rosemond was losing
9 sleep still over his son being assaulted. So in that context
10 Rosemond explained to Abdullah exactly why McCleod was going to
11 line up Fletcher. He said because these dudes -- that's
12 G-Unit -- wasn't gonna be happy. In other words, they weren't
13 going to stop. The feud was not going to end until G-Unit went
14 to a funeral, until one of their own died. That's why McCleod
15 is working on lining up Fletcher.

16 So this conversation is another way you know what
17 Rosemond wanted. He wanted to send G-Unit members to Lowell
18 Fletcher's funeral. By the way, he is telling the truth about
19 this barbershop meeting. How do you know? Abdullah testified
20 that during this meeting with Rosemond, Rosemond told Abdullah
21 that McCleod had received only \$1000 in coming home money from
22 their associate, Rodney Johnson. And McCleod also took the
23 stand and testified that after he got out of jail he actually
24 got \$1000 from Johnson to help him get back on his feet in
25 August 2009.

HBSAAROS2

Summation - Johnson-Skinner

1 Now, you have to ask yourself, how did Abdullah, who
2 told you he'd never spoken to McCleod in his life know that
3 McCleod was given \$1000 by Johnson? He knew that because
4 Rosemond told him. That conversation really happened at the
5 barbershop. That's how you know he was telling the truth about
6 that.

7 About a week after that first meeting between McCleod
8 and Rosemond in Central Park, Rosemond summoned McCleod for a
9 second meeting. This one took place inside the Whole Foods at
10 Columbus Circle again near Rosemond's home on the west side.
11 Makes sense. McCleod told you that Rosemond wanted to meet
12 there because there was no phone reception downstairs and
13 Rosemond noticed going down the escalator he had no cellphone
14 signal on his phone. Rosemond was being careful because he
15 knows the seriousness of what he is about to talk about with
16 McCleod. He is about to plan a murder. This meeting is very
17 important. It's here by that "Sweet and Spice" sign that
18 Rosemond starts to work out the details of his plot to kill
19 Lowell Fletcher.

20 Here is what McCleod told you was said. Rosemond
21 first said he had \$30,000 for anyone who could bring Fletcher
22 to him because he's gonna hit him so hard and so fast he's not
23 gonna see it coming. McCleod responded, Are you thinking about
24 doing this yourself? You're gonna do this yourself? And
25 Rosemond said, Yeah. What were you thinking? And McCleod then

HBSAAROS2

Summation - Johnson-Skinner

1 said, I spoke to "D" the other day. And Rosemond said, OK. I
2 haven't seen "D" in quite some time. OK, yeah. Speak to "D".
3 Let me know how that goes.

4 Now let me go back and break this down because it's
5 important. The first thing Rosemond said to him was that he
6 had \$30,000 for anybody who can bring Fletcher to him.
7 \$30,000. Again, think about that. Why is he willing to pay
8 \$30,000 for someone to bring Fletcher to him? So Rosemond
9 could have a discussion with Fletcher? Would he pay \$30,000 so
10 Fletcher could be murdered, so Rosemond could beat him up? Why
11 got just wait until he gets out of jail and find him on the
12 street like G-Unit found Rosemond's son on the street.

13 Remember the amounts of money in the past, not just
14 luring someone but for organizing and carrying out an act of
15 violence. He paid five thousand dollars for -- He paid \$12,000
16 to Stewart for someone else to shoot at Baja's house. And he
17 also just told McCleod that he had \$10,000 to injure Fletcher,
18 cut him with a knife in jail. \$30,000 is triple \$10,000.
19 That's the amount of money he had to injure Fletcher. And not
20 for actually doing the shooting or doing the cutting or for
21 just luring him somewhere. The reason Rosemond had \$30,000 for
22 that is because Rosemond was going to do more than just injure
23 Fletcher or shoot him in the leg. He was going to shoot and
24 kill him. And the person luring Fletcher to Rosemond for a
25 murder would take on a lot of risk. They'd be part of a murder

HBSAAROS2

Summation - Johnson-Skinner

1 conspiracy. Going to have to get paid a lot of money for that.
2 So just the \$30,000 alone told you that Rosemond intended this
3 to be a murder. But that is not all Rosemond said. He then
4 said he wanted Fletcher brought to him because he's gonna to
5 hit him so hard and so fast he's not gonna to see it coming.
6 You know Rosemond didn't mean to him with his fist. He's not
7 going to pay \$30,000 to lure hum so he could slap him like his
8 son was slapped. He didn't arrange for -- for Fletcher to be
9 released from jail so he could beat him up. He wand him
10 brought so he could kill him. McCleod told you he had no
11 misunderstanding about this and that's why he proposed Derrick
12 Grant as the shooter. On cross-examination McCleod said he
13 understood Rosemond to be talking about killing Lowell Fletcher
14 himself. That's 1133.

15 That's why McCleod said to Rosemond next, You're
16 thinking of doing this yourself? Do you think McCleod would
17 have been concerned if he thought Rosemond was going to beat
18 Fletcher up or do a driveby shooting like he did at Yayo's
19 mother's house? No. Mohammed McCleod was concerned because he
20 didn't think it was a good idea for Rosemond, the head of a
21 music management company and the head of a huge drug
22 trafficking organization someone already under a lot
23 surveillance to kill someone himself? So that's why when
24 Rosemond responded to McCleod, Yeah. What were you thinking,
25 McCleod said, well, I spoke to "D" the other day. "D" is

HBSAAROS2

Summation - Johnson-Skinner

1 Derrick Grant. And Rosemond responded, OK. I haven't seen "D"
2 in over three years. Yeah. Speak to "D". Let me know how
3 that goes.

4 Now, to a shopper at Whole Foods passing by this might
5 be a harmless conversation about a friend named "D". But you
6 know having heard all the evidence and knowing the history of
7 the G-Unit feud and the full context of his conversation, this
8 was far from harmless. It was deadly. Of course sitting in
9 the public Whole Foods, Rosemond wasn't going to say, I'm
10 planning on killing Fletcher myself. And McCleod wasn't going
11 to say, It's a good idea to kill Fletcher.

12 What about Derrick Grant, the triggerman? They left
13 what didn't need to be said unsaid. They knew each other from
14 their time in jail together and their time in the drug business
15 together. They shared a history that was about 12 years long
16 at that point and they knew the context. McCleod knew that
17 Rosemond also had known Grant from prison and that Grant had
18 done that first shooting at Violator Records. Remember it was
19 McCleod that told you about that. So McCleod knew they could
20 both trust Grant. Based on all this history, McCleod
21 understood why Rosemond was offering \$30,000 and what Rosemond
22 was proposing to do. And based on all the evidence, you know
23 that Rosemond knew what McCleod was saying too even though
24 McCleod didn't spell it out in a written contract. He told
25 Rosemond, let's see if Derrick Grant will be the shooter

HBSAAROS2

Summation - Johnson-Skinner

1 instead. Rosemond agreed and told McCleod to reach out to
2 Grant and then report back to him on what Grant said. By the
3 way, it's no surprise that Rosemond quickly realized it'd be
4 better for Grant to be the shooter here.

5 Remember what you heard about how Rosemond's a
6 well-known head in the music management company. And remember
7 what Rosemond told McCleod about how he is under surveillance,
8 all the agencies are looking at him. The climate's never been
9 like this. It's better for Rosemond to act like a businessman.
10 Delegate this to someone who is under less scrutiny like Grant
11 and McCleod. That is why he said, Yeah. Speak to "D". Let me
12 know how that goes.

13 And by the way McCleod's testimony about this meeting
14 at Whole Foods it's corroborated by the phone records. McCleod
15 told you he was contacted by phone to meet up that day. On
16 August 24, 2009 McCleod gets a call and he has back and forth
17 calls with Jason Williams. McCleod told you that shortly after
18 that second meeting with Rosemond, McCleod went to visit Grant
19 at his house on 174th Street in the Bronx. Here is a photo of
20 Grant's house.

21 McCleod testified that he told Grant about his line on
22 Fletcher. And that Rosemond wanted to do it himself. Again,
23 McCleod didn't have to spell it out for Grant. Grant knew the
24 context too. Grant responded, For real? And they both just
25 looked at each other. Again, no surprise that Grant who did a

HBSAAROS2

Summation - Johnson-Skinner

1 shooting for Grant in the past didn't think that Rosemond
2 should be shooting himself. McCleod told Grant, Yeah. I
3 mentioned you. And Grant told McCleod that he was in. Let him
4 know that's a go. Yeah, I'm with that.

5 McCleod said that he and Grant also discussed the fact
6 that Rosemond had \$30,000 for someone to bring Fletcher to him
7 so Rosemond could be the shooter. And now that Rosemond wanted
8 Grant involved and McCleod would bring Fletcher to Grant
9 instead of to Rosemond, they could expect at least twice that
10 amount of money. That makes sense. McCleod and Grant knew
11 they'd be getting paid for this murder, at least \$30,000. But
12 they also thought maybe we'll get something more because of the
13 extra work they're doing.

14 Let me be clear about this. McCleod and Grant didn't
15 talk about extra money because the goal of their contract from
16 Rosemond changed as defense counsel suggested in his opening.
17 The goal is the same all along, murdering Fletcher for which
18 Rosemond had at least \$30,000. The only thing that changed is
19 that McCleod and Grant had more work to do themselves now.
20 McCleod testified that he then confirmed for Rosemond that
21 Grant was in and Rosemond said, OK.

22 Now, I want to go forward to September 10, 2009.
23 McCleod spoke to his contact in jail that day who told him
24 Fletcher was being released the next day from Queensborough
25 Correctional. McCleod testified he told Rosemond this.

HBSAAROS2

Summation - Johnson-Skinner

1 Rosemond told McCleod, OK, get with Jason and get with "D" and
2 let them know. In other words, get with one of the closest
3 people to me, my driver Jason Williams and Derrick Grant who
4 we've already picked to do this. McCleod's testimony was
5 corroborated by phone records in that phone chart, Government
6 Exhibit 502. You can see that from 7:11 p.m. on September 10,
7 2009 until 9:46 p.m. that same day there are six texts between
8 Rosemond and the McCleod phone one. That's the Ingam phone you
9 see. There are three calls and text between McCleod and Jason
10 Williams on that same day about that same time period. So
11 those are all the calls McCleod told you about planning with
12 Rosemond and Williams what to do on the day Fletcher got
13 released.

14 By the way, was there any surprise Rosemond wanted to
15 involve Jason Williams in that plot? You heard about how
16 Jason -- he was driving the car when Rosemond tried to get the
17 gun to shoot a Lighty in New Jersey. Williams is one of
18 Rosemond's most trusted men and he was already a part of this.
19 Rosemond involved him in the murder that would end the feud.
20 Rosemond, not McCleod involving a third person, Williams, after
21 Grant and McCleod are already part of the scheme. There is
22 more evidence that this is a plot to kill and this is
23 Rosemond's plot. He is in charge.

24 The next day, September 11, 2009.

25 McCleod told you that Jason Williams picked him up at

HBSAAROS2

Summation - Johnson-Skinner

1 a halfway house in Brooklyn where he was living. He told you
2 he and Williams drove to Queensborough to lay eyes on Fletcher.
3 McCleod found out from a guard that Fletcher had just left.
4 McCleod thought for a second and decided to call Robert
5 Macedonio. He was also the lawyer for Kevin Chung the last
6 contact from jail. So McCleod called the lawyer's office. And
7 you can see that call here in the phone records. On
8 September 11, McCleod called the Macedonio office landline.
9 The person in the office said, actually, they're together right
10 now. I'll put you in touch. McCleod told the lawyer then
11 passed the phone to Fletcher. That's when McCleod talked to
12 Fletcher on the phone.

13 McCleod told you about this conversation. He
14 introduced himself. He said he had a common friend. The guy
15 in jail that told him to lookout for Fletcher. McCleod gave
16 Fletcher that phone number and told Fletcher they should get
17 together and he suggested maybe I'll have some money for you
18 when you get out. Those are all things that someone getting
19 out of jail needs and wants. What Fletcher didn't know is that
20 he would be dead 16 days later, 16 days after getting out of
21 jail for assaulting Rosemond's son.

22 Williams told but this trip to Queensborough too. He
23 testified that he drove to Queensborough with McCleod because
24 Rosemond asked him to get with McCleod that day. He waited
25 outside the jail while McCleod went in. In addition to the

HBSAAROS2

Summation - Johnson-Skinner

1 testimony from both of those witnesses and the phone call
2 records, how else do you know that McCleod is telling the truth
3 about September 11? You saw these cell site maps.

4 This map is McCleod's phone one. It shows you that
5 morning from nine to ten a.m. he was in the area of this
6 halfway house in Brooklyn and then he started going west. The
7 next slide shows you during the same period Jason Williams was
8 there because he is picking up McCleod at his house. The next
9 map shows you McCleod near Queensborough. And the next map
10 shows you Jason Williams there too because he's waiting
11 outside.

12 Now, McCleod testified about a week or a little more
13 later he got a text from Rosemond to meet him at the same place
14 as their last meeting. This would be their third meeting
15 before the murder. McCleod told you'd Williams was also
16 present for this. McCleod told you this time they stayed out
17 outside. You don't have to rely on McCleod alone to know these
18 meetings happened because you saw these phone call records
19 which shows that the defendant and McCleod had numerous phone
20 calls back and forth. There are two texts from Rosemond at the
21 beginning from the McCleod phone asking McCleod to meet and
22 Williams and McCleod also shared text and calls that day.

23 How else do you know this meeting happened? Location
24 data about it. The cell site maps place first make at Columbus
25 Circle, then Rosemond's phone at Columbus Circle, then

HBSAAROS2

Summation - Johnson-Skinner

1 Williams' phone, same place between ten a.m. and 12:30 on the
2 24th just like McCleod told you. No question McCleod met with
3 Rosemond that day, three days before the murder. McCleod told
4 you what he and Rosemond talked about at that meeting.
5 Rosemond asked McCleod if McCleod was using his regular phone,
6 the same phone. When McCleod told him yes Rosemond said, no,
7 get another phone and make sure you talk to Fletcher and no one
8 else on that phone.

9 He told Jason Williams to give McCleod a few hundred
10 dollars to buy a new phone and Rosemond pointed to a Radio
11 Shack where McCleod could get it. Ask yourselves, why did
12 Rosemond want McCleod talking to Fletcher on a phone that had
13 never been used for anything else and that couldn't be traced
14 back to McCleod and Rosemond? Did you hear about Rosemond
15 making sure there is an untraceable phone in any of the other
16 shootings in this case? No. Like I said before, Rosemond was
17 careful. He took extra precautions because this was a
18 murder-for-hire conspiracy. He intended this murder and he
19 didn't want McCleod and himself to be caught. He didn't want
20 to be sitting here in this courtroom today.

21 Another thing you should remember, at this meeting
22 McCleod told you that Rosemond also asked are you sure you guys
23 can handle this? Are you sure you got it? That's at 986.
24 Because if you can't handle it, I have somebody. Two important
25 things about that.

HBSAAROS2

Summation - Johnson-Skinner

1 First, Rosemond's making clear to McCleod he wants a
2 result this time. This is not going to be an attempted
3 shooting where Rosemond has time wasted? Are you sure you can
4 handle this? This is not something you need to ask when you
5 are planning to injure someone. You never heard him saying
6 that in any of the previous shootings. That's another way he
7 intended this to be a murder.

8 Second, it shows you that Rosemond had other people he
9 could involve in this besides Williams, McCleod, Grant. It
10 shows you this wasn't McCleod's operation. It wasn't William's
11 operation. It wasn't Grant's operation. It was Rosemond's.
12 And if he wanted more people involved so he could be sure it
13 got done this time, he'd do it.

14 McCleod told you that he did what Rosemond asked. He
15 bought a new prepaid phone at a Radio Shack under the name of
16 Stacy King. You know he is telling you the truth about that
17 because you saw that exhibit. The subscriber info for the
18 Stacy King phone that shows you that phone was activated the
19 same day. Look at the address 304 West 58 Street, New York,
20 New York as a user address right there at Columbus Circle.

21 The next day September 25.

22 McCleod told you after he bought the Stacy King phone
23 that night he contacted Fletcher in order to give him the new
24 phone number. Here are those records. He contacted Fletcher,
25 actually, on 25th early in the morning at 2:59 a.m. Fletcher

HBSAAROS2

Summation - Johnson-Skinner

1 called him back at 7:39. In fact, just like McCleod told you
2 except for this one call you see here, over the next two days
3 this phone only called Fletcher's phone just like Rosemond
4 wanted.

5 McCleod also told you he received a text message from
6 Rosemond that day, September 25, and he and Rosemond agreed to
7 meet at Houston's Restaurant and it would be their fourth and
8 last meeting before the murder. Here the text messages between
9 McCleod and Rosemond that day and throughout the day, look at
10 all those texts between McCleod and Rosemond's Buckson phone.
11 That is two days before the murder. That's another way you
12 know that Rosemond was intimately involved in this murder.

13 McCleod told you he met with Rosemond at Houston's and
14 they had to wait for a table. While they were waiting Rosemond
15 and McCleod went upstairs to Barnes and Noble. Rosemond took
16 out a Blackberry. He showed McCleod an address at 161 Street
17 and said this is where Fletcher lives according to a spy he
18 had. Rosemond asked him, See if something can be done up
19 there. Take a look at that area and let me know. Page 994.

20 You know that 161 Street is where Leta Bethel,
21 Fletcher's sister told you she lived and where Fletcher was
22 when he got out of jail. Here is a picture of that apartment
23 building. So did McCleod make up that testimony about Rosemond
24 telling him to go to 161? No. How would McCleod know that
25 Fletcher's sister actually lived at 161 Street? Rosemond told

HBSAAROS2

Summation - Johnson-Skinner

1 him at this meeting. Was McCleod telling you the truth about
2 Rosemond having a G-Unit spy. You know he was because it was
3 corroborated by Abdullah. Abdullah also told you that Rosemond
4 had a G-Unit spy down on his luck and Rosemond was paying him
5 for information.

6 Again, stop and ask yourselves, why is Rosemond
7 sending McCleod to see if 161 Street is a place where something
8 can be done? Where what can be done? You need to scout
9 locations not when you are planning a shooting of someone's
10 house or a car like Rosemond had done in public before without
11 regard to who is nearby, but when you are planning a murder and
12 you want to get away with it without getting caught. So the
13 fact that Rosemond had people scouting locations was another
14 way you know he intended this murder. McCleod told you that
15 after that dinner at Houston's, at Rosemond's request he hung
16 back to listen to conversations between Rosemond and that spy.

17 The spy told Rosemond that Fletcher was nervous about
18 someone setting him up. But as McCleod listened to that
19 conversation he realized Fletcher wasn't nervous about McCleod.
20 It was somebody else. Why is that important? Because it shows
21 again the lengths that Rosemond is going to go to make sure
22 that this murder is successful. You don't care if your target
23 is tipped off if you are planning to shoot at his house or
24 shoot at his car. Rosemond wanted a result this time. That's
25 more evidence that he wanted this to be a murder.

HBSAAROS2

Summation - Johnson-Skinner

1 So now take a step back after this fourth planning
2 meeting, two days before the murder. Look at Rosemond's
3 response after getting the information from McCleod that he had
4 a line on Fletcher. Rosemond didn't react impulsively. He
5 didn't tell security, hey, go get your guy, Life, in Brooklyn
6 and go shoot at his house. He didn't go to Jason Williams to
7 do a driveby shooting. No. He took his time this time. He
8 had meetings. He planned the murder. He got all of his team
9 in place. He made sure everything was to his advantage.
10 Comparing the level of planning here to the other prior
11 nonfatal shootings shows you Rosemond's intent again.

12 By the way, how do you know McCleod is telling you the
13 truth about this meeting? Look again at the cell site maps.
14 They place McCleod's phone at Houston's seven to 8 p.m.
15 September 25, 2009. Then Rosemond's phone, same place. And
16 then Williams phone same place.

17 Now at that Houston's meeting McCleod and Rosemond
18 agreed that 161 was a good location McCleod texted Rosemond,
19 it's a good date. I like her. McCleod testified that after he
20 scouted out Leta Bethel's house, he didn't like the location.
21 So he texted Rosemond, I don't like the girl. No chemistry.
22 You'll see these texts here at 11:11 p.m. same night
23 September 25, 2009. McCleod told you he went up there right
24 after this meeting. McCleod told you that Rosemond then told
25 him, OK, get with Jason Williams and Derrick Grant the next

HBSAAROS2

Summation - Johnson-Skinner

1 day. And there's Rosemond's response in these texts. You know
2 the reason that Rosemond wanted him to get with Williams and
3 Grant is to scout more locations.

4 Now, these texts about the girl, McCleod is reporting
5 to Rosemond about whether 161 Street is a good location because
6 Rosemond is McCleod's boss in this murder-for-hire conspiracy.
7 If McCleod was doing this by himself would McCleod need to
8 report to the Rosemond about whether he liked or didn't like
9 the location? Of course not.

10 Why is it in code about a girl? Use your common
11 sense. When you're planning a murder-for-hire and discussing
12 the best location to do a murder, you speak in code. You don't
13 want to write out, this isn't a good location for the murder.
14 Again, if Rosemond was careful and he made sure that the
15 members of his murder crew were careful too.

16 McCleod testified that later that night he reached out
17 to Williams or Grant to help him to meet up at Grant's house
18 the next day. You see those calls at ten p.m. that night and
19 11:35 that night. McCleod told you the next day he want
20 looking for the perfect place like Rosemond wanted him to do.
21 You see these calls between McCleod, Williams and Grant
22 throughout the day the day before the murder. Williams told
23 you the same thing about this day too, that he drove around
24 with McCleod and Grant look for a place. Williams told you he
25 did that because Rosemond asked him to find a spot to lure

HBSAAROS2

Summation - Johnson-Skinner

1 Fletcher to.

2 And Rosemond told him to final a spot with no cameras.
3 No cameras. Stop and think about that for a minute. Rosemond
4 knows he is sending his people to lure Fletcher to a certain
5 location with no cameras. Did you hear him worried about
6 cameras outside the Apollo Theater or at the toll booth in New
7 Jersey or Baja's or his sister's house? No. This was
8 different. Rosemond knew it. It's know another way you knew
9 he intended murder.

10 You knew know from McCleod after looking at a spot he
11 realized he had a perfect place all along, somewhere near where
12 he lived before. He chose a spot at Jerome Avenue and -- it
13 was dark. McCleod thought a camera by the building could be
14 avoided. It was near a subway and it was also near the Cross
15 Bronx Expressway so Williams to could drive away in the getaway
16 car.

17 Location, McCleod pointed out that there was no
18 sidewalk at that time on 2009 on the other side of the street.
19 So a person walking up the sidewalk would have to walk right by
20 that dark recess area. McCleod told you why he and Grant
21 planned he would be the recess so Lowell Fletcher would have to
22 walk right passed him.

23 You know that McCleod and Williams were telling the
24 truth because you saw these cell maps again that placed their
25 phones near Mount Eden Avenue on that same day, the first one

HBSAAROS2

Summation - Johnson-Skinner

1 was McCleod. This one is Williams. You also have the
2 stipulation that McCleod actually got a ticket for not wearing
3 a seatbelt that night at the same place. McCleod and Williams
4 both told you about McCleod getting that ticket too. More
5 corroboration. Williams told you that after picking the shot
6 spot he sent Rosemond and encrypted e-mail, We all good. We
7 found a spot. And Rosemond said, OK.

8 Just like McCleod sent Rosemond updates about the
9 murder, Williams did too. Rosemond was the leader of this
10 murder plot because it wasn't McCleod or Williams who wanted
11 revenge on Fletcher. It was Rosemond. So he was the boss.
12 After picking the shot Williams, McCleod and Grant then went to
13 Harlem and met up with Rodney Johnson. McCleod told you it was
14 then that he realized Toree was involved in this too. At that
15 meeting Johnson told the others that he had Brian James, that's
16 B-Love scouting out 161 Street. And Williams and Grant told
17 Johnson, It's OK. We've already picked out a place.

18 Remember what you know happened just two days before
19 the Rosemond asked McCleod outside the Whole Foods, Are you
20 sure you can handle this? Because I've got someone else. Here
21 is that someone else. McCleod told you he'd never even spoken
22 to Toree about Fletcher or about how he lived at 161 Street
23 that day. McCleod told you he thought to himself, Why is Toree
24 saying this? You know who else had the information that
25 Fletcher lived at 161 Street. Rosemond. So this shows you

HBSAAROS2

Summation - Johnson-Skinner

1 that Rosemond was involving in other people without McCleod
2 even knowing in this murder plot. And again, that makes sense.
3 Rosemond is not just a part of this. He was the orchestrator.
4 This was important to him. It wasn't just a shooting at a
5 building or at a car. He was doing his homework this time
6 because it was a murder.

7 McCleod told you on the night of September 26 he
8 called Fletcher using the phone Rosemond told him to get and
9 use only for Fletcher. He told you about that call in his
10 testimony. It's corroborated by the phone records. Here is
11 the call at 10:17 p.m. And then Fletcher called McCleod back
12 at 3:43 a.m. and McCleod returned the call at 3:45 a.m. on the
13 27th, the day Fletcher would die.

14 McCleod told you about that conversation, that he told
15 Fletcher they should get together tomorrow, meaning
16 September 27 that day. McCleod told Fletcher he would give him
17 \$25,000 and they would get some drinks and see some girls.
18 McCleod told you Fletcher was excited about that. McCleod
19 testify after that conversation. McCleod texted Jason and said
20 they were on for tomorrow. Again, his testimony is backed up
21 by the phone record. There's a text to Jason Williams
22 immediately after those calls to Fletcher. See that text at
23 3:51 a.m. and then he calls later in the day to Grant at
24 1:01p.m. The next day was September 27, 2009. McCleod
25 testified Williams picked him up that night and drove him the

HBSAAROS2

Summation - Johnson-Skinner

1 Bronx. Williams told you why he did that. Because Rosemond
2 asked him to. Williams testified that Rosemond told him today
3 was basically the day, the day Rosemond's been waiting for all
4 these years. Williams testified the same e-mail conversation,
5 the encrypted e-mail conversation is when Rosemond told
6 Williams, Bring the quiet. Bring the quiet. In other words,
7 bring my silencer .22 caliber gun. Rosemond telling Williams
8 to bring the gun with the silencer out of all the guns Williams
9 was holding for Rosemond is more evidence that Rosemond
10 intended this to be a murder. He was being as careful as
11 possible. It's the same reason he wanted to get a .22, a
12 smaller gun -- street shooting. This is not a driveby at Tony
13 Yayo's mother's house. You can't fight a one and a half foot
14 gun in a bag of chips. Let's be clear. Rosemond knew it too.
15 You heard what Rosemond told Stewart about that gun, that it
16 did damage by bouncing around the body and cutting arteries.
17 That's at page 203. So Rosemond sending his .22 silencer,
18 that's more evidence that he intended to murder.

19 McCleod told you he communicated with Williams that
20 day. And if you look at the phone chart you'll see again the
21 text and several calls between McCleod and Williams that day.
22 McCleod told you he also called Fletcher again and told him to
23 meet up in the Bronx that night.

24 This is a call on September 27. McCleod testified
25 that at some point we waiting for Williams to pick him up he

HBSAAROS2

Summation - Johnson-Skinner

1 also texted Rosemond and said, I got a hot date. That's
2 basically the same code he had already discussed with Rosemond
3 about the girl and murder location. He is telling Rosemond he
4 is going through the plot. He's got the date. What did
5 Rosemond say in response? Have fun.

6 Now defense tried to suggest in cross-examination that
7 McCleod and Rosemond didn't sit down and discuss, I got a hot
8 date and McCleod must have been confused. Ask yourself what
9 does "have fun" mean. If it doesn't mean go ahead with our
10 plan, does it mean, "stop, don't kill the man"? Does that mean
11 we have four planning meetings? I've offered you at least
12 \$30,000. I've sent you to scout murder locations with no
13 cameras. I sent my .22 caliber gun with a silencer to a scene.
14 I have a backup team in place that you don't even know about
15 yet but make sure to give him a leg shot? No. McCleod and
16 Rosemond both knew a message was Rosemond giving him the green
17 light to go ahead and kill Fletcher. You know McCleod is
18 telling the truth because you saw his phone records between
19 Rosemond and McCleod that day right after the call to Fletcher
20 at 3:20 p.m. look at what McCleod does. He texts Rosemond at
21 3:28 p.m. and there's four messages about two hours before the
22 murder. Rosemond is in direct contact with McCleod. It's more
23 evidence of his involvement in this murder.

24 At the murder scene McCleod told you about the
25 additional people Johnson and a man he later learned was Shawn

HBSAAROS2

Summation - Johnson-Skinner

1 Williams sitting in Johnson's truck by that McDonald at Mount
2 Eden and Jerome. McCleod told you he was very surprised
3 because someone was about to be killed because here is two
4 people involved in a plan McCleod didn't know about. He didn't
5 know he was going to show up that day. McCleod told you the
6 only people he discussed the murder with were Williams, Grant
7 and Rosemond.

8 And you know how Johnson got there and what his job
9 was. Abdullah testified that Rosemond later told Abdullah that
10 Johnson was there as the backup shooter. Johnson was there
11 because Rosemond had sent him. Now, let me stop there.
12 Rosemond sent a backup shooter. Did you hear testimony about a
13 backup shooter at any of the other incidents? No. You only
14 need a backup shooter when you want to make sure your target
15 doesn't get away. You only need a backup shooter when you are
16 desperate for your plan to work, when you want a target to die,
17 when you waited years and plotted this murder and you don't
18 want to mess it up.

19 Also, look at what it tells you about all the people
20 now involved in this. In addition to Rosemond, there's
21 McCleod, Grant, James, Johnson B-Love who scouted the location
22 and Johnson's extra guy in the car, Shawn Williams. Remember
23 what Abdullah said on the stand, oh, man, Jason, Toree, the
24 shooter, Slim, Slim's man, five people there for that one dude.
25 What does that tell you? Rosemond assembled a hit team. In

HBSAAROS2

Summation - Johnson-Skinner

1 all the other violent incidents no witness testified there were
2 this many people involved in an assault or another shooting.
3 The sheer number of people involved also shows you Rosemond
4 intended this to be a murder.

5 Now -- told you after he arrived at the scene, he
6 parked his car. McCleod told you was it was in the same place
7 on the right side of the next photograph on Mount Eden Avenue.
8 McCleod, Williams and Grant all met in the car. Williams
9 remembered driving there with Grant. McCleod told you Grant
10 was wearing a dark hooded sweatshirt and all black gloves and
11 clothes. You saw that in the video surveillance. McCleod and
12 Williams both told you that Grant went to get a bag of chips to
13 put the gun in. McCleod told you he walked with Grant to get
14 that bag of chips. They came back to the car. Williams then
15 went to park his car around the corner up on Macombs. McCleod
16 went to find Fletcher and Grant took his spot on that recess to
17 kill him.

18 Now, on this phone chart you see there Fletcher called
19 mac McCleod. McCleod told you about that call and said he was
20 off the 4 train in the Bronx. You know that is when Fletcher
21 arrives because you seen the cell site evidence that shows you
22 Fletcher's phone in the area of the murder at the time of this
23 call. McCleod said he walked upward Macombs and told Fletcher
24 to go there too. McCleod told you he hung up the phone so he
25 could call Grant and tell him he is coming. Here are the calls

HBSAAROS2

Summation - Johnson-Skinner

1 right here. After that call to Fletcher, McCleod calls Grant
2 at 8:47. McCleod then told you about the back and forth with
3 Fletcher calling him and sending Fletcher up and down that hill
4 and calling Grant to tell him he's coming and did you get him
5 yet. McCleod didn't know how Fletcher was making it past Grant
6 alive. You see these phone calls at 8:48 from Fletcher and
7 also at 8:53 from Fletcher. And then you see McCleod calling
8 Grant.

9 Now, Fletcher didn't call again after that 8:55 call
10 from McCleod to Grant. You know that's because Grant fired at
11 least seven shots. He hit Fletcher's back and arm as he tried
12 to run away. Brook told you that Grant shot Fletcher from
13 about 15 feet away from about the front of that table to the
14 witness stand. Not very far. You know that seven .22 caliber
15 shell casings were found in this photo near the McDonalds.

16 And let's just briefly play a clip of video
17 surveillance that shows Grant and Fletcher. There's Fletcher
18 at the top screen in the red jacket just like McCleod told you
19 and there's Grant in all black just like McCleod told you. And
20 you can see something shiny, the bag of chips in Grant's hand
21 as he walks away. Looks like he put something in it.

22 Then Williams told you that Grant had run up the hill
23 and got in his car waiting at the top of hill. Grant gave
24 Williams Rosemond's .22 caliber gun. And Williams put it back
25 in the stash box in the car. There's that testimony. Williams

HBSAAROS2

Summation - Johnson-Skinner

1 told you what Grant said that Fletcher realized what was
2 happening and tried to run away but it was too late. He shot
3 him once. He thought his job was done. He ran back to the
4 car.

5 McCleod told you about what Grant told him too, that
6 grant said he almost got away. The last time I just couldn't
7 get let him get away. I had to chase him down and luckily I
8 had the quiet on it because I let off a lot of shots. That's
9 what Grant said. So there's no question what Grant was doing
10 that night. Grant pulled the trigger at least seven separate
11 times and fired at least seven shots to match those seven shell
12 casings.

13 Now McCleod told you after the shooting he Shaw
14 Fletcher's body. You know Fletcher made it from the area by
15 the McDonald to Macombs and Goble. His body pumping with
16 adrenaline running for his life, that's why Fletcher made it.
17 McCleod said he saw Fletcher with one foot in the street and
18 the rest of his body on the curb. McCleod told you he saw the
19 body as unresponsive and he told himself he's dead. He's very
20 dead. After seeing the body McCleod testified he tried to call
21 Williams and Grant and Johnson and here are those calls.

22 There's two calls to Williams, two calls to Grant and
23 then Johnson calls McCleod. It's more corroboration of
24 McCleod's testimony. Johnson told McCleod to come to his house
25 in Harlem. Johnson jumped in a cab and went to his house.

HBSAAROS2

Summation - Johnson-Skinner

1 There was a post murder meeting. He met Williams, Johnson,
2 Grant, Johnson's man in the car, Shawn Williams.

3 Williams corroborated this. He told you about this
4 meeting too. He told you he drove with Grant to Harlem after
5 the shooting where he met up with McCleod and Johnson. McCleod
6 testified he told the people at the meeting. He saw Fletcher's
7 body and he's finished. McCleod told you he explained he saw
8 him laid out on the gurney with no movement. He told you that
9 when he said that none of Rosemond's associates were angry or
10 shocked or surprised. That makes sense because they all
11 understood that's what they were supposed to do. Here is what
12 Jason told you about why he wasn't surprised. That's what we
13 went there to do. Page 770.

14 Here is what Brian McCleod told you about why he
15 wasn't surprised. That was the expected outcome. Page 1077.

16 At the meeting Johnson pointed at the Stacy King
17 phone. He took it from McCleod and he gave pieces of it to
18 each person to break it up. Now McCleod told you he didn't ask
19 Johnson to do that. No one else gave up their phones. Johnson
20 somehow knew that that Stacy King phone had to be destroyed.
21 He knew for the same reason -- Rosemond told him to do it.
22 Rosemond knew this was a murder. It was different from his
23 other shootings where you never heard about any phones being
24 destroyed afterwards.

25 And by the way, you know John was the backup shooter.

HBSAAROS2

Summation - Johnson-Skinner

1 You know he had a gun with him that night because McCleod told
2 you that after the meeting he saw Johnson pass the gun to Shawn
3 Williams in Johnson's building after the meeting. That's the
4 gun Johnson brought to the scene because Rosemond, he didn't
5 send him as a backup to the assault. He was the backup shooter
6 in a murder.

7 The cell site evidence backs him up. Here are the
8 slides, time of the murder. First, this is Jason Williams'
9 phone. Then here is Derrick Grant's phone hitting a cell tower
10 in the same area on all those calls with McCleod about what's
11 going on? Where is he? And then here is Johnson's two phones.
12 His first one was the Leslie Pretty phone and Mike -- phone,
13 same area. Then here is McCleod Stacy King phone, the phone he
14 used to talk to Fletcher. At 8:02 and 8:48 and then at 8:53
15 that was that last call from Fletcher that he night when he
16 then called Grant at 8:53, he's up there right where you expect
17 him to be.

18 Finally, here is McCleod's regular phone hitting all
19 these cell towers and all these towers closest to the murder.
20 He'd only hit these other two towers to the right at 9:18 p.m.
21 That makes sense. That's about when he was leaving. That's
22 who he is talking to on those calls. Johnson told him to come
23 to his place. It's a little bit farther away. And here is the
24 cellphone maps for later that night at the meeting at Johnson's
25 house 9:20 to 10:30. Here's McCleod's phone right there.

HBSAAROS2

Summation - Johnson-Skinner

1 Next is Jason Williams right there. Johnson's phone,
2 same place. Because they're all at that meeting just like the
3 witnesses both told you. Jason Williams said he communicated
4 with Rosemond by encrypted Blackberry that night after the
5 murder. He told him everything was all right. Page 771.

6 He said just enough so Rosemond would understand that
7 his plan had worked. That is how Rosemond wanted his crew to
8 operate. Williams told you what Rosemond said that same night.
9 Make sure you get rid of that. Again Williams knew what he
10 meant. Make sure you get rid of my gun that was used as a
11 murder weapon.

12 So after the meeting Williams went to the East River
13 and he threw the gun in the water. Detective Fox told you that
14 he has that computerized system that alerts him if any of the
15 shell casings from this case ever match a gun that was found.
16 There's never been any hits. You know why because the gun is
17 in the East River just like Williams told you. Again, Rosemond
18 and I'm sure members of his crew were careful. He had the
19 murder weapon thrown away. His careful covert tactics that's
20 more evidence of Rosemond's intent to murder.

21 What did Abdullah tell you happened to him that day,
22 September 27? He said he received a text on his Blackberry
23 from Rosemond. Abdullah testified he didn't know what this was
24 about at the time but he understood it to mean get Johnson to
25 call Williams, the driver, ASAP. Abdullah remembered the

HBSAAROS2

Summation - Johnson-Skinner

1 message because he was watching football. Abdullah also
2 remembered that Rosemond was in Miami at the time. You now
3 know from Deputy Heintz Rosemond was in Miami at the time of
4 the murder. Abdullah told you he followed Rosemond's
5 instructions. He passed along Rosemond's request that Johnson
6 contact Williams. You know why Rosemond wanted Johnson to get
7 in touch with Williams. This was the night of the murder and
8 Rosemond needed Johnson, the backup guy, to know where to go to
9 contact Williams to make it to the murder scene.

10 Abdullah told you the next day, September 28, he
11 received a message from Rosemond that said, yo, that bitch is
12 out of here. Abdullah testified he didn't really understand
13 the significance of this until he got back to New York and had
14 a face-to-face meeting with Rosemond at that restaurant in
15 Harlem. But you understand the significance. That's Rosemond
16 in his own words celebrating the death of Fletcher with his
17 drug dealing partner. Remember, someone who knew about the
18 G-Unit feud and who knew about the slap and who even knew that
19 Brian McCleod --

20 But Rosemond made a I was take here. For all his
21 efforts to be careful he made a mistake. His desire to
22 celebrate Fletcher's death, it got the better of him. Because
23 while there's a map of Rosemond's intent, this message alone is
24 enough for you to find that he intended to murder. Let me
25 explain why. This is very important. What do you know

HBSAAROS2

Summation - Johnson-Skinner

1 Rosemond knows at this point on Monday September 28, 2009?
2 Rosemond is in Miami. He left New York City sometime after
3 that 5:48p.m. call on September 27. Deputy Heintz told you the
4 record show that the next calls in Miami. Williams said he
5 only sent Rosemond a message by encrypted Blackberry that
6 everything's all right or everything's good. He didn't tell
7 Rosemond Fletcher died or he's lying on the curb unresponsive.
8 Just told him, Everything's all right. It wasn't until a
9 through few days later on the ride back from picking up
10 Rosemond at LaGuardia Airport that Williams told Rosemond in
11 detail what happened. Makes sense Rosemond only wants to talk
12 about that kind of stuff in a face-to-face meeting.

13 McCleod told you he didn't contact Rosemond the night
14 of the murder either. They phone records showed McCleod
15 contacted Rosemond September 29, the next day after this
16 message from Rosemond to Abdullah, That bitch is out of here.
17 So the only evidence about what Rosemond knows at this point on
18 the day of the, after the murder is that Everything is good.
19 Everything is all right.

20 What does Rosemond do? He tells Abdullah, That bitch
21 is out of here. The only reason he would have said that is if
22 he planned this from a murder from the beginning. He learned
23 that his plan worked. All he was told was, Everything's good.
24 Everything was all right. And what did he say? The bitch is
25 out of here. Make no mistake "the bitch is out of here", that

HBSAAROS2

Summation - Johnson-Skinner

1 means Fletcher's dead. It's not something Rosemond would have
2 said if he knew that his crew had been successful in giving
3 Fletcher a leg shot or injuring Fletcher. "Out of here" means
4 what it says. He's dead. Gone.

5 So when Williams told him, Everything's good, all
6 Rosemond knew is that his crew did the job he ordered planned
7 and paid for. They murdered Fletcher like he wanted. That's
8 why Rosemond told Abdullah, The bitch is out of here.

9 Rosemond wrote back, Get rid of that murder weapon.
10 Again, you didn't hear Rosemond telling anybody to get rid of a
11 gun in any other shootings. Williams told you Rosemond never
12 asked him to get rid of the gun. The one and only time he
13 asked him to get rid of a gun was when Rosemond told Williams
14 to get rid of that .22 caliber gun. So on the night of the
15 murder just after Fletcher was killed and just after learning
16 everything's good, Rosemond had the presence of mind to tell
17 Williams, Get rid of that. That tells you that what Rosemond
18 wanted, what he planned was a murder from the very start.

19 Next day September 29. Now what did McCleod do after
20 the murder? He testified that a few days later he texted
21 Rosemond. Here is those text September 29, 30, October 1. He
22 told you that he did that because Grant ask about the money.
23 Remember, this is a business transaction, a murder-for-hire.
24 McCleod and Grant need to get paid. And what did Rosemond say
25 when McCleod asked him for money? Did he say, no way, I'm not

HBSAAROS2

Summation - Johnson-Skinner

1 paying you for that. You went too far. Instead Rosemond was
2 only annoyed that McCleod was texting him. He said, Y'all got
3 to be patient. Relax. Stay off my phone. Rosemond's response
4 here that's more evidence he intended this murder.

5 Again, Rosemond's being careful. He doesn't want the
6 man who lured Fletcher to his death as part of his scheme
7 calling and texting him two days later about the murder.
8 Rosemond knows it's dangerous to communicate on phones about
9 criminal activities. That's why he gave McCleod, use the Stacy
10 King phone. That's why he used encrypted Blackberries and
11 multiple phones. That's why he met. Rosemond knew he's guilty
12 and he knew McCleod's text and calls to his phone could get him
13 caught for what he did. So he tells McCleod stay off the
14 phone.

15 The next day October 1, Williams told you a few days
16 after the murder he picked up Rosemond at LaGuardia Airport
17 when he was coming back from Miami. Now Williams didn't know
18 the date. He told you that in that car drive back he told
19 Rosemond all the details about the murder. He testified
20 Rosemond was not shocked or angry when he told him. His
21 response was just regular. Why would he be shocked and angry?
22 Rosemond knew Fletcher was dead. He knew his crew had been
23 successful already from that text from Williams and that's what
24 he wanted all along.

25 So Williams told you he picked up Rosemond at the

HBSAAROS2

Summation - Johnson-Skinner

1 airport and Abdullah told you he met with Rosemond in Harlem.
2 Abdullah told you he wanted to buy a Cartier watch. So he and
3 Rosemond met outside the Mobay Restaurant in Harlem. There
4 Abdullah told you Jason Williams was in the car. Makes sense
5 because Jason was in the car, just picked him up from the
6 airport to drive him back. Abdullah testified, told you
7 Rosemond had just come home. He is staying at his sister's
8 house in the Bronx. The Rosemond told him -- was not taking
9 care of one of their own and that McCleod had offered to give
10 Fletcher some money. Rosemond told Abdullah that Rosemond gave
11 Williams his .22 with the silencer to give to McCleod for when
12 McCleod met Fletcher. Rosemond also told Abdullah that
13 Fletcher met with McCleod, came from out of no where and
14 started clapping him up and Fletcher ran.

15 Rosemond also explained to Abdullah the Blackberry
16 messages he had just sent. He said he asked him to have the
17 drive on the day of the murder because he had Johnson there as
18 a backup shooter and he texted, Yo, the bitch is out of here,
19 because Fletcher was dead.

20 You know Rosemond told Abdullah about these details
21 matching up with what happened. That's more corroboration for
22 what the cooperating witness told you. You know that Rosemond
23 spent more than two years trying to get his revenge. When he
24 knew Fletcher was coming home he exploited a weak link in
25 G-Unit by finding a man who had just come home from jail had no

HBSAAROS2

Summation - Johnson-Skinner

1 money and wasn't taking being taken care of by his crew. He
2 sent his handpicked team and then he sent his backup team. He
3 sent his .22 caliber gun with the silencer. That's why
4 Fletcher was out of here.

5 Abdullah also told you he asked Rosemond outside of
6 Mobay, Are you worried this going to come back to you? Did he
7 say, No, I'm not worried, I had nothing to do with this, they
8 went too far, I didn't order this murder? No. This is what he
9 said. He said Fletcher is a known gang banker. It could be a
10 gang related killing. Rosemond was banking on the fact that no
11 one would care that Fletcher, a gang member, got killed on a
12 dark Bronx street, that they would just chuck it up to another
13 gang related killing. He was wrong.

14 How do you know -- conversation with Williams in the
15 car from the airport and this meeting with Abdullah outside
16 Mobay actually took place? Cell site evidence about it.
17 Remember when Abdullah was on the stand and defense asked
18 Abdullah, Are there any phone records that corroborate that
19 Mobay meeting? Here is a map showing Jason Williams phone on a
20 highway leading from LaGuardia Airport, what Williams told you
21 he picked Rosemond up coming back from Miami 9:38 p.m. on
22 October 1, 2009.

23 If you look at the same slide you'll see that at
24 10:46 p.m. it hit that tower across the river. Could be the
25 west side of Manhattan right there is 125 Street. The next

HBSAAROS2

Summation - Johnson-Skinner

1 slide shows that at 10:59 and 11:15p.m. there's the Williams
2 phone west end and about 65 Street hitting a tower there.
3 That's the same cellphone tower where Rosemond lives. So these
4 slides that show you Williams picking up Rosemond at the
5 airport driving him to the west side across Manhattan 125
6 Street and then going to Rosemond's apartment on west end and
7 65.

8 Now, did they go straight to Rosemond's home? No.
9 The trip took too long for that, almost an hour and a half.
10 They stopped at Mobay where Rosemond got the cash from Abdul
11 and had that conversation about the murder. Here is Abdullah's
12 phone near Mobay when he was meeting with Rosemond there.

13 (Continued on next page)
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HBSAAROS2

Summation - Johnson-Skinner

Hbsnros3

Summation - Mr. Johnson-Skinner

1 So that is how you know Williams and Abdullah are
2 telling you the truth about that meeting.

3 The next day was October 2, 2009. McCleod told you he
4 texted with Rosemond to set up an in-person meeting with
5 Rosemond at Columbus Circle about payment. And you know
6 McCleod was telling you the truth because you saw these cell
7 maps showing you that McCleod's phone, Rosemond's phone, and
8 Williams phone were all at Columbus Circle on October 2,
9 between 10 a.m. and 12 p.m.

10 Here are the texts between the Ingam phone, that's the
11 McCleod phone 1, and the Buckson phone, used by Rosemond, that
12 morning on October 2 to set up that meeting.

13 McCleod told you that at that meeting Rosemond told
14 him the delay in payment wasn't his fault.

15 He said: That wasn't on me. As soon as that happened
16 I told Khalil and T to give you to y'all.

17 So, stop right there. Rosemond is saying as soon as
18 the murder happened, he didn't hesitate. He knew payment was
19 due immediately, and he told Abdullah and Toree -- that's
20 Johnson -- to give the cocaine he owed to McCleod and Grant.

21 McCleod testified that Rosemond told him to go see
22 Toree. He had one kilogram for him. Again, Rosemond expressed
23 no anger at McCleod about the fact that Fletcher was dead.
24 None. It is on your screens, page 1085 to 1086.

HBSAAROS2

Summation - Johnson-Skinner

1 By the way, if this is a situation where Rosemond had
2 only wanted a leg shot, and McCleod and the rest of the crew
3 had gotten carried away do you think Rosemond would have
4 apologized to McCleod for the delay in payment. Of course not.
5 He would refuse to pay, he would pay less, or he would scold
6 him, like he had done before.

7 Rosemond apologized. He made sure that McCleod was
8 given the payment that he was promised because Rosemond wanted
9 McCleod and the rest of the crew to do that murder, and they
10 had successfully completed the job.

11 Now, you heard what happened after this meeting
12 between McCleod and Rosemond. McCleod told you before actually
13 going to pick up the cocaine from Johnson, he had to see his
14 parole officer in the Bronx. Here's the cell site map that
15 shows the same thing. There is his phone and here is the
16 parole officer's address in the Bronx that day. And then
17 there is a stipulation about the parole officer's testimony
18 that McCleod actually came to visit him that day.

19 McCleod told you that after the parole officer he then
20 went to visit Johnson in front of his building in Harlem, that
21 Johnson had Lover with him. That's Brian James, B-Love. And
22 Lover gave McCleod a kilogram of cocaine hidden in an Apple
23 computer box.

24 You know McCleod was telling you the truth about that
25 too, because you saw more cell site maps which show McCleod's

HBSAAROS2

Summation - Johnson-Skinner

1 phone and then Johnson's phone both at that residence on
2 October 2 at 2 p.m.

3 And then McCleod told you he went to Grant's house in
4 the Bronx to give him his share of the payment. McCleod told
5 you at Grant's place he opened the box, had the cocaine in it.

6 And how was it packaged?

7 He said, like all the cocaine from Rosemond's
8 organization was packaged, with mustard or a condiment placed
9 inside to hide the smell. That is what Abdullah and Williams
10 told you about how their cocaine was packaged. That is more
11 corroboration.

12 McCleod told you he split up some of the cocaine to
13 share the profits with Grant. And Abdullah told you about the
14 same payment, corroborating McLeod again. He told you that,
15 soon after the murder took place, Rosemond contacted him by
16 encrypted BlackBerry, a different message. Rosemond asked him
17 to tell Johnson to give McCleod a kilogram of cocaine.

18 And Abdullah told you that Johnson later confirmed to
19 him he did in fact give McCleod that kilogram worth \$30,000.

20 There's one last thing about this payment. Abdullah
21 told you about a later conversation he had with Rosemond, about
22 how they were discussing the drug count for the business, and
23 how the numbers were a little off.

24 Abdullah told you he said to Rosemond, It's short
25 because you told me to tell Johnson to give McCleod one of

HBSAAROS2

Summation - Johnson-Skinner

1 those things, a kilogram of cocaine.

2 Rosemond said, Oh, yeah. That was for the Bronx shit.
3 I've got to give him two keys for that.

4 So Rosemond was planning on paying McCleod two
5 kilograms for the murder, but acknowledged he had already told
6 Abdullah to tell Toree he gave McLeod one. Rosemond paying the
7 \$30,000 he owed for this murder and planning to pay more, it's
8 more evidence that he intended the murder.

9 So the payment of one kilogram about \$30,000, that
10 happened October 2.

11 What else do you know happened that day?

12 That's the last day the Buckson phone number was ever
13 active. That is the phone Rosemond used in planning this
14 murder. That is the end activity date 10/2/09 on the phone
15 records for that phone.

16 Deputy Heintz told you that the records reflect a
17 customer called to cancel the phone service. Now, we don't
18 know whether it was Rosemond himself or Dr. Buckson. We do
19 know that four days after the murder and one day after Rosemond
20 returned from Miami and the same day he met with McCleod to set
21 up the payment for that murder, the phone Rosemond used to plan
22 the murder was deactivated, the same phone Rosemond told
23 McCleod stay off of.

24 That is more evidence that Rosemond knew he was
25 guilty, didn't want to be associated with McCleod, and was

HBSAAROS2

Summation - Johnson-Skinner

1 covering his tracks.

2 By the way, in addition to the payment to McCleod, you
3 also know Rosemond paid Williams \$8,000 for Williams' role in
4 the murder.

5 Why is that \$8,000 important?

6 Before the murder Rosemond never made a promise to
7 Williams to pay him this money. He promised to pay the \$30,000
8 to McCleod and Grant, but not to Williams.

9 If the murder wasn't what Rosemond wanted, would he
10 have paid Williams a bonus?

11 Of course not. Rosemond paid that bonus because he
12 was pleased with what Williams had done.

13 By the way, ask yourself, did Rosemond ever pay
14 Williams for any other nonfatal acts of violence that G-Unit
15 and Williams were involved in? You never heard about any of
16 that. It shows you how important this murder was to Rosemond.
17 He paid a bonus to Williams for the first time for his role
18 because this was different from the other shootings.

19 So that was the payment.

20 You then have a meeting in November of 2009. McCleod
21 met with Rosemond, and McCleod told you Rosemond was
22 complaining to him about how he was in debt. How he was down
23 about a million dollars.

24 This is what Rosemond said: "It's like deja vu. This
25 is what happens when you take a soul."

HBSAAROS2

Summation - Johnson-Skinner

1 Let me say that again, "This is what happens when you
2 take a soul."

3 Rosemond said that to McCleod, ladies and gentlemen,
4 the man who told him he had a line on Fletcher and who lured
5 Fletcher to his death for Rosemond two months before.

6 Let's be clear. That is an admission to the murder
7 from Rosemond's own mouth.

8 Rosemond did say not this is what happens when someone
9 goes to far and you wanted a leg shot and someone got killed.
10 No, talking about himself, he says, "This is what happens when
11 you take a soul."

12 What is the last thing you have Rosemond saying about
13 this murder? Abdullah told you he had a conversation with
14 Rosemond after Johnson had been arrested in April 2010.

15 Abdullah was worried about Brian James, B-Love,
16 cooperating and telling the police about Rosemond's role in the
17 murder. B-Love is the one who Johnson said he had checking out
18 Fletcher's house on 161st and who gave McCleod the box
19 containing the kilogram of cocaine.

20 Abdullah thought, although he was wrong, that B-Love
21 was also the one in the car with Johnson at the scene.
22 Actually, that was Sean Williams. At the meeting Abdullah
23 asked Rosemond, What if B-Love talks to the police about the
24 murder? And Rosemond said: Don't worry about it. The only
25 person that can hurt me in this thing is Slim. And I had told

HBSAAROS2

Summation - Johnson-Skinner

1 Slim to lay low, just in case.

2 You know why Rosemond thought McCleod was the only one
3 who could hurt him, because he was the one who Rosemond knew
4 had the most information about the murder. He was the lure
5 man. He was one who agreed with Rosemond to involve Grant as
6 the shooter. He was the one who Rosemond told to get an
7 untraceable phone. He was the one Rosemond told to scout
8 locations, the one who Rosemond told to have fun right before
9 the murder, and the one Rosemond paid for the murder after.

10 That's why McCleod could hurt him, because Rosemond
11 knew McCleod had the knowledge of the facts showing that
12 Rosemond ordered, planned, and paid for this murder.

13 I'm sure you noticed, by the way, the difference in
14 the level of detail that McCleod and Williams testified about
15 this. That makes sense. That is what Rosemond wanted to
16 happen. Williams' role was to be the driver and bring the gun.

17 From Rosemond's point of view, the less information
18 Williams had the better. Rosemond wanted McCleod to be the
19 only one that could hurt him.

20 Look at the roles Rosemond put people in, in this
21 murder. The members of the crew, they played the same roles
22 in this murder as they played for Rosemond in the rest of his
23 life.

24 Williams was Rosemond's driver. He was the getaway
25 driver in the murder.

HBSAAROS2

Summation - Johnson-Skinner

1 Grant was a shooter for Rosemond in the past. He was
2 the shooter in this murder.

3 Abdullah was Rosemond's drug partner. Rosemond had
4 him handle getting the drugs to McCleod as payment.

5 And McCleod, he was the guy who was loyal to Rosemond,
6 who took the heat for him on that prior drug stash house
7 arrest, and who Rosemond thought wouldn't tell on him about
8 this murder. That is another way you know this was Rosemond's
9 murder plot.

10 Three weeks ago Mohammed Stewart told you about two
11 conversations he had with Rosemond about the beginning and the
12 end of this feud.

13 Stewart testified that after Rosemond's son was
14 assaulted the defendant's attitude changed. He was always
15 upset talking every day about strategy to get back. Stewart
16 told you Rosemond said his dispute with G-Unit wasn't going to
17 be over until they are carrying a coffin.

18 Rosemond kept that promise, ladies and gentlemen.

19 You heard Stewart tell you about what Rosemond said at
20 the end of the feud too. He told you about when he met with
21 Rosemond after the murder on the Lower East Side. Rosemond had
22 him called up from Atlanta for an in-person meeting. Stewart
23 told you he saw Williams first, and he was handed Lowell
24 Fletcher's obituary, this obituary. And Williams told you
25 about this meeting, too, corroborating Stewart.

HBSAAROS2

Summation - Johnson-Skinner

1 By the way, Stewart told you he hasn't spoken to
2 Williams in years, in fact, not since this meeting.

3 Stewart didn't remember showing the obituary to
4 Rosemond, but Williams remembered that Stewart still had it in
5 his hand when Rosemond came outside. Stewart told you that
6 Rosemond came outside bouncing, with a pep in his step as he
7 said later.

8 Stewart asked Rosemond, "We can all sleep now?"

9 Rosemond said, "I can get some sleep. You don't know
10 how many sleepless night I had with this."

11 Stewart told you he responded, "I don't know. I
12 was -- I had been dealing with the beef with you." That's the
13 G-Unit beef that you know Stewart had been dealing with, with
14 Rosemond, and Stewart told you Rosemond looked and nodded. He
15 knew what Stewart meant.

16 You knew, too, ladies and gentlemen. You know why
17 Rosemond could sleep again, because he had his revenge, because
18 Fletcher was in a coffin, and because James Rosemond had put
19 him there.

20 So that is how and why Fletcher was murdered.

21 I said at the beginning only one thing is really in
22 dispute here, whether Rosemond intended and was part of a
23 conspiracy to murder Fletcher instead of injure him.

24 Ladies and gentlemen, having heard all the evidence,
25 you know that Rosemond entered into a conspiracy to kill

HBSAAROS2

Summation - Johnson-Skinner

1 Fletcher and that he did intend that Fletcher would die.

2 Now, you know a conspiracy to murder Lowell Fletcher
3 existed. Jason Williams told you he was a member of that
4 conspiracy, and that the goal was to murder Fletcher.

5 Here's his testimony about it. It's page 775.

6 Brian McCleod told you that he wasn't surprised when
7 he saw Fletcher dead because that was the outcome he expected.
8 You know Derrick Grant was a member of this conspiracy, too.
9 He fired seven shots at Fletcher's back and had to chase him
10 down to make sure he didn't get away.

11 You know Rodney Johnson was a member too. You heard
12 the evidence that Rosemond sent him there as a backup shooter
13 and that he had a gun with him. So the only question is was
14 Rosemond a member of that conspiracy. You know that he was
15 based on everything that he said and did.

16 Now, defense counsel tried to make a big deal about
17 how Rosemond never said the words "kill" or "murder." The
18 problem is your common sense tells you that's not the only way
19 you can get into a murder-for-hire conspiracy. You have to
20 listen to Judge Kaplan on the law, but I expect he will
21 instruct you that, to prove a conspiracy, the government
22 doesn't have to show that two or more people sat around a table
23 and entered into a solemn pact orally or in writing. We have
24 to prove a mutual understanding, either spoken or unspoken,
25 between two or more people to accomplish the unlawful purpose

HBSAAROS2

Summation - Johnson-Skinner

1 charged in the indictment.

2 And you know that murder-for-hire conspiracy wasn't
3 spelled out in a written or oral pact. It was an illegal
4 agreement, a mutual understanding between men who had committed
5 crimes together in the past and who knew the context of the
6 G-Unit feud. And it was planned in secret, so it's no surprise
7 that in this secret criminal murder-for-hire conspiracy, the
8 members of the conspiracy didn't spell everything out in
9 explicit detail. They didn't say "murder" and "kill".

10 Use your common sense. That is not how Rosemond did
11 things. Like Jason Williams told you, when it came to talking
12 about crimes, Rosemond pretty much left what doesn't need to be
13 said unsaid.

14 Rosemond -- your common sense tells you that that's
15 what people planning a murder conspiracy do. Rosemond was too
16 savvy to say what didn't need to be said. He was too careful
17 about what could get him in trouble.

18 When you look at what he did say and all the evidence
19 about the actions he took before and after the murder, you know
20 he was a member of that conspiracy to murder Fletcher.

21 Now, how do you know that Rosemond intended that
22 Fletcher be killed instead of just shot or injured? Well, look
23 at all the evidence of Rosemond's actions and statements before
24 and after the murder that we just talked about and use your
25 common sense.

HBSAAROS2

Summation - Johnson-Skinner

1 That is the one thing the defense doesn't want you to
2 do, because when you take a step back and you look at all the
3 evidence together using your common sense, the evidence is
4 devastating.

5 Defense counsel in his opening statement asked you to
6 look at each piece of evidence or each witness. Look at them,
7 ask if they help you decide intent and then set them aside.

8 For example, he suggested Dr. Smiddy, the medical
9 examiner, wouldn't help you decide whether Rosemond intended
10 this murder. When you think about it, when you look at
11 Dr. Smiddy's testimony, that Fletcher was shot five times in
12 the back and the arm with bullets that she took out of the body
13 and that Detective Fox told you were .22-caliber bullets, when
14 you look at that in the context of all of the evidence in this,
15 like the evidence that Rosemond sent this .22-caliber gun with
16 the silencer to the scene and that Grant used that gun to kill
17 Fletcher, when you use your common sense, you realize that
18 Smiddy's testimony about the bullets shot into Fletcher, it
19 does help you determine Rosemond's intent, to know that he
20 intended that Fletcher be shot and killed that night.

21 I also want to take a minute to discuss the idea that
22 Rosemond could have wanted Fletcher to be shot and not killed.
23 This is not the movies. This not a TV show. Derrick Grant was
24 not a trained sniper with a laser sight shooting at Fletcher's
25 foot. This is one man shooting at another man on a street in

HBSAAROS2

Summation - Johnson-Skinner

1 the Bronx from about 15 feet away at night.

2 Let's be clear. When you send someone to do a
3 shooting with a silenced handgun on a street corner with
4 bullets that can rip through muscles and lungs and the heart,
5 that is evidence you intended to murder.

6 If you look at all the evidence and you consider it in
7 the context of everything you have seen and heard, you will see
8 this wasn't a plot to beat Fletcher up. It wasn't a plot to
9 shoot him in the leg.

10 If you look at how this murder was plotted in more
11 detail, with more participants than Rosemond's prior nonfatal
12 shootings. If you look at Rosemond's planning, the four
13 planning meetings and his meeting with the G-Unit spy -- and
14 here's a list of his meetings -- and the one meeting afterward
15 to discuss the payment.

16 If you look at how Rosemond had people scout murder
17 locations, if you look at all the covert careful tactics he
18 used, like the untraceable phone, meeting underground at Whole
19 Foods, the silencer on the gun, getting rid of gun and rid of
20 the phone afterwards, if you look at the facts that Rosemond
21 sent his own gun to the scene, that he sent a backup shooter,
22 if you look at the amount of money he promised and actually
23 paid, more than \$30,000, and if you look at his own words,
24 words like, Those dudes aren't gonna be happy until they're
25 carrying a good coffin or going to a funeral I'm going to hit

HBSAAROS2

Summation - Johnson-Skinner

1 him so hard and so fast he's not going to see it coming how he
2 said the bitch is out of here when all he knew was that
3 everything was good, how he said I can finally sleep when this
4 was done, and how he said this is what happens when you take a
5 soul, if you look at all of those things, you will know that he
6 intended this to be a murder.

7 You will know there is no gap in the government's
8 evidence like defense counsel claims. You will know this is
9 not special sauce with no beef like the hamburger commercial
10 defense counsel referenced. This is not a TV commercial. This
11 is evidence in a murder case. A real person, Lowell Fletcher,
12 died.

13 All the evidence we have been talking about today and
14 your common sense tell you that Rosemond intended that Fletcher
15 would die when he ordered, planned, and paid for this murder.

16 Now, I'm almost done.

17 Before I reach my last point, let me address something
18 I expect you will hear from defense counsel, that the
19 cooperating witnesses, they're all liars and you can't believe
20 any of their devastating testimony about Rosemond. Let me be
21 clear. All four of these men committed serious crimes with and
22 for the defendant. With the exception of Williams, all of them
23 committed serious crimes on their own that had nothing to do
24 with the defendant.

25 That is why the government prosecuted, arrested, and

HBSAAROS2

Summation - Johnson-Skinner

1 convicted them for their crimes. It is also why in our opening
2 statement we asked you to carefully scrutinize their testimony.
3 It is because of their criminal relationship with Rosemond that
4 they have important testimony to offer, testimony about
5 Rosemond's planning Fletcher's murder.

6 To learn about a complex murder-for-hire scheme that
7 involved multiple people, you actually have to get the
8 information from the inside sources, from the people who are
9 actually part of the conspiracy.

10 So one of the things you have to decide is, are these
11 inside sources telling you the truth, or are they just weaving
12 a fantastic story to try to trick each and every one of you?

13 How do you tell?

14 First, ask yourself what did they testify about?

15 Did they testify just about Rosemond, or did they also
16 testify about other people and even themselves?

17 when they talked about themselves, were they candid or
18 did they hold back?

19 Stewart told you about numerous shootings he's
20 committed, and many other crimes he's done.

21 Abdullah admitted he sold huge quantities of drugs and
22 was involved in other shootings.

23 Williams admitted not only to this murder but to two
24 other serious crimes.

25 And McCleod told you he sold drugs for a long part of

HBSAAROS2

Summation - Johnson-Skinner

1 his life separate from the defendant.

2 Ask yourself, is anyone going to get on the stand and
3 make up all these terrible things about themselves?

4 Of course not.

5 Also ask yourselves, if the cooperators were honest
6 about not only themselves, what about other people they
7 committed crimes with beside Rosemond.

8 They didn't just talk about Rosemond. They named
9 names. They told you about all the other people involved in
10 the defendant's crime, people like the other cooperating
11 witnesses, people like Derrick Grant, Rodney Johnson, Brian
12 James, Derrick English.

13 Did they tell the truth about these people, but only
14 lie about Rosemond?

15 No.

16 Also ask yourselves, what are the cooperating
17 witnesses' incentives?

18 Are they better off lying or telling the truth?

19 Stewart told you he's still waiting to be sentenced,
20 and he faces an automatic mandatory minimum 20 years. If he
21 lies, his cooperation agreement is ripped up. If he tells the
22 truth and gets that letter from the government, there's a
23 chance he gets less than 20 years.

24 Jason Williams, already serving a sentence of more
25 than 24 years. His only chance for less time is if he tells

HBSAAROS2

Summation - Johnson-Skinner

1 the truth and gets a similar letter if the government. If he
2 lies, he will serve all of that time, and he risks additional
3 time for perjury.

4 You saw Jason Williams' demeanor on the witness stand
5 and how uncomfortable he was testifying against Rosemond. He
6 told you it was hard to talk about Rosemond because he was like
7 family to me.

8 Williams isn't out to get Rosemond, ladies and
9 gentlemen. You know he's telling the truth for one reason,
10 because it's in his own best interest to do so.

11 What about McCleod and Abdullah? They have already
12 been sentenced and served their time, and they are on
13 supervised release, a form of parole.

14 Defense counsel tried to suggest that these witnesses
15 would all do anything to get out of jail. These guys are
16 already out. It doesn't make any sense. At this point, having
17 served their sentences, what incentive do they have to come
18 here, take an oath, and commit perjury against Rosemond? None.

19 If they tell the truth, their supervised release may
20 be reduced. That is not much of a carrot for getting on the
21 witness stand and talking about their criminal past in a public
22 trial. But if they lie, they face a harsh stick: They could
23 risk going back to jail, and everything they did to cooperate
24 before could be for nothing. Under the circumstances, what's
25 best for McCleod and Abdullah is to tell the truth.

HBSAAROS2

Summation - Johnson-Skinner

1 You get to scrutinize the cooperators' testimony, and
2 you should. But when you do, you are going to start asking
3 yourselves, how is it that what each of them says matches up
4 with what other people say in important details?

5 How is it that both Abdullah and Stewart told you that
6 Rosemond used basically the same words to describe how the
7 G-Unit feud would end, with a coffin or with a funeral.

8 How is it what Abdullah said Rosemond told him about
9 the details of the night of murder at that Harlem meeting at
10 the restaurant matches exactly what you know happened in the
11 murder?

12 On the details of events that matter, the ones you
13 would expect someone to remember if they actually occurred,
14 these witnesses all told you consistent accounts. That's a way
15 you can tell they are telling the truth.

16 Finally, ask yourselves, if the cooperating witnesses
17 were lying, how is it that what they told you is supported not
18 only by the other witnesses, but by the other independent
19 evidence in this case, like the cell site evidence showing
20 Rosemond's phone at meeting locations where and when the
21 witnesses told you he was, and the phone records showing texts
22 and calls between Rosemond and McCleod just like McCleod told
23 you?

24 The answer is simple, because what the witnesses told
25 you is what happened.

HBSAAROS2

Summation - Johnson-Skinner

1 Now, I want to talk to you for a few minutes about my
2 last topic, the charges and how we have met our burden on the
3 elements.

4 Listen to Judge Kaplan on the law and the charges, but
5 I expect he'll tell you the defendant has been charged in four
6 counts.

7 Count One charges Rosemond with conspiring or agreeing
8 with others to have members of G-Unit murdered in exchange for
9 payment from March 20, 2007, the date Rosemond's son was
10 assaulted, up to September 27, 2009, the date Fletcher was
11 murdered.

12 Count Two charges Rosemond with the murder for hire of
13 Fletcher and the aiding and abetting of that murder for hire.
14 This is the substantive murder for hire, as distinguished from
15 the conspiracy to murder members of G-Unit that resulted in
16 Fletcher's death as charged in Count One.

17 Count Three charges that, during the murder-for-hire
18 conspiracy charged in Count One, Rosemond used, carried, and
19 possessed firearms in connection with that conspiracy, and
20 aided and abetted others who did the same.

21 Finally, Count Four charges that Rosemond used a
22 firearm in connection with the murder for hire of Lowell
23 Fletcher or aided and abetted others who used the gun in
24 murdering him.

25 For the murder-for-hire counts, I expect the judge

HBSAAROS2

Summation - Johnson-Skinner

1 will tell you that that there are three elements of the
2 substantive offense:

3 First, the defendant used or caused someone else to
4 use a facility of interstate or foreign commerce;

5 That he did so with the intent that Lowell Fletcher be
6 murdered in violation of the laws of any state or the United
7 States; and,

8 Third, that the defendant intended that the murder of
9 Lowell Fletcher be carried out in exchange for something of
10 pecuniary value or a promise or agreement to pay something of
11 pecuniary value.

12 With respect to the first element, you know that
13 Rosemond and other members of this conspiracy used facilities
14 of interstate or foreign commerce -- cell phones. That is part
15 of this plot to murder Fletcher.

16 You remember this long stipulation I read about the
17 phone records. It's Government Exhibit 1305. Again, you can
18 look at all the stipulations in the jury room.

19 This tells you that each of those cell phone carriers
20 operate a telephone network that's capable of placing calls
21 between states and internationally. You heard about literally
22 dozen of calls in this case and texts made by members of the
23 conspiracy.

24 You know Rosemond used the Buckson phone to
25 communicate with McCleod about the murder and to set up their

HBSAAROS2

Summation - Johnson-Skinner

1 planning meetings. You know Rosemond had McCleod buy the Stacy
2 King phone to use to communicate with Fletcher. Those examples
3 are more than enough for that element.

4 Skipping ahead to the third element, that the
5 defendant intended that the murder be carried out in exchange
6 for something of pecuniary value, as to that element you have
7 first what happened before the murder, that Rosemond and
8 McCleod discussed how Rosemond had at least \$30,000 for
9 McCleod's role in the murder.

10 You heard that from both McCleod and Abdullah. That
11 Rosemond in fact gave McCleod a kilogram of cocaine worth about
12 \$30,000 in payment for the murder.

13 You heard Abdullah's testimony that Rosemond told
14 Abdullah to have Johnson give those drugs to McCleod.

15 And you saw the cell cite evidence and the stipulation
16 showing you that what McCleod said about picking up the drugs
17 was true.

18 That is the first and the third element of substantive
19 murder for hire.

20 The second element is that the defendant used or
21 caused someone else to use the phones with the intent that
22 Fletcher be murdered.

23 We just talked about all the ways that you know that
24 Rosemond intended that Fletcher would be murdered, so that
25 element is met too.

HBSAAROS2

Summation - Johnson-Skinner

1 With respect to Count One, the conspiracy count, I
2 expect the judge will tell you you have to find a conspiracy to
3 commit murder for hire existed and that Rosemond knowingly and
4 willfully and voluntarily joined that conspiracy.

5 Again, we just talked about all the ways you know that
6 Rosemond did join a conspiracy to commit murder for hire.

7 I also expect the judge will ask you on Counts One and
8 Two, if you find that Fletcher died as a result of those
9 crimes. Of course, you know he did.

10 Dr. Smiddy testified the cause of Fletcher's death was
11 his gunshot wounds, and specifically this wound A, the shot
12 through his lungs, heart and his aorta.

13 Now I want to spend a few moments on the last two
14 counts, Counts Three and Four, the gun counts.

15 You have heard testimony about a lot of guns. You
16 only have to focus on one, the .22-caliber with the silencer.
17 There can be no serious dispute that that gun was used to
18 murder Fletcher. There were seven. .22-caliber shell casings
19 found at the scene.

20 You heard from Detective Fox that those shell casings,
21 they all matched each other. That meant they were all fired
22 from the same gun. You heard there were .22-caliber bullet
23 fragments found in Fletcher's body.

24 Detective Fox told you that actually three of those
25 bullets matched each other. The other two were so deformed

HBSAAROS2

Summation - Johnson-Skinner

1 from being shot through his body, they couldn't be examined.

2 You know that that gun was Rosemond's gun. Williams
3 told you he was holding that gun for Rosemond, that Rosemond
4 told him to take it to the murder scene and get rid of it
5 later.

6 Rosemond himself told Abdullah that that .22-caliber
7 gun with the silencer, his gun, was used to murder Fletcher,
8 and Mohammed Stewart told you about that gun too. If you
9 remember, he was holding it for Rosemond when Life used it to
10 go shoot at Baja's sister' house. And Stewart said he actually
11 gave it back to Jason Williams.

12 Again, listen to Judge Kaplan on the law, but I expect
13 he will tell you that it is not required that the defendant
14 personally commit all the elements of the substantive
15 murder-for-hire count or personally hold or use a firearm in
16 connection with Counts Three and Four in order to be guilty of
17 those crimes if he aided and abetted others who did the same
18 thing who committed those crimes.

19 Keep those instructions in mind when you consider the
20 fact that Rosemond sent Williams to the murder scene with his
21 .22-caliber gun knowing and intending that his murder crew were
22 going to kill Lowell Fletcher with it.

23 Keep those instructions in mind when you consider all
24 the things Rosemond did to bring about this murder, even though
25 he wasn't the trigger man himself.

HBSAAROS2

Summation - Johnson-Skinner

1 At the start of this trial the first witness Leta
2 Bethel, she told you that on the day of her brother's death,
3 she ordered him a couch so he would have a place to sleep in
4 her small one-bedroom apartment.

5 We can go to that slide.

6 She told you, "I purchased the couch, but by the time
7 they delivered it, you know or whatever --"

8 She trailed off, but she was crying about how her
9 brother had died.

10 You know what happened before they delivered it.
11 Lowell Fletcher never got to sleep on that couch. But James
12 Rosemond, he could sleep again, because Lowell Fletcher was
13 dead. He had his revenge, and the feud was over.

14 Rosemond paid for Fletcher to die because only one
15 thing could satisfy him after Fletcher and the other G-Unit
16 members assaulted his son.

17 He unleashed an onslaught of violence and shootings,
18 but it wasn't enough. He wanted someone in a coffin before he
19 could rest, so he ordered, planned, and paid for Fletcher
20 murder.

21 You might ask yourself, why did Rosemond, the CEO of a
22 music management company, the head of a profitable drug
23 business, why did he think that he could get away with all
24 these shootings and with carrying out this plot to kill
25 Fletcher? Even though his desire for revenge was so strong he

HBSAAROS2

Summation - Johnson-Skinner

1 couldn't sleep, why did he actually go through with killing
2 Fletcher?

3 Why was Rosemond so brazen?

4 Because Rosemond thought he wouldn't get caught for
5 this crime. He didn't think his enforcer, Mohammed Stewart;
6 his number two man in the drug business, Khalil Abdullah; his
7 personal driver, Jason Williams; his old friend from jail who
8 had been loyal to him before, Brian McCleod; he didn't think
9 that they would come here take that witness stand and tell you
10 what he did. He didn't think he would be caught with all his
11 covert tactics like not saying too much, getting rid of the gun
12 with the silencer, deactivating his phone after the murder was
13 done. He also didn't think anyone would ask too many questions
14 about a gang banger being killed in the Bronx. He was wrong.

15 Those witnesses, they did come here and they told you
16 about how Rosemond is responsible for Fletcher's murder. And
17 now, at this trial, Rosemond is facing justice for his crimes.

18 You heard about how not much is actually in dispute in
19 this case. You know that on the issue that is in dispute the
20 evidence that Rosemond intended to murder, it's overwhelming.
21 You heard how the testimony of all the witnesses matches and
22 supports each other.

23 You know the witnesses' testimony is supported not
24 just by each other, but by the other evidence in the case, like
25 the cell site records and the phone records.

HBSAAROS2

Summation - Johnson-Skinner

1 At the start of this trial, we asked you to use your
2 common sense as you listened to the evidence. Now I am going
3 to ask you to keep using your common sense as you go back to
4 the jury room to deliberate. When you consider the testimony
5 of all the witnesses and all the evidence that you have seen
6 and heard, the only just and fair view, the only view that's
7 consistent with the evidence is that the defendant, James
8 Rosemond, is guilty.

9 THE COURT: Thank you, Mr. Skinner.

10 We will take a ten-minute break.

11 (Jury not present)

12 (Recess)

13 MR. TOUGER: Your Honor, I expect you want me to stop
14 around 1?

15 THE COURT: No, I expect you to finish.

16 MR. TOUGER: You want me to finish the whole thing?

17 THE COURT: If you don't mind breaking, stop around
18 1:15.

19 But I will leave that to you. If you want to go
20 straight through, your call.

21 If you want to interrupt, interrupt about 1:15.

22 MR. TOUGER: OK.

23 THE COURT: Just let me know ahead of time.

24 Are you going to do that or not?

25 MR. TOUGER: The only problem is if I go straight it

HBSAAROS2

Summation - Johnson-Skinner

1 will probably take us to 2 o'clock. I think that is a long --

2 THE COURT: Your hour of last week became an hour and
3 a half this morning. Now it's getting into an hour and
4 three-quarters.

5 MR. TOUGER: It's going to be an hour and a half.

6 THE COURT: Do you want to break it or not?

7 MR. TOUGER: I think so. If I go through, I go
8 through.

9 THE COURT: I would like to know.

10 MR. TOUGER: You would like to know?

11 THE COURT: You can have it either way. Just tell me.

12 MR. TOUGER: I'll go through.

13 THE DEPUTY CLERK: Shall I get the jury, your Honor?

14 THE COURT: Yes.

15 MR. TOUGER: We'll go straight through, your Honor.

16 THE COURT: You need to have that in a case where I
17 can see it.

18 MR. TOUGER: That's my problem. I'm trying to find a
19 place where everybody can see it.

20 Can you see it now, your Honor?

21 THE COURT: Yes.

22 (Jury present)

23 THE COURT: OK. Members of the jury are present and
24 the defendant is present.

25 What we are going to do, ladies and gentlemen, is

Hbsnros3

Summation - Mr. Touger

1 Mr. Touger is going to make his closing argument. We will then
2 break for lunch. You will hear the rebuttal argument from the
3 government after lunch, and then I will charge you and we will
4 stay tonight.

5 Mr. Touger.

6 MR. TOUGER: Thank you, your Honor.

7 First of all, ladies and gentlemen, let me thank you
8 for sitting here as jurors in this case. This case has gone on
9 a little bit longer than we expected, but that is kind of
10 typical. I want to thank you all for your prompt attendance
11 here, and what I know was your attention to every bit of
12 evidence that came in because I was watching you during the
13 trial and none of you fell asleep, which I give you a pat on
14 the back for.

15 The government brought up in their closing argument
16 today my analogy to where's the beef. So let me go back to
17 that for a second.

18 I don't mean in any way to take away from the
19 seriousness of this case. This is obviously a very serious
20 case for Lowell Fletcher's family, for the government and
21 obviously for Mr. Rosemond, who faces the charges here.

22 I want you to imagine -- I am going to explain the
23 commercial a little bit, because, as I understand it from
24 people, that people younger than me don't know what that
25 commercial is even about. I am going to explain it in a

Hbsnros3

Summation - Mr. Touger

1 different way.

2 I want you to think of it you are going to a
3 restaurant and you have been told they have the best bacon
4 cheeseburger in New York City.

5 You go into that restaurant and you order that --
6 sorry for those vegetarians in the crowd -- and it comes to
7 you.

8 There is a beautiful bun, there's a crisp piece of
9 lettuce, there's a nice juicy piece of tomato, there's
10 perfectly aged cheddar cheese. Everything looks just right,
11 except when you really investigate and you go to put some
12 ketchup on it, you notice there's no burger.

13 And that's what we have here, ladies and gentlemen.
14 The government's evidence can be a metaphor for that hamburger.

15 Let's look at it again.

16 The roll, this beautiful roll could be all these prior
17 shootings you heard about and all the cell phone records that
18 back up where everybody was.

19 The tomato, that could be the fact that Jimmy
20 Rosemond's son was assaulted.

21 The lettuce could be that Jimmy participated in these
22 conversations with Mr. McCleod.

23 The cheddar cheese could be that Jimmy spoke with
24 Brian McCleod many times and ordered Jason to bring the .22.

25 And the bacon could be all of Jimmy's statements after

Hbsnros3

Summation - Mr. Touger

1 the incident occurred.

2 But what they are missing, even with all this
3 wonderful evidence, and it's very good evidence, but it doesn't
4 prove one thing, they are missing the burger, the intent of
5 Jimmy to kill. That's what's missing in this case.

6 It doesn't matter how many meetings they verified
7 occurred. It doesn't matter all the other evidence that is
8 beyond established. They have failed to prove the main element
9 in this case, that Jimmy intended that any member of G-Unit
10 die, let alone Lowell Fletcher. That evidence is missing from
11 Jason Williams' testimony and Brian McCleod's testimony.

12 Nowhere in their testimony did either of them say the
13 key words, "Jimmy ordered me to kill Lowell Fletcher." And I
14 don't mean just using the word "kill." They testified that
15 there's nowhere that he even used any words that mean kill,
16 murder. Nowhere.

17 Go through the record. There's a lot of smoke thrown
18 up by the government and all the testimony about drug dealing
19 and other shootings, all to cover up the big void in their case
20 that no one ever says Jimmy wanted Lowell Fletcher dead or
21 anybody else from G-Unit dead.

22 This is the essence of the case. Did Jimmy -- and
23 Jimmy's the only important one. It doesn't matter what Brian
24 McCleod's intent was. It doesn't matter what Jason Williams'
25 intent was. It doesn't matter what Derrick Grant's intent was.

Hbsnros3

Summation - Mr. Touger

1 They are not on trial.

2 The only person who matters, the only intent that
3 matters to you is what was Jimmy's intent?

4 Did Jimmy join a conspiracy with the intent to have
5 somebody killed?

6 Now let's go back to the government's opening
7 statement to see what they said they will prove and how they
8 would do it.

9 The first thing they said was, as you will see and
10 hear during this trial, for more than two years Rosemond and
11 his team tried over and over again to have a member of G-Unit
12 shot and killed.

13 There is no proof the government can point to
14 throughout this whole trial that supports this statement.

15 Stewart, and as he told you he was, and as the
16 government just said, he was Jimmy's right-hand man with all
17 this. He was the Swiss army knife I believe he referred to
18 himself. He was Jimmy's go-to guy. He was the main man in the
19 feud.

20 And what did he say?

21 He never wanted to kill anyone; never asked anyone to
22 kill anyone.

23 So how, if the main man in this alleged feud for these
24 two years wasn't supposed to kill anyone and never tried to
25 kill anyone, was Jimmy's intent to kill?

Hbsnros3

Summation - Mr. Touger

1 Abdullah, same testimony, same intent. Never intended
2 to kill anyone, never tried to kill anyone, never ordered
3 anybody else to kill anyone, never wanted anyone to die.

4 (Continued on next page)

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HBSAAROS4

Summation - Touger

1 MR. TOUGER: All shootings they both made it quite
2 clear to you that they never shot with the intent to kill.

3 Jason Williams never was asked to kill anyone. He
4 never shot at anyone and never saw Jimmy kill anyone. McCleod
5 wasn't in jail for the entirety of the feud, so he has no
6 testimony on this issue. So none of the four witnesses the
7 government brought before you and have told you they are
8 telling the truth, remember the government stands behind each
9 and every one of these people, they are telling the truth, can
10 support their first argument that for two years Jimmy tried to
11 kill a G-Unit member because all of the people involved this
12 those shootings told you that wasn't true.

13 Stewart testified at page 190, We were going to bring
14 the beat to G-Unit when ever we saw them. But he told you that
15 doesn't mean kill. He made that very clear. Hurt them maybe,
16 but not kill them.

17 Then the government continued:

18 first you'll hear from law enforcement officers such
19 as the officers who responded to the murder scene, as well as
20 officers who responded to other violent acts that Rosemond and
21 his associates committed against members of G-Unit.

22 I would suggest to you that none of the police
23 officers who testified here or whose testimony was placed
24 before you by stipulation helped you answer the question, Did
25 Jimmy intend to have anyone killed? Their basic testimony was

HBSAAROS4

Summation - Touger

1 they arrived at a location where there had been a shooting.
2 They gathered ballistics and they left. One or two of them
3 interviewed a few witnesses. But that was what their sole
4 involvement in the case was. The only thing they proved is
5 that no one ever got killed at any one of these shootings and
6 in all the shootings only one person got hurt by a Czar alleged
7 shooting. Which is a misstatement from what the government
8 said to you in their opening when he said it all changed on the
9 day that Mr. Rosemond's son was attacked. I would suggest if
10 you ask the man who got shot at the Apollo that night by
11 Abdullah was a person -- did he get wounded, he got wounded he
12 got shot.

13 Second panel.

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

17 Again, I suggest to you that neither of the two
18 experts, Dr. Smiddy or Deputy Heintz who testified in case gave
19 you any assistance in deciding the only question that is in
20 dispute. Dr. Smiddy certainly does not help the prosecution's
21 case even taking back -- yes, Lowell Fletcher did die due to
22 the shooting but that is -- and this is the first important
23 thing for you to remember -- is not important in this case.
24 That's not the question you have to decide. It is obvious that
25 Lowell Fletcher died. The proof that is irrelevant is that if

HBSAAROS4

Summation - Touger

1 Jimmy had decided to kill Lowell Fletcher and Lowell Fletcher
2 lived he'd still be guilty of Count One. The fact that Lowell
3 Fletcher died or didn't die is not important. It's sad. We
4 have sympathy for his family but you can't use those emotions.
5 As far as evidence in this case, it means nothing.

6 Dr. Smiddy's testimony, if anything, proves that Jimmy
7 never intended for Lowell Fletcher to die that night. She
8 confirms that Lowell Fletcher was shot at a distance. There
9 was no stippling or any of that other evidence that proves a
10 close-up shot. We know from the civilian witness that he puts
11 that distance, Mr. Brooks, at 15 or more feet. And then a .22
12 caliber weapon was used. And as I will show you later on, both
13 those facts prove that this was not an intended homicide.

14 Marshal Heintz's testimony certainly does not help you
15 answer the question. All he did was confirm that certain
16 meetings and communications took place during this case. Well,
17 did you ever see me argue -- no, because I don't. All those
18 meetings, they took place. It's obvious they took place just
19 as the prosecutor just told you. We do not dispute one fact of
20 his testimony. But what is important is not that the meetings
21 took place. What is important is what was discussed at those
22 meetings and for that you have no proof from Marshal Heintz or
23 anybody else except the cooperators and we'll get to that
24 later.

25 Third, you'll hear from everyday citizens who happen

HBSAAROS4

Summation - Touger

1 to witness events relating to the murder. For example, you
2 will hear from an eyewitness who saw the shooting take place on
3 his way back from picking up dinner. And you will also hear
4 from Fletcher's sister who he was living with at the time and
5 who spent the day with Fletcher the day he was murdered.
6 Again, these witnesses certainly do not prove that Jimmy
7 intended Lowell Fletcher to die that night. They are just
8 further proof of the extent the prosecution will go to coverup
9 the gaping hole in their proof. They will try anything to
10 inflame your passion against Jimmy and hope you will just
11 convict him because you don't like him.

12 While the testimony of Ms.-Marte is very dramatic and
13 she certainly deserves an accommodation for what she did, it
14 does nothing to help you answer the question, What was the
15 intent of Jimmy on that night? Again, we'd all have sympathy
16 for Lowell Fletcher's sister and all his family but her
17 evidence, her testimony does not help the government prove to
18 you that Jimmy intended Lowell Fletcher to die.

19 And Valerie Bernard, Yayo's sister, why was she called
20 to testify at all if not to rachet of your disdain for the
21 world that Jimmy lived in. The defense stipulated to the fact
22 that her house was shot at. So why was it necessary to call
23 her to say her house was shot at? It was only to get you to
24 dislike him more, so she could testify about her daughter.

25 And what's interesting about that is did Jimmy shoot

HBSAAROS4

Summation - Touger

1 them as they were going in the house? No. The testimony is
2 that they waited till they got in the house and the house was
3 their protection. If he wanted them dead, they would have been
4 shot as they went in the house.

5 Not one civilian witness provided you with any proof
6 that Jimmy intended Lowell Fletcher to be kill as opposed to
7 being shot at.

8 Panel Four.

9 I mentioned you would also see physical evidence that
10 evidence to support what you will hear from the witnesses. For
11 example, you will hear about cellphone evidence tying Rosemond
12 to the planning and executing of the murder. Well, the
13 cellphone evidence as we've already mentioned does nothing of
14 the sort. All it proves is that there were meetings and
15 conversations. It proves nothing about the content of those
16 meetings. There is absolutely no physical evidence in this
17 case that proves Jimmy intended Lowell Fletcher to be killed as
18 opposed to being shot at. There are no tapes of any
19 conversations. There are no videotapes of any consequence.
20 There are no photographs of any consequence. The only thing
21 the videotape of actual shooting demonstrates is how poorly
22 this allegedly well-planned incident was done. For all their
23 planning that McCleod allegedly did he can't even get Fletcher
24 to go to the right spot. The actual shooting takes place no
25 where near the allegedly intended site.

HBSAAROS4

Summation - Touger

1 Panel Five.

2 The prosecution's supposedly most powerful witnesses.
3 Finally, you're going to hear from people who have inside
4 knowledge of Rosemond's crimes. That is because those people
5 committed crimes with Rosemond. I suggest to you that not one
6 of these four people provided you with evidence that Jimmy
7 intended Lowell Fletcher to die that night. Remember most
8 importantly, it is not the intent of Brian McCleod or Derrick
9 Grant that matters. It is only the intent of Jimmy. Did Jimmy
10 intend for Lowell Fletcher to be killed? Well, let's look at
11 each one of those cooperators for a short moment right now.

12 Mohammed Stewart the first one, told you he has no
13 firsthand knowledge of the incident. He knows nothing about
14 the shooting of Lowell Fletcher till after it occurs. He does
15 however shoot a lot of people sometimes even at close range.
16 Remember his description of the Ocal shooting? He took his .45
17 caliber gun, put it to the man's stomach and emptied it into
18 his stomach but never intended to kill him that night and
19 didn't want him to die. They are telling you Mohammed
20 Stewart's telling the truth. So you can't question that
21 testimony. He shoots people. He orders people shot but never
22 intends for that person to die. As a matter of fact, he's told
23 you quite honestly he's never killed anyone. So I ask you how
24 does he help the government's case?

25 Khalil Abdullah, again, he told you he has no

HBSAAROS4

Summation - Touger

1 firsthand knowledge of the incident. Finds out everything
2 after it has occurred. He also shoots a lot of people and has
3 ordered others to shoot at people even using terms such as
4 "clap him up". For him the terms that they say means in their
5 minds kill but he's told you when he's used those words it
6 doesn't mean to kill. Their own witness is defeating their
7 argument. So I ask you how does he help the prosecution's
8 case.

9 If anything, Abdullah and Stewart are the defense's
10 best witnesses because both say they shoot at people or order
11 others to shoot at people, use words such as "clap him up" and
12 most importantly, have never ever after saying clap him up or
13 hit him but don't kill. Abdullah made that quite clear, he's
14 never added that little sentence fragment at the end "don't
15 kill him". That is exactly the situation we have here.

16 Furthermore, the government's argument that this is
17 personal to Jimmy and that is why it's homicide. Well,
18 Mohammed Stewart told you pointblank the war between him and
19 Baja became personal. Baja shot at him multiple times. Blew
20 up his barbershop but he never wanted to kill Baja, never
21 intended to kill Baja. If he died he wouldn't have been
22 unhappy but never wanted to kill him.

23 Then you have Jason Williams talk about him much more
24 later on the but at page 841 and 842.

25 Q. You had no idea whether they were going to kill Lowell

HBSAAROS4

Summation - Touger

1 Fletcher that night or shoot him because you had been involved
2 in none of the planning?

3 A. Right.

4 So Jason Williams a telling you that he had no idea
5 what the goal of Brian McCleod and Derrick Grant was that
6 night, let alone Jimmy. The one person who testified in this
7 case who as the prosecution just told you this morning was
8 closest to Jimmy, had the best relationship with Jimmy, spoke
9 to Jimmy everyday either in person or by telephone, he tells
10 you pointblank he had no idea. What better evidence can you
11 have that the government's failed to prove to you that Jimmy
12 intended to kill Lowell Fletcher that night? The star witness
13 who they stand behind 100 percent who hopes to get out of jail
14 by New Year's comes in here, testifies in front of you and says
15 he has no idea.

16 Let's go to Brian McCleod.

17 For now I just want to concentrate on one point in his
18 testimony and that is a lead up to and the proffer session of
19 January 2014. To set the scene Brian McCleod is about to go to
20 his first proffer session. Let's see what McCleod says at page
21 1120 of the record.

22 A. I plan to tell the truth and change one part.

23 Q. What is the one part you plan to change?

24 A. Who I gave my portion of the cocaine to.

25 Q. OK. Besides that, you plan to tell the entire truth about

HBSAAROS4

Summation - Touger

1 your activities?

2 A. Yes.

3 He says:

4 I'm going to tell the truth about everything but who I
5 gave the drugs to.

6 Q. Nothing else would be a non truth?

7 A. Exactly.

8 Continuing on to page 1121.

9 Q. And you specifically told them that this was going to be a
10 shooting, "them" being the prosecution, a shooting not a
11 homicide, right?

12 A. I told them I felt I was participating in what would be a
13 shooting and not a killing, yes.

14 Q. Then you had many more meetings with the government after
15 that, right?

16 A. Yes, sir.

17 Q. And you even count how many proffer sessions you attended
18 prior to your testimony at a prior proceeding in February 2014?

19 A. I would say somewhere between 10 and 15.

20 Q. And you spoke with them for a long time at some of those
21 proffer sessions, right?

22 A. Yes, sir.

23 Q. And each one of those proffer sessions you signed the
24 proffer agreement saying you are going to tell the truth?

25 Into page 122.

HBSAAROS4

Summation - Touger

1 A. I believe so, yes, sir.

2 Q. And by then after the first when did you realize that you
3 had to tell them the whole truth even about Blast, the man he
4 gave the drugs to?

5 A. I realized that when I left the first session.

6 Q. So Mr. McCleod has told you that after he left the first
7 session even during that session he was telling the truth
8 except about Blast but when he left the first session he was
9 going to tell the whole truth about everything?

10 Now let's jump to January 2014. McCleod has been
11 cooperating for a long time. He's been to over ten proffer
12 sessions, 10 to 15 he says and he's questioned for hours upon
13 hours, knows full well that he has to tell the truth and not
14 protect anybody and not leave any facts out. He's being
15 prepared to testify at a prior proceeding in the case and the
16 government asked him the important questions just like they did
17 at his very first proffer session. What was your intention
18 that night to kill Lowell Fletcher or to just shoot him? And
19 on that day, just as he did on the first day, he said, our
20 intention was not to kill him but to shoot him.

21 And what happens after that? Page 1123 of the record.

22 Q. And would I also be correct in saying that at that point a
23 problem erupted at the meeting. A problem erupted at the
24 meeting?

25 A. Yes, sir.

HBSAAROS4

Summation - Touger

1 Q. So the government stops the meeting and says you'd better
2 go talk to your lawyer.

3 Over ten proffer sessions, hours upon hours of
4 questioning -- and this has never happened before. The
5 government doesn't like the answer because if that is his
6 answer they have no case against Jimmy.

7 So what happens? The proffer session is halted.
8 Mr. McCleod goes to talk to his lawyers. He comes out of that
9 meeting and lo and behold, the answer changed. Why do you
10 think that is? Isn't it most likely that his lawyers said if
11 you want this cooperation agreement that you have to say it was
12 a murder from the beginning. And Brian McCleod looks into the
13 future and he see life behind bars or he sees getting out of
14 jail and being a free man. And he changes his answer and
15 magically the shooting becomes a murder for one reason and one
16 reason only. Brian McCleod wanted to go home.

17 Page 1126 leading into 1127 of the record.

18 Q. At the last proffer session was different from the answer
19 you gave at that point?

20 A. Yes.

21 Q. And you went on and testified at that prior proceeding in
22 February of 2014, right?

23 A. Yes.

24 Q. And after that you got your 5K1 letter?

25 A. Yes.

HBSAAROS4

Summation - Touger

1 Q. And after that you got sentenced not to life in jail, not
2 to 20 years but to six years?

3 A. Well, I think you're leaving out another proceeding in
4 November.

5 Q. Right?

6 A. But yes.

7 Q. Ultimately you, got sentenced to six years after you got
8 the 5K1 letter?

9 A. Yes.

10 "Q. And now you've walked out of jail?

11 A. I left jail, yes.

12 That is why we are here, ladies and gentlemen. If
13 Brian McCleod doesn't change his answer back in January of 2014
14 so he could walk out of jail a free man you all, me, and
15 Mr. Rosemond would not be sitting here today.

16 At page 1129 McCleod told you they talked about Lowell
17 Fletcher at every proffer session. So for years and dozens of
18 meetings it was just a plain shooting, not a homicide. But
19 when it came time for Brian McCleod to testify in a prior
20 proceeding the government couldn't have that answer any more.
21 So they told him go talk to your lawyer and it changed. Well
22 which is the true statement? The statement he told so many
23 times he can't count knowing he had to tell the truth or the
24 statement he told once because he wanted to get out of jail?
25 The government and his lawyers laid it out for Brian McCleod

HBSAAROS4

Summation - Touger

1 and he saw the writing on the wall and he changed his answer.

2 And now based on that answer these five people sitting
3 at that table want you to convict Jimmy for conspiring to
4 murder and actually murdering Lowell Fletcher. That is the
5 foundation of their proof beyond a reasonable doubt. This one
6 answer which for years went one way and then magically changed.

7 Now let's look at other factors the government says
8 proves that this was a homicide. During their initial
9 summation they made a big deal about the fact that Jimmy agrees
10 to pay \$30,000 to McCleod and his men. The government has
11 argued to you that this is more than Jimmy has ever paid for
12 anything and thus, this proves it was more than just a
13 shooting. But I look at the evidence completely disproves this
14 theory. McCleod himself tells you not to believe that argument
15 quite clearly when he testified at page 1095 even if Lowell
16 Fletcher had just gotten shot in the kneecap, even if it was
17 just a leg shot, I deserve more than \$30,000.

18 So right there the government's argument goes down
19 to -- no murder necessary. Just a knee shot. And Brian
20 McCleod tells you I get more than \$30,000. But there's so much
21 more. Brian McCleod told us at page 907 that back in 2003
22 Jimmy pays Derrick Grant acting alone a half a kilo to do
23 nothing more than shoot up the window of Violator Records.
24 \$15,000 in 2003 before his son was assaulted, \$15,000 to shoot
25 up a window. Jimmy is now paying him a third of a kilo for

HBSAAROS4

Summation - Touger

1 this thing. So how is it more? Half a kilo to shoot up a
2 window, a third of a kilo to do what a murder? You've got to
3 be kidding me.

4 Mohammed Stewart testified at page 199 that Jimmy paid
5 him \$12,000 to shoot up a house. Again, no murder involved.
6 No murder intended. So how does the fact that Jimmy's willing
7 to pay each McCleod, his inside man and Derrick Grant \$10,000
8 for the murder when Jimmy was paying more for just -- had
9 nothing to do with the murder.

10 Plus, we know from the evidence that a murder costs a
11 lot more than \$30,000. Remember Mohammed Stewart's testimony
12 that to kill Baja was going to cost \$75,000. I do my math
13 that's two and a half times \$30,000. So how was \$30,000 --
14 remember McCleod's testimony it really doesn't matter what
15 you're doing because the kneecap was worth more than \$30,000.
16 It matters how much you're involved in the activity.

17 And don't let the government fool you by saying the
18 price went up after the incident occurred because Jimmy paid
19 \$30,000, never agreed to pay more and only paid \$30,000. You
20 have no testimony that Jimmy ever paid more than that one kilo.
21 So there is no evidence that Jimmy paid the going rate for a
22 homicide. He paid for a shooting.

23 Next the prosecutor argued that there was so much more
24 planning for this incident and this proves it was homicide and
25 not just a shooting. Well, again, let's look at the evidence

HBSAAROS4

Summation - Touger

1 and see what it proves.

2 The government is very good about making grandiose
3 statements and glossing over the evidence. Like they said in
4 their summation, they never mentioned one G-Unit shooting. But
5 we know G-Unit shot at Violator. We know G-Unit never
6 threatened people at Violator and Jimmy but they don't mention
7 that because they don't want you to think about it. So they
8 come out with a statement, the planning in that case proves a
9 homicide.

10 Let's go over the evidence.

11 McCleod told you on his direct testimony at page
12 973 -- this is when he is being questioned by the prosecutor --
13 that they went to Queensborough to see if anything could take
14 place that day. So McCleod tells you pointblank, we went to
15 Queensborough to see if possibly we could do Jimmy's bidding
16 and it was such a great plan that they had come up with that
17 Derrick Grant, the alleged shooter, doesn't even bother to show
18 up. Doesn't even come. Never appears. Great planning.

19 Jason testifies at page 950 he didn't know who sent
20 him there or why he was even there or what he was supposed to
21 do and doesn't even remember to bring a gun. Plus, they both
22 get there too late to do anything any way because Mr. Fletcher
23 has already left the scene. Great planning. Lots of planning.
24 Really good job.

25 The government made it clear in their closing that

HBSAAROS4

Summation - Touger

1 Jimmy gets angry when things don't go his way. First of all, I
2 don't see any evidence of that any way. If Jimmy really wanted
3 Lowell Fletcher killed, what more time to get angry than right
4 now? They had him, could have followed him anywhere and shot
5 him and they don't. The shooter doesn't show up. They get
6 there too late. Is there any testimony that Jimmy got angry at
7 that moment? You could look as far as you want and as deep as
8 you want into the record. There is none because Jimmy, just a
9 shooting. We'll get him some other time.

10 And then remember my cross-examination of Mr. McCleod
11 who I granted was sparring with me a lot but take out that
12 sparring and he did give a lot of valuable evidence. Talked
13 about the meetings. Let's go through them a little bit.

14 The first meeting McCleod just tells Jimmy of his
15 connection to Lowell Fletcher. I got a line on Lowell
16 Fletcher. Jimmy says, Great. No planning at all at that
17 meeting, just information.

18 Second meeting where Jimmy says he has \$30,000 for
19 someone to bring Lowell Fletcher to him and McCleod says, What?
20 I just spoke to Derrick. Why don't we see if he'll do it.
21 Jimmy says, OK. We'll talk more about exactly what was said at
22 that meeting later on but there's no planning there. No
23 planning, whatsoever, just Jimmy taking yourself out and
24 substituting -- in.

25 Then there is the meeting, the second meeting at Whole

HBSAAROS4

Summation - Touger

1 Foods where Jimmy just asks, Are you sure you can handle this?
2 And then tells him to buy a separate phone so that that's the
3 only phone you should talk to Lowell Fletcher with. No
4 planning. What to do, how to do it. Nothing. How to do it.
5 And if you want to use the fact that he told Mr. McCleod to buy
6 a separate gun was planning, go right ahead. They make a big
7 deal about that. Only problem with that is witness after
8 witness told you they all have many phones because they have
9 one phone for one criminal activity, one for another criminal
10 activity, one phone for their family, a shooting, a criminal
11 activity. You go to jail if you shoot at somebody.

12 Jason Williams told you he went to jail just for
13 having a gun in the car. If you get caught shooting at
14 somebody you go to jail. You want to cover that up. So the
15 fact that he told Mr. McCleod to go by a separate phone in the
16 context of this case means nothing when Stewart told you
17 everybody had separate phones. Abdullah told you you have a
18 separate phone for each person you are doing a crime with. I
19 think with Stewart, he says so nobody can tell on anybody else.
20 So that one fact that they made such a big deal about does not
21 prove any intent on Jimmy's part. So, yes, you could say that
22 that is a planning part, but it doesn't push the needle toward
23 intent to kill at all.

24 The next meetings are the two before and after the
25 dinner. The prosecution talked about that it happened in

HBSAAROS4

Summation - Touger

1 Barnes and Noble. What happens at that meeting? Jimmy takes
2 out a phone and says here is Lowell Fletcher's address. I got
3 it from some inside source. Here is his address. Well,
4 there's no planning there. It's just giving an address for
5 where there can find Lowell Fletcher because they blew it at
6 Queensborough. He knows where he's living. No planning, no
7 who should do what, what should happen, nothing. Here's the
8 address. Then they go and have dinner. Nothing discussed at
9 the dinner. After the dinner they walk, then they go to meet
10 this inside man. There's conversation with the inside man
11 about how Lowell Fletcher is getting nervous about something.
12 And what does McCleod tell you after he leaves? He tells
13 Jimmy, Don't worry. That's not me. He's not suspicious of me.
14 And then they work out a code. And this is very important.

15 They work out a code so that when Mr. McCleod goes to
16 that 161 Street address he can text Jimmy back whether it's a
17 good spot or not and they explain to each other the code
18 because as it was testified to in this case, a code is only
19 efficient if both sides know what it means. If one side
20 doesn't, know you have confusion and you might have something
21 done that you didn't mean to have done.

22 Now, what's important about that discussion about the
23 definition of a code is the government relates back to the
24 conversation about "I have been hitting them so hard" that
25 Jimmy had initially with Mr. McCleod that "hit" is the code for

HBSAAROS4

Summation - Touger

1 kill. And no where in that conversation do you hear any
2 testimony that either one had to explain to the other what
3 hitting meant. Remember that when I talk about that later on.

4 Basically, he's telling Mr. McCleod to go up to the
5 161 Street address and see if the coast is clear. How does
6 that prove a homicide? There have been other shootings where
7 the coast wasn't clear and they didn't go ahead with it. Times
8 when they were cops behind them on the highway, they pulled
9 off. The time when they went to shoot Chris Lighty and the
10 police in the area they fled off. That is what they do. You
11 don't shoot at people if you are going to get caught on camera
12 if you.

13 Do, Stewart testified, checking out location after
14 location before shooting at him. Obviously, you don't perform
15 a criminal act where there are cameras there. McCleod himself
16 told you that. So there's no real planning.

17 The next thing that occurs is McCleod tells you he
18 goes directly up to the address by cab and checks it out
19 himself. Well, it's interesting to note that Jason Williams
20 testified at page 753 that he drove McCleod to Lowell
21 Fletcher's house that night. McCleod tells you he took a cab
22 there, went by himself Jason Williams tells you at page 753, I
23 took him there. You decide which one is telling the truth.
24 There are more examples of this later on. We'll get to them.

25 So McCleod goes to the address says it's not good.

HBSAAROS4

Summation - Touger

1 Sends the code they worked out, bad date or whatever it was.
2 Jimmy responds, OK. Get with the other guys. Pick another
3 spot. That is really not planning either. Just that's not a
4 good spot. We've talked about how that's happened before. So
5 the mere fact a shooter decided it was not a good location or
6 the right time to do a shooting is not proof of a homicide.
7 It's happened multiple times before in this case at shootings
8 we all know were not fully intended.

9 The next day is really the only day that the
10 government is correct that some planning takes place. Can't
11 dispute that. McCleod meets with Derrick and Jason. They
12 canvass a few spots and they pick out one. So some planning
13 obviously took place. But what is most important is who is not
14 involved in that day in that meeting or texting or call. There
15 is no testimony that any event involved this man. James
16 Rosemond is not involved in that day at all. He is not
17 contacted by anyone. He is not involved in the decision
18 making. This meeting is solely between McCleod, Williams and
19 Grant. And remember their motive is totally unimportant to
20 you. Only Jimmy's motive is important. And on the day when
21 the most planning is done Jimmy is not involved at all.

22 Now the government will also argue as they have that
23 the fact that Lowell Fletcher is lured to the shooting spot and
24 an inside spy is used, proves that this is a homicide. How
25 many times do they say that in their openings and in their

HBSAAROS4

Summation - Touger

1 closing? I lost count. Well, their own witnesses disprove
2 that theory also. Remember Jason's Williams' testimony about
3 the attempted shooting on Chris Lighty? Jimmy had an inside
4 source telling where Chris Lighty was going to be. They lured
5 Chris Lighty to a dinner and they didn't do it because too many
6 police on the street. And I would also add that there were
7 multiple cars and multiple shooters for that shooting. More
8 than five people involved and we all know that wasn't the
9 killing. So this whole argument about luring proves homicide
10 is defeated by their own witnesses. Now let's move on.

11 Williams testified at page 835 that Jimmy gave him no
12 instructions to give McCleod and most importantly didn't even
13 tell him who to give the .22 to. Yes, he told him to bring the
14 22 but -- does he give him any other instructions? No, not
15 one. Who did he give the gun to, not what to be done when gets
16 there? Just bring the gun. The .22 has been used before in a
17 shooting. They used a MAC-10 in shootings. Didn't mean
18 homicide.

19 So according to the government this incident is so
20 meticulously planned out by Jimmy but he gives no instructions
21 to his closest ally, to his closest friend, to his closest
22 confidant about how it's supposed to be done or how it's
23 supposed to occur or who is even going to be the shooter. And
24 what does McCleod tell you? That when they do arrive Jason
25 tells him you, McCleod, are gonna do the shooting. Oh, no, I

HBSAAROS4

Summation - Touger

1 ain't gonna do the shooting. Grant's doing the shooting. So
2 this meticulously planned out homicide nobody even knows who is
3 gonna do the shooting. That's meticulous planning is what was
4 going on in these meetings? Nothing. There was no planning.
5 Brian McCleod is supposed to be the chairman of board of the
6 shooting. And he doesn't even know that Jason is telling him
7 to be the shooter. So the evidence fails to prove that Jimmy
8 was involved in this at all. There was no great planning of
9 this.

10 Incidentally McCleod came up with an idea. Jimmy said
11 go with it and they went ahead and did what they do. This was
12 just another shooting in a long line of shootings but,
13 unfortunately, for every one involved one the bullets had to
14 hit the target in the wrong spot. A .22 shot from 15 feet on
15 the run and, unfortunately, for everyone involved, it happened
16 to the wrong spot. This was not a planned homicide and the
17 evidence proves it. If this was planned, the most important
18 role of who the shooter would be would have been established
19 beforehand and the evidence proves that it wasn't. The only
20 thing planned here was where the shooting was going to take
21 place and ultimately that didn't even happen. The shooting
22 didn't even take place, the evidence shows, where it was
23 supposed to take place. There was never a plan to shoot Lowell
24 Fletcher to death.

25 Put up panel seven.

HBSAAROS4

Summation - Touger

1 The Court: No, you didn't do it or, no, he's not
2 right?

3 This is Brian McCleod testifying.

4 A. No, I never had a conversation with Jason or Derrick or
5 Rodney Johnson telling them to kill Lowell Fletcher.

6 The next panel please.

7 Testimony of Jason Williams.

8 Q. And you had no discussions with Jimmy about planning the
9 shooting of Lowell Fletcher?

10 A. No.

11 So what does the evidence show -- if there was a plan
12 to kill why did McCleod just walk up and greet Fletcher, make
13 him comfortable, have Grant come and shoot him in the back of
14 the head? That's a planned homicide. That sounds like a plan.

15 But the reason is obvious why McCleod didn't do this
16 because the plan was for Lowell Fletcher to survive and that's
17 why Fletcher could never see McCleod. If this was a planned
18 homicide why does Mr. McCleod go through such a great extent
19 never to go get Fletcher? They can't get him to the point.
20 You heard that evidence and you saw the videotape. They're
21 running back and forth calling him each. Why doesn't McCleod
22 just say wait where you are. I'll come get you. Because the
23 plan is that he is to survive. It's just a shooting and you
24 can't have the ID, the look on McCleod.

25 Remember, McCleod told you that Fletcher was trusting

HBSAAROS4

Summation - Touger

1 him. He was bringing 2500 bucks. He was going to get him
2 women and alcohol. He was trusting him. So why not have
3 McCleod walk up to Fletcher, say hello, how do you do, shoot
4 him on the spot. When he's unsuspected, get him to go into a
5 car or an apartment and kill him? That's a planned homicide.
6 But luring someone onto a dark street and refusing to go and
7 meet him no matter how confused Fletcher got and shooting him
8 from at least 15 feet away from the smallest caliber weapon
9 available, yes, a .22 can kill obviously. I'm not stupid.

10 Obviously, a .22 can kill but if you believe their
11 testimony Jimmy had much more powerful weapons available to him
12 with silencers. And it's only logical that a bullet coming
13 from a .45 which weighs five to seven times more than a .22
14 would have a better chance of killing someone than a .22 so if
15 they wanted him dead he doesn't bring the .22. The plan was
16 never for Fletcher to die. Yes, there was a message to be sent
17 and a reason for the shooting. But the evidence clearly shows
18 it was not a homicide.

19 Same amount of plan for the Chris Lighty shooting and
20 we know that is not a murder. Luring him to a spot, multiple
21 shooters, multiple vehicles, surveillance of that spot and that
22 wasn't an intent homicide and the evidence demonstrates that
23 neither was the shooting of Lowell Fletcher.

24 Stewart testified at page 194, question from the
25 prosecution.

HBSAAROS4

Summation - Touger

1 Q. Did you ever conduct surveillance of the G-Unit members?

2 A. Yes.

3 Q. Surveillance of G-Unit members, Stewart is saying yes. So
4 how is this any different? What did you do?

5 A. I go to their houses. Get their phone records. Find, get
6 their phone numbers. Get their call lists incoming and
7 outgoing call lists. I would find addresses, go to their house
8 and take out their houses.

9 Page 194 of the record.

10 They were paying the phone companies to get the
11 records of G-Unit members but that's -- if that's the planning
12 I don't know what is.

13 There was a lot of planning being done for many of the
14 shootings, yet none of them were planned homicides and neither
15 does the evidence show was the shooting of Lowell Fletcher.

16 McCleod is the only one planning anything because for
17 him this is a big pay day. He's just got out of jail. He
18 needs money. And also it's a way to get back into Jimmy's good
19 graces and maybe make some more money from Jimmy. So he's the
20 one planning the Derrick Grant, Jason Williams does no
21 planning. Only time Jimmy gets any strategizing was after the
22 shooting actually occurred.

23 The judge will tell you you can't join a conspiracy
24 for murder-for-hire once the act is done. Once the act is done
25 you can't join that conspiracy. It is important to know that

HBSAAROS4

Summation - Touger

1 at the time Jimmy allegedly told Jason to get rid of the gun
2 though he doesn't know for sure that Fletcher is dead. Jason
3 told you that he testified that he didn't know Fletcher was
4 dead until sometime the next day. So the only time Jimmy does
5 anything about those involved, so he doesn't know a homicide
6 occurred. The government wants you to take that message that
7 he sent Jason everything is all right as proof that it was a
8 homicide. No. Everything's all right. He was shot. We don't
9 know what happened. But he is shot. We did our job. And it's
10 only logical that since somebody was actually shot for the
11 first time in all of Jimmy's shootings whether you believe he
12 ordered them or not, whether you believed did them or not, you
13 can believe that Jimmy ordered every shooting. You can believe
14 that Jimmy did every shooting. For first time somebody has
15 been hit. Remember the one in which the guy got hit? Jimmy
16 didn't order. Jimmy didn't do that. Abdullah did the whole
17 thing. This is the first time in six years that somebody has
18 actually gotten shot. Jimmy doesn't want to go to jail. He
19 says get rid of the gun. He doesn't care. It's a gun. So
20 that act does not prove that Jimmy knew this was a homicide.
21 It just proves that Jimmy didn't want to get arrested.

22 But wait, wait, wait the government will say. What
23 about Rodney Johnson, the backup shooter? That's the big
24 point. There's the backup shooter. Well, the first question
25 is who tells you Rodney Johnson is a backup shooter? The

HBSAAROS4

Summation - Touger

1 answer to that question is no one. The government makes up
2 that theory out of thin air. They say it but they provide you
3 no evidence to prove it. Jason Williams tells you we had no
4 idea why Johnson was there. None. Brian McCleod, the alleged
5 orchestrator of the whole event, he also testified they had no
6 idea why Johnson was there and was shocked to even see him
7 there. Any other witness? Nope. McCleod Stewart certainly
8 doesn't know. Khalil Stewart certainly doesn't know. The
9 government just says he's a backup shooter. No evidence to
10 prove it but they want you to believe it.

11 There is some evidence to prove why Johnson was really
12 there. He is really there to verify. I'm not going to sit
13 here and tell you that's what it is because nobody said that
14 either. But there is some evidence to back that up. You heard
15 testimony from Stewart who told you about arguments he got into
16 with Jimmy about shootings that he alleged to have occurred and
17 you Jimmy said, no, that didn't happen. And those arguments
18 called strife in their relationship.

19 So Rodney is there to verify Jimmy wants to make sure
20 before he pays \$30,000 to these three guys if somebody was
21 actually shot. That's what Rodney Johnson is there for. Am I
22 correct? I don't know. Only Rodney Johnson could answer that
23 question. But the evidence shows you that neither my argument
24 has a little support and their argument has no support. If he
25 was the backup shooter, if that was his role that night to make

HBSAAROS4

Summation - Touger

1 sure that Lowell Fletcher was dead then why when he walks by
2 Lowell Fletcher and doesn't know if he's dead does he not put
3 another bullet into him? He knows he has a gun. The
4 prosecution tells you that but he just walks by, verifies he's
5 on the ground not looking too good, but he doesn't shoot him.

6 The government will also argue that Jimmy paid for a
7 shooting so that proves he must have meant it to be a homicide.

8 Well, first of all -- this is the judge's charge --
9 you can't enter the conspiracy after the event occurred.

10 Second of all, Jimmy didn't raise his fee. He paid
11 just the \$30,000 which we've already showed does not prove the
12 case.

13 Second of all, Jimmy doesn't even pay that fee on
14 time. The government admits that. They come up with oh, it
15 wasn't my fault.

16 Well, Jimmy is not going to go tell the guy who did
17 the shooting at this point he knows it's murder. So he knows
18 that guy can put him in jail. I'm not paying you just yet
19 because of what you did but he doesn't pay him. He waits a
20 while to pay him.

21 Finally, Stewart told you pointblank, Jimmy's paid for
22 shootings he didn't order, didn't want to have done but I paid
23 before for them. The government brought up that up on their
24 closing also. So the fact that Jimmy paid doesn't mean that --

25 Next, the government argues what about Jimmy saying

HBSAAROS4

Summation - Touger

1 they won't be happy until they go to a funeral or they won't be
2 happy until they're carrying a coffin, spent a lot of time on
3 that. This proves he intended to kill someone and specifically
4 Lowell Fletcher. But look at the reason it was said, how it
5 was said and exactly what was said. It was said after this
6 feud had gone on for years. It was seemingly never going to
7 end one shooting after another. If you add them up, get to 10
8 or 20 shootings over a six year period, one after another.

9 Remember this feuding had been going on since at least
10 2003 both sides attacking each other. Not just Violator. Like
11 they want those, you believe G-Unit was shooting at people. As
12 a matter of fact, Stewart told you the whole thing changed at
13 the Hot 97 shooting which was spurred on by G-Unit shooting
14 somebody that day. And it was said with no joy, just matter of
15 fact, no threats, as a matter of fact statement.

16 And what it says -- and we'll substitute G-Unit out
17 for the word day as of -- so then you have G-Unit won't be
18 happy until G-Unit goes to a funeral. Well, obviously, G-Unit
19 wouldn't be happy going to one of their own funerals. We are
20 not throwing a party going to one of their friends funerals.
21 The statement based on timing of when it was said could just
22 demonstrate Jimmy's exasperation with the feud and what G-Unit
23 might to do and to the lengths to which they might go. In
24 other words, that Jimmy was expressing the fear that G-Unit was
25 going to put one of his guys into a coffin and there's

HBSAAROS4

Summation - Touger

1 certainly plenty of evidence that G-Unit's people could do
2 that. They shot at people. They burned down businesses. They
3 drive around in bulletproof vans. And remember Stewart's
4 testimony about that they had those vans before the feud with
5 Jimmy's and Violator Records even began.

6 So G-Unit is used to people trying to shoot at them.
7 I am not saying as the government is that the evidence makes
8 out this clearly. The evidence doesn't. The evidence leaves
9 this statement up to you for interpretation but for the
10 government to come in here and claim this is the linchpin of
11 their case besides the testimony of Brian McCleod is frankly
12 insulting to you. Because they don't knew what it means
13 either. They weren't there. They taking the statement out of
14 context and you can't base your verdict on that statement
15 because no one can tell exactly what that statement means.

16 The evidence shows you that. The government has also
17 argued that Jimmy's statement to McCleod that he wanted McCleod
18 to bring Lowell Fletcher to him because he wanted to hit him so
19 hard and so fast that he wouldn't know what was coming. This
20 proves Jimmy's intent to kill. That's what they told you. Hit
21 him so hard and so fast that he won't know what's coming. The
22 government argues that this was Jimmy speaking in code and the
23 word "hit" in this sentence proves that is Jimmy was --

24 Well, where is the evidence that establishes that the
25 world "hit" is a code for murder? Remember as established by

HBSAAROS4

Summation - Touger

1 evidence that a code is only official if both sides understand
2 the code being used. That is why McCleod and Jimmy
3 specifically discussed the meaning of the girlfriend code
4 before McCleod goes and investigates Fletchers address as a
5 location for the shooting. So both he and Jimmy were under
6 the -- in this incident there is no testimony from McCleod that
7 when Jimmy used the word "hit" he explained that code to him
8 means kill. So the code must have had its meaning from prior
9 use. Prior use proves understanding of code just like stuff
10 and paper. McCleod knew "stuff" was the drugs. "Paper" was
11 money, and get it out of that house. Just like Jason knew that
12 "bring the quiet" meant .22 because there was prior use of both
13 of those codes and they knew what they meant.

14 Well, let's look at the evidence.

15 Stewart, Abdullah, Williams all came before you and
16 told you they used the word "hit" to mean a shooting but not a
17 homicide. Abdullah specifically stated that he would use the
18 word "hit" or "clap him up" to mean shoot at someone and he
19 never intended those shootings to be a homicide and most
20 importantly he never clarified those statements by adding
21 "don't kill".

22 McCleod himself testified about having shot anyone
23 never being asked to shoot anyone in the past. So how does he
24 know what "hit" means? So the government's own witnesses don't
25 support that. The government will argue Jimmy knows. He meant

HBSAAROS4

Summation - Touger

1 it that way. Well, the evidence doesn't support that argument
2 either. In the same conversation in which Jimmy told McCleod
3 he wanted to hit him so hard and so fast at page 930, as they
4 said in their closing, Jimmy said I have been going to war with
5 these clowns and hitting them at every turn. So in that same
6 conversation Jimmy uses the word "hit" to describe the war he
7 has been having with G-Unit and we all know that in that war
8 there had been no homicides. There have been no intended
9 homicides the evidence shows and that nobody was asked to kill
10 anybody. And most importantly Abdullah, Stewart, the main
11 people in this war testified they never intended to kill anyone
12 and Jimmy never told them to kill anyone. You have been told
13 this time and again.

14 So I ask you where is the proof that "hit" meant kill?
15 You can search the record but you'll not find anything because
16 there is none from the evidence in this trial and that is what
17 you must use to judge Jimmy, the evidence. Not the movies you
18 have seen, not the books you have read, not the government's
19 unsupported arguments but the evidence that came from that
20 witness stand and the stipulations that were entered before.
21 And each witness told you "hit" the word "hit" only meant shoot
22 at without any intent to kill.

23 I know it's hard for you to comprehend but you must
24 take yourself out of your world and put you in the world of
25 G-Unit and Violator Records, worlds we are discussing, the

HBSAAROS4

Summation - Touger

1 world we are operating in. This is a world where people drive
2 around in bulletproof cars. Do any one of you have a
3 bulletproof car? No. Because you're not in that world. This
4 is a world where people shoot at people to send a message.
5 None of you have ever done that I bet. But this world, they do
6 it all the time. What does Jimmy say to Abdullah when he's
7 threatened at the Apollo Theater? The government said that to
8 you in their closing, this happens all the time. People get
9 threatened with guns. People get shot at. You have to take
10 yourself out of your world and enter into this world and in
11 this world as Abdul and Stewart told you "hit", "clap up" just
12 means shoot at, nothing more.

13 At page 1154 McCleod told you that Jimmy always gave
14 him the information necessary to complete the task. And
15 Williams testified that Jimmy gave him just enough information
16 to complete the task. So if this was going to be a murder in a
17 long line of shootings, something completely different than the
18 last six years and we won't go over all the shootings but count
19 them up 19 or 20 of them, over a six-year period, none of them
20 with the intent to kill, if this was going to be something
21 completely different from that it is only logical that
22 something would have been said to take this out of that realm.

23 (Continued on next page)
24
25

Hbsnros5

Summation - Mr. Touger

1 And the evidence shows you that nothing was, because,
2 as the evidence clearly shows, this shooting was no different
3 from the previous ones, and the evidence shows no one was meant
4 to die, which leads me to the first factor that proves this
5 wasn't a homicide.

6 First and foremost, there is history. The government
7 ignores that history completely. The feud at this time, as I
8 have said, has been going on for over six years, and between
9 the shootings that G-Unit did and Czar did and other people
10 did, there were at least 20 shootings, shooting at houses, at
11 people, at cars and people in them, hitting people, fire
12 bombings. Yet, with all these incidents, the evidence shows
13 you nobody had the intent to kill anyone.

14 The perpetrators of many of these incidents, Mohammed
15 Stewart, Khalil Abdullah, and Jason Williams, all came before
16 you and told you they never intended to kill anyone.

17 Some of these scenes, you heard testimony of 20 or 30
18 bullets being fired. These weren't boom, let's go. 20 or 30
19 bullets being fired in some of them, yet none of them were
20 done, as the evidence shows, with the intent to kill.

21 So what makes this shooting different from all the
22 other shootings after six years?

23 Why would everything suddenly change, and Jimmy wants
24 someone killed after never having killed anyone, as the
25 evidence shows, of never having ordered any killings as the

Hbsnros5

Summation - Mr. Touger

1 evidence shows?

2 Remember these shootings didn't occur in a short time
3 period. I know it seems that way, because you heard about them
4 in a condensed time of two weeks, but these shootings were
5 spread out over six years, sometimes with months or years going
6 between events.

7 Some of these shootings were done by people Jimmy
8 didn't even tell them to do, like the Apollo shooting, for
9 instance. Jimmy didn't tell Abdullah to do that. He told
10 Abdullah not to do it. But Abdullah went and did it anyway.

11 Stewart shooting at Violator Records after the Hot 97
12 incident, Jimmy never told Stewart to do that.

13 Or the time Stewart just happened on one of Baja's
14 vehicles and decided to burn it up and shoot it for good
15 measure. But, most importantly, almost 20 shootings in this
16 case prior to the Lowell Fletcher shooting, and the only person
17 ever hit was not even killed. One person was hit by Violator
18 Records. And that person didn't even want to file a complaint.

19 No one was killed the evidence shows, because, as each
20 witness told you, there was never an intent to kill, just send
21 a very powerful message.

22 Well, the prosecution will argue this one was
23 personal. Lowell Fletcher was one of three grown men who
24 attacked his son with a gun, so this one was personal.

25 Well, right off the bat that argument disproves Count

Hbsnros5

Summation - Mr. Touger

1 One, because Count One says conspiracy to murder for hire to
2 kill anybody of G-Unit, not just Lowell Fletcher.

3 So if the murder of Lowell Fletcher was personal, and
4 that's why it's a homicide, then you must acquit him of Count
5 One.

6 But, more importantly, the whole argument is proven to
7 be false by the evidence presented at this trial.

8 First, Lowell Fletcher wasn't the only perpetrator of
9 the assault. There were two other individuals.

10 We know Yayo was one of the perpetrators, so how come
11 Jimmy never intended to kill him? The evidence shows you that.
12 Quite clearly Stewart said it, never intended to kill him. So
13 why does he not want to kill Yayo, but he want to kill
14 Fletcher?

15 Stewart came before you and testified that he shot at
16 Yayo and those close to him so many times he couldn't remember
17 them all, but he never intended to kill them.

18 Remember the government stands behind Stewart's
19 testimony, and he says he never intended to kill Yayo or anyone
20 related to him, and he says Jimmy never ordered him to kill
21 anyone.

22 Abdullah, same thing.

23 Williams same thing.

24 So why is Jimmy so intent on killing Fletcher and not
25 on Yayo?

Hbsnros5

Summation - Mr. Touger

1 It makes no sense. It is not logical.

2 Second, the government wants you to believe that Jimmy
3 is a desperate man, this whole business about I couldn't sleep
4 for two years. He is so desperate he is thinking of nothing
5 else for two years but killing Lowell Fletcher.

6 Well, again we have the Yayo problem. Why isn't he
7 losing sleep over Yayo?

8 Then we also have the other problem the evidence
9 showed. McCleod told you, page 1130, all Jimmy had to do was
10 go on the Department of Corrections' website, type in Lowell
11 Fletcher's name, and he would have found out where he was, and
12 when he was to be released.

13 No evidence to show that that ever occurred. He
14 didn't need McCleod to tell him. If he really was so
15 desperate, losing sleep every day, to find Lowell Fletcher, it
16 was right there on the Internet for everyone to see. The
17 simple answer was he wasn't.

18 Even the testimony from McCleod disproves this
19 government's theory. McCleod told us quite clearly that Jimmy
20 had let it be known in prison that there was a \$10,000
21 reward -- and they brought this out in their closing -- for
22 anyone to mark Fletcher while he was in custody. And McCleod
23 told you, and they admit, that mark only meant to cut, not
24 kill.

25 This is important for two reasons.

Hbsnros5

Summation - Mr. Touger

1 One, why, if Jimmy wanted Fletcher killed, was the
2 price only to slash him?

3 But Jimmy only wanted to slashing him in jail and kill
4 him on the street? That doesn't make any sense.

5 And, two, notice the price -- \$10,000. The same price
6 per person that Jimmy was paying for the shooting of Lowell
7 Fletcher that night. Because the evidence shows you his intent
8 was the same. The evidence shows you his intent was only to
9 shoot him and not to kill him.

10 Third, if the motive to kill was because it was
11 personal, then how do you explain the following incidents:

12 On the day of the attack itself, Jimmy's son comes
13 upstairs to the office. He's in tears. He tells everybody
14 what happened, everybody gets very upset, they are angry.

15 Do they rush downstairs at that point?

16 No.

17 Violator Records is right across the street. Did they
18 rush downstairs and go put some bullets in their window or
19 anything?

20 No.

21 Time goes by, and they go downstairs and there is
22 Chris Lighty's brother, and Stewart says, Let's get him. Let's
23 get our revenge.

24 And Jimmy's initial reaction is no. He had nothing to
25 do with it. That's what Stewart said. The fact that Stewart,

Hbsnros5

Summation - Mr. Touger

1 in front of all the people he was with, convinces Jimmy to
2 shake his head and go, OK, is not as important as Jimmy's
3 initial reaction.

4 Jimmy is angry. He's fuming. It's the day of the
5 incident, and his initial emotion is don't do anything. The
6 fact that he didn't want to look bad in front of all his people
7 and argue with Stewart at that point doesn't mean he had the
8 intent to do anything at that moment. It just shows you the
9 lack of control Jimmy had on Stewart. And the evidence shows
10 you that, even with that lack of control, Stewart never kills
11 anyone.

12 Plus, remember the testimony of Abdullah that day.

13 Jimmy calls him. He says, "My son was just attacked
14 by Yayo and his crew."

15 Does Jimmy say, "Come on down here. We've got to get
16 them?"

17 No, there's no testimony to that.

18 He just tells him what happened and hangs up the
19 phone, and Abdullah never even comes to the office. This
20 bloodthirsty killer that the government wants you to believe
21 Jimmy is, the evidence shows you says, "Don't do anything."

22 Then we have the Apollo incident.

23 And, by the way, this is another example of two of the
24 government's witnesses testifying about the same incident, but
25 can't quite get it right. Abdullah says he's there with Jimmy

Hbsnros5

Summation - Mr. Touger

1 from the very beginning, and Stewart makes it quite clear that
2 Abdullah didn't come until after they ran out of the Apollo.
3 I'll leave it to you to decide who's telling the truth, but
4 what is important is both say that Jimmy shows up at the Apollo
5 unarmed. They all go through the metal detectors. G-Unit
6 comes barreling through, and the government says -- I love this
7 in their closing -- Yayo approached Jimmy.

8 If that's not trying to cover up something, I don't
9 know what is. Because their own witnesses said Yayo didn't --
10 yes, Yayo approached him. But it's how he approached him
11 that's important. He approached him in a very negative way.
12 Even though Jimmy was polite and greeted him politely, Yayo was
13 angry and yelling at him and embarrassing him in public and was
14 very forceful, so forceful that they decided they got to
15 skedaddle out.

16 So they run up to the mezzanine, because they are
17 outnumbered. At that point, that same crowd of people come up,
18 and one takes out a gun points it at Jimmy and says, "Just give
19 me the word. Just give me the word."

20 Here's a gun pointing at Jimmy's head, and the man
21 saying, "Just give me the word."

22 In the middle of the Apollo Theater, G-Unit is doing
23 this. They hightail it out of there, they get out, and
24 Abdullah says, "Holy crap. They just put a gun to our heads.
25 We got to do something, we got to do something."

Hbsnros5

Summation - Mr. Touger

1 And Jimmy says, "No, no. This happens all the time."
2 This is the world they live in.

3 If Jimmy is this bloodthirsty killer who wants
4 everybody dead that they want you to believe he is, why is he
5 fighting with Abdullah?

6 What does Abdullah tell you?

7 Oh, no, that ain't working with me. He calls his
8 people. Gets his guns, drives his car, sees the van pull over.
9 People get out, standing around that van, and he tells his
10 boys, "Clap it up."

11 "Clap it up."

12 But he also tells you, and you've got to believe it's
13 the truth because they stand behind him, he didn't intend to
14 kill anybody when he said that.

15 So, "Hit that van, clap it up," doesn't mean kill at
16 the Apollo, but it means kill two years later.

17 Then there is the peace offering meal with Chris
18 Lighty that P Diddy was the moderator for.

19 What happens there?

20 There is no peace arrangement offered by Lighty. The
21 exact opposite happens. He stands up in the middle of this
22 meeting in front of everybody and mashes Jimmy in the face.

23 And Abdullah tells you, and you don't even need
24 Abdullah to tell you because you know that's highly
25 embarrassing to Jimmy, and what does Jimmy do?

Hbsnros5

Summation - Mr. Touger

1 Does he push back? Does he fight back? Does he do
2 anything?

3 No.

4 He turns around, literally turns the other cheek, and
5 walks out. This man has just embarrassed him in front of
6 everybody who was important to him, including P Diddy, one of
7 the biggest stars in his industry, and Jimmy does nothing.

8 Let us not forget the New Year's Eve party that you
9 heard testimony about. Jimmy is there with all of his buddies.
10 He's not outnumbered anymore. He's there with all of his
11 buddies, Stewart, Abdullah. He's drunk. Everybody is a little
12 tipsy. And they see Chris Lighty.

13 What happens?

14 You would think with all this going on, if Jimmy is
15 this guy bent on revenge and can't sleep and wants someone in
16 G-Unit to suffer and he's drunk, there would have at least have
17 been some pushing or shoving or insulting. Maybe he goes over
18 and mashes Chris Lighty in the face.

19 What happens?

20 Nothing. Chris Lighty comes over and says hello,
21 leaves. Nothing.

22 The exact opposite of what you would expect happens.
23 Jimmy is nothing but the polite man, just as he was at Apollo.

24 So what do we have?

25 Yayo threatened Jimmy with a gun at the Apollo, but he

Hbsnros5

Summation - Mr. Touger

1 didn't want him killed for that.

2 Chris Lighty embarrassed Jimmy in public, but he
3 didn't want him killed for that.

4 Baja did all that he did, but Jimmy -- not only did he
5 not want to have him killed. For the first time Stewart is
6 coming to him and saying, "Let's kill this guy."

7 And \$75,000 means nothing to Jimmy if you believe the
8 evidence. He's making millions if you believe the evidence.
9 So it's not the price that drives him away. Jimmy just doesn't
10 want anybody killed.

11 And he says, "No, I'm not doing it."

12 The day of his assault, Jimmy's first response is,
13 "Don't do anything."

14 Yayo was not only involved in the assault on his son.
15 You have evidence that some people said he was the one who held
16 the gun the day of the assault. But Jimmy doesn't want him
17 killed. Jimmy doesn't want Lowell Fletcher killed in jail.

18 But the government wants you to say this shooting is
19 different.

20 Where is the evidence to back up their argument?

21 Also remember Mohammed Stewart's testimony. They got
22 so angry at Jimmy because he wasn't taking a hard enough stand
23 against G-Unit. He was begging Jimmy to do more, and Jimmy
24 just refused.

25 The man who the government wants you to believe

Hbsnros5

Summation - Mr. Touger

1 desires nothing but revenge on G-Unit is getting lectured by
2 his own man, Mohammed Stewart, that he's not doing enough. He
3 says he can't even call Jimmy for bullets. He can't even call
4 him for bullets.

5 The government will also argue that the proof that
6 Jimmy wanted Lowell Fletcher killed is because Jimmy tells
7 people that Lowell Fletcher was killed and that he set up the
8 shooting after the incident.

9 Well, that's the important fact. That's the important
10 fact of all those postincident statements. They happened after
11 the incident.

12 They were factual. Jimmy did set up the shooting. He
13 set up the shooting. The fact is somebody was killed. That
14 happened. Can't deny it. So all those postincident statements
15 saying someone was killed and that he set it up are true.

16 But that does not mean he entered that conspiracy with
17 the intent to kill. Jimmy is just stating facts.

18 Remember Stewart's testimony about never wanting to
19 kill someone. What did he add? I wouldn't be so unhappy if
20 Baja or Yayo did die.

21 Was Jimmy angry or upset that Lowell Fletcher died?

22 The evidence doesn't show it one way or the another.
23 He is very even keeled the evidence shows. But it doesn't show
24 that he's happy, and it doesn't show that he's upset. It shows
25 that he's even keeled. He's matter of fact. He's stating the

Hbsnros5

Summation - Mr. Touger

1 obvious. He didn't say it with any joy in his voice.

2 Abdullah made that quite clear during his testimony.

3 And Stewart, although he said that Jimmy came out of
4 the restaurant with, I think he said pep in his walk, also told
5 you that Jimmy didn't know that Stewart knew that Lowell
6 Fletcher was dead at that point.

7 When they got to talking about the incident, all he
8 said was, "Can we sleep?"

9 And Jimmy matter of fact said, "Yes, we can sleep."

10 That's true. They can sleep. Nothing has happened
11 since that shooting. His six-year war seems to be over. It is
12 nothing more than a statement of fact. It is not proof. It is
13 not an admission of a homicide. The evidence does not show
14 that at all. There was no joy in his voice when he said it.
15 It was just a statement of fact.

16 If Jimmy had really wanted Lowell Fletcher killed, the
17 evidence would show that there would have been more of a
18 matter-of-fact answer delivered in an even tone.

19 So these postevent statements are proof of nothing.
20 What is important is that up until the moment of the shooting
21 itself, every witness told you that Jimmy never ordered anyone
22 killed or killed anyone himself. The word "hit" does not mean
23 kill in this case.

24 These four men, three of which have been granted their
25 freedom, and one more is hoping to walk out of jail in just a

Hbsnros5

Summation - Mr. Touger

1 couple of weeks, came in here to help the government with its
2 case. The government has even gone as far as paying for
3 McCleod to go to college. And none of them, as much as they
4 have tried to paint Jimmy as a killer, McCleod even changing
5 his answer to the ultimate question so he could get out of
6 jail, none of them has told you that Jimmy ordered a homicide
7 on the night in question or at any other time.

8 Do you want some water?

9 JUROR: I'm OK.

10 MR. TOUGER: That by itself is proof beyond a
11 reasonable doubt that the government has failed to meet its
12 burden of proving that Jimmy intended a homicide as opposed to
13 a shooting. None of the witnesses put those words coming out
14 of Jimmy's mouth, no matter how much the government wanted them
15 to.

16 Let us not forget that the government has painted a
17 picture of Jimmy as a man hellbent on killing Lowell Fletcher.
18 He allegedly can't sleep for the past two years. He has
19 thought of nothing else.

20 Yet, when McCleod comes to Jimmy with the idea to get
21 Lowell Fletcher, what is Jimmy's reaction?

22 Does he tell McCleod, Let's get right to it? Let's
23 move on this? Call him each day? He's been waiting for two
24 years for this. He can't sleep.

25 No, that's not his reaction.

Hbsnros5

Summation - Mr. Touger

1 McCleod tells you he waits ten days until he calls him
2 again. Ten days, nothing happens. Page 983.

3 Then another meeting takes place, and again there is
4 another week to ten days that go by. This man who allegedly
5 hasn't slept in two years, has thought of nothing else, doesn't
6 do anything in a hurry. Doesn't jump on it and say, Let's go,
7 let's go, let's go, doesn't hurry one bit.

8 Even after the disaster in Queensboro, which you have
9 to qualify as only a disaster Jimmy doesn't even get angry.
10 There is no reaction at all.

11 I suggest to you that the evidence doesn't support
12 that Jimmy is a man haunted by this incident to his son that is
13 waiting impatiently for something to gets done and is hellbent
14 on revenge.

15 The evidence does show that this is just another
16 shooting in a long line of shootings as I said before, inside
17 info paid for, luring him to the spot, multiple shooters,
18 multiple vehicles, surveillance of the spot; nothing different
19 from many other shootings that they've done on many other
20 occasions without the intent to kill as the evidence shows.

21 Now let's talk about these cooperators for a few
22 minutes. I am not saying what he said I am going to say, that
23 they are all lying about everything. They aren't. I am not
24 saying that at all. But none of them came before you and
25 testified out of the goodness of their heart either. Each one

Hbsnros5

Summation - Mr. Touger

1 came here because they wanted to get out of jail or not go to
2 jail at all.

3 And it has worked. Three of them are walking free,
4 and the fourth hopes to be very soon.

5 Each one testified about all the crimes they have
6 committed? And why not? They were given a free ride for every
7 one of them. They weren't being prosecuted for those crimes.

8 And each one rattled off their crimes to the
9 government during their proffer sessions. The government never
10 hesitated on their decision to let them cooperate. No matter
11 how many shootings, no matter how many beatings, no matter how
12 many robberies.

13 How do you think Shaka feels? They didn't go and
14 arrest Abdullah for the attempted murder of Shaka, did they?

15 How do you think Ocal feels? They didn't go and
16 arrest Stewart for the attempted murder of Ocal.

17 No, because they didn't intend to kill those guys.
18 They told you that.

19 It doesn't matter how many incidents they talked
20 about. The government said, Just tell us. Keep on coming. As
21 long as you say bad things about Jimmy, you're fine with us.

22 Mohammed Stewart, with all he has done, has not spent
23 one day in jail, not one day, just because he agreed to
24 cooperate.

25 Each one testified that they weren't supposed to

Hbsnros5

Summation - Mr. Touger

1 commit any new crimes once they signed on as cooperators, and
2 each one has told you that they have, and the government has
3 done nothing about it.

4 Mohammed Stewart has committed crime after crime, been
5 involved in shootings, and has acted in a way that caused child
6 services to remove a 14-year-old girl and her mentally disabled
7 mother from his home. Yet the government just says OK, just
8 keep coming in here and testifying against Jimmy. We don't
9 care.

10 As far as the fact that they must tell the truth, I
11 ask you just to do one thing. Their cooperation agreements are
12 in evidence. Read them.

13 Read the cooperation agreement. The language is
14 unequivocal. If the government decides they are telling the
15 truth, the government agrees to write the get out-of-jail free
16 letter, or, as it is called in legal circles, the 5K1 letter.

17 The government decides, not you, not Judge Kaplan,
18 certainly not me, the government decides whether it will write
19 the 5K1 letter or not.

20 THE COURT: And the judge decides the sentence, which
21 may be anything up to the statutory maximum.

22 MR. TOUGER: That's correct, yes.

23 That's in the cooperation agreement.

24 So these four cooperators know who they have to
25 please, these four men and women sitting at that table.

Hbsnros5

Summation - Mr. Touger

1 That is how they get the 5K1 letter, and hope, as the
2 Court just told you, that the judge will give them a break.
3 And we know from McCleod and Abdullah that a Court has already
4 done that.

5 That is why McCleod's truthful testimony changes at
6 the infamous proffer sessions, because he knows who he has to
7 please to get out of jail. So his truth miraculously changes,
8 and he told you -- he came up with a reason. He told you the
9 reason that he changed it, not because anybody told him that it
10 was the only way to get out of jail, because he finally
11 realized after going it all over in his head that, yes, he was
12 involved in a murder.

13 Think about that. He finally realized in January of
14 2014 that he was involved in a murder. That means back in 2009
15 he didn't know he was involved in a murder, which is exactly
16 what we are saying the evidence shows.

17 Read the cooperation agreement. See what it says.
18 And the evidence will become crystal clear to you who decides
19 if they get a 5K1 letter or not.

20 Now, to their credit, they have come in here and told
21 you mostly the truth. They have. But most of that truth
22 doesn't help the proof that Jimmy intended a homicide. But at
23 certain key points they have added facts to stories or omitted
24 some facts at key times or just blatantly changed their answers
25 to help the government along.

Hbsnros5

Summation - Mr. Touger

1 But just remember lying to these men is easy. They
2 have lied all their lives to the government, to judges, parole
3 officers, police officers, under oath, not under oath. They
4 have lied for their own benefit, and they will do that here
5 because they are lying for freedom. Freedom instead of
6 spending the rest of their lives in jail -- and Abdullah and
7 McCleod are walking out in the street, sleeping with their
8 families. So when McCleod or any other states a fact, just
9 remember why he is doing it.

10 But the government came in here and asked you not to
11 believe them because they are -- the government came in here
12 and says you have to believe them because they are the ones
13 calling them. So when they tell you, when Stewart tells you
14 and Abdullah tells you that he never intended to kill anybody,
15 you've got to believe it.

16 And the government has written letters for two of them
17 saying how credible, honest, and trustworthy they are. So,
18 when you consider their testimony, remember to look at it under
19 this microscope, that each one is up there trying to shape the
20 truth as best he can to help the government as best they can.

21 Yet, even with all that, not one, not one came in here
22 and told you that Jimmy intended to kill any member of G-Unit,
23 let alone Lowell Fletcher.

24 Each one has testified time and again that Jimmy never
25 said that, ordered that, did that, at all.

Hbsnros5

Summation - Mr. Touger

1 There is your reasonable doubt staring you in the
2 face. The evidence is your reasonable doubt. But there are
3 more important times during this trial where the cooperators
4 testified to completely different facts, not inconsequential
5 facts, that attempted to make the government's case that much
6 better.

7 For instance, when it comes to the argument about
8 planning, the government does not want this to look like no
9 planning went into this, so Jason denies asking McCleod to be
10 the shooter.

11 Remember he said, No, I never did that.

12 But McCleod at page 1147 made it quite clear, that
13 that did happen.

14 Right after that there is again the difference between
15 Jason's testimony sand McCleod when Jason at page 766 said that
16 he gave the gun to grant after he left to get the bag of chips
17 and not until McCleod said Fletcher had arrived. Remember?
18 That's what he testified to at page 746.

19 But 1148 McCleod says that Grant had the gun. He
20 didn't see it, but everything, with the way he was moving and
21 everything led him to believe that grant had the gun when they
22 left to get the bag of chips. Again, this shows the lack of
23 planning and the confusion of what was going on that night.

24 Then there is the fact that McCleod testified at page
25 1039 that he pointed out Rodney Johnson to Jason Williams when

Hbsnros5

Summation - Mr. Touger

1 they drove by Johnson's car when they first arrived on the
2 scene. Not only did he point him out, he mentioned it to
3 Williams and was surprised that he wasn't surprised, that Jason
4 wasn't surprised to see Williams there -- I mean Johnson there,
5 trying to indicate in some way that Jimmy must have sent
6 Johnson because Williams knew about it.

7 There's only one problem with that. Williams
8 testified at page 770 that he didn't know Johnson was present
9 at the scene of the shooting until after the shooting when they
10 met up at Johnson's apartment.

11 So who's making something up out of thin air? McCleod
12 or Williams? One of them is.

13 That is why it is important for you to understand,
14 just like the cooperation agreement says, it is the government
15 that decides if they are telling the truth.

16 Jason Williams testifies at page 753, as I said
17 before, that he drove with McCleod to check out Lowell
18 Fletcher's apartment in an attempt to make his testimony more
19 valuable.

20 But McCleod at page 994 says he went alone that night
21 by cab and called Jason and D afterwards to arrange the next
22 day's meeting.

23 And Stewart, in an attempt to make his testimony sound
24 more credible, testified that he worked for Jimmy in the music
25 business. Remember the card he showed and the jacket. One

Hbsnros5

Summation - Mr. Touger

1 problem with that, Jason Williams says at both page 667 and
2 825, that Stewart never worked for Jimmy in the music business.

3 And then finally we have the difference in the Apollo
4 incident that we have already discussed, where Stewart again
5 tries to make his testimony more valuable by making him alone
6 with Jimmy at the Apollo, but Abdullah disputes that testimony
7 quite clearly.

8 These differences just demonstrate how each cooperator
9 wanted to make himself sound better so the government would
10 sign them up and get them out of jail and how the government
11 doesn't really care what they are saying as long as they are
12 saying bad things about Jimmy. It is important to consider the
13 order of when each became a cooperator.

14 Of course, Stewart was first, but he didn't have any
15 information about the shooting of Lowell Fletcher.

16 Then came Abdullah, but he had no direct information
17 about the shooting of Lowell Fletcher.

18 So the government was still looking for more people to
19 come aboard, which explains McCleod. Finally, someone who was
20 involved in the shooting, yet even he could not put a homicide
21 on Jimmy's back, as the evidence shows, even though he changed
22 his answer in an attempt to do so.

23 Panel 9.

24 Jason Williams' testimony from 8/17.

25 "Q. Now, April of 2017 you decided that you did want to

Hbsnros5

Summation - Mr. Touger

1 cooperate, right?

2 "A. Yes.

3 "Q. And I believe you just stated because you wanted to go
4 home just like Mr. Abdullah, Mr. McCleod, and Mr. Stewart,
5 right?

6 "A. Yeah.

7 "Q. And you knew that the government wanted you to cooperate
8 in this case, right?

9 "A. Right.

10 "Q. Did you know that the government wanted information about
11 the Lowell Fletcher shooting?

12 "A. Yes.

13 "Q. And you know that they wanted information about Jimmy's
14 role in that shooting?

15 "A. Yes. Yeah."

16 So the government, still desperate for that one
17 witness that would cover the gap in their proof, turned to
18 Jason Williams, who had refused their overtures to cooperate
19 for years but finally, when all his appeals and motions were
20 done and he was facing doing the next 20 or more years in jail,
21 and he saw how Stewart Abdullah and McCleod were walking around
22 as free men living and enjoying life with their families, he
23 decided to cooperate also, and the government, desperate for
24 that one witness to seal the deal, brought him on to their
25 team.

Hbsnros5

Summation - Mr. Touger

1 But he even couldn't provide the testimony that the
2 government so desperately needed, that testimony that once and
3 for all would prove Jimmy intended a homicide, and wanted it to
4 come from his closest associate.

5 But what happens?

6 Even Jason fails them. He comes in here and quite
7 clearly says, as I showed you before, I had no idea whether
8 this was a shooting or a homicide, and Jimmy certainly never
9 told me to kill anyone.

10 So, despite their best efforts, the government has
11 fallen short in meeting their burden of proof of proving beyond
12 a reasonable doubt that Jimmy intended to kill anyone, even
13 Lowell Fletcher.

14 Each cooperator has made it crystal clear that every
15 shooting prior to the Lowell Fletcher shooting was not an
16 intended homicide and McCleod and Williams have provided no
17 evidence that the shooting of Lowell Fletcher was any
18 different.

19 Remember what Jason Williams said. There is no doubt
20 from the evidence that Jimmy was a producer of music, videos
21 and movies. There is no doubt that he had a legitimate
22 business that made a lot of money. Every witness told you
23 that.

24 There is also no doubt that the business caused him to
25 travel quite often all around the country and that he conducted

Hbsnros5

Summation - Mr. Touger

1 this business even after his son was attacked when he was
2 alleged to have been so preoccupied with revenge that he was
3 doing nothing else.

4 There is evidence that shortly after his son was
5 attacked, he left the country for a month and went to visit
6 some holy sites in Africa. All again when he was supposed to
7 be so preoccupied with events that he couldn't even sleep.

8 Does this prove that he didn't order Lowell Fletcher
9 to die?

10 No.

11 But it is proof you should consider when deciding if
12 the government and its witnesses aren't overplaying their truth
13 in this case about saying that Jimmy was so bent on revenge he
14 couldn't sleep. This proves that that is not true.

15 The important question, as the Court has told you
16 during this trial and will continue to tell you during the
17 charge, and as the government told you in their closing, is did
18 Jimmy intend for Lowell Fletcher to be murdered.

19 The question is not, Was Lowell Fletcher killed?

20 This obviously occurred. Although you might
21 sympathize with his family, you cannot base your verdict on
22 that emotion.

23 The question also is not is Jimmy a drug dealer. It
24 does not matter if the government has proven to you that fact
25 or not. It also does not matter if the government has proven

Hbsnros5

Summation - Mr. Touger

1 to you that Jimmy as ordered or committed violent acts.

2 It is also unimportant if Jimmy hired McCleod and
3 others to shoot Fletcher.

4 The one and only important question is, Did the
5 prosecution prove to you beyond a reasonable doubt, all
6 reasonable doubt that Jimmy intended anyone, including Lowell
7 Fletcher, to be killed?

8 Put another way, if the government has proven to you
9 that Jimmy was a drug dealer that Jimmy committed and ordered
10 violent acts, that Jimmy wanted Lowell Fletcher to be shot, but
11 has failed to prove to you that Jimmy wanted anyone killed, as
12 the Court will tell you, you must acquit him of these charges.

13 You might not like Jimmy. You might not respect him.
14 You might feel he is a violent person who deserves to be
15 punished, but you as jurors have a sworn oath only to convict
16 him of charges brought against him if the government has proved
17 them beyond a reasonable doubt, and I submit to you that they
18 haven't.

19 The government wants you to forget that oath you swore
20 to. They want you to convict Jimmy despite their lack of
21 proof. They want you to be swayed by the testimony of his drug
22 dealing. They want you to be blinded by his testimony of his
23 violent acts.

24 They want you to base your verdict on your emotions
25 for Lowell Fletcher and his family and the rest of the

Hbsnros5

Summation - Mr. Touger

1 emotionally charged evidence. Look at all the time they spent
2 on those incidents.

3 But you did take an oath, and I know you will honor
4 it.

5 Now, you are about to enter the jury room after you
6 hear the government's response to my closing and the judge's
7 charge on the law.

8 You will notice in this courtroom and outside the
9 courthouse there's nobody banging on the wall saying you must
10 convict. The only thing anybody wants from you in this case is
11 for you to follow the law as the judge gives it to you, look at
12 the evidence as it came from this witness stand, put it
13 together, and see if the government has made their case beyond
14 a reasonable doubt.

15 That is the only thing the public wants from you, to
16 honor your oath, and I ask you, when do you that, when you take
17 the charge as the judge gives you, when you review the evidence
18 as you heard it and you put the two together, you will come to
19 the only verdict that is possible. Not guilty on all counts.
20 Thank you.

21 THE COURT: Thank you, Mr. Touger. Ladies and
22 gentlemen, we'll break for lunch. 3 o'clock.

23 (Luncheon recess)
24
25

Hbsnros5

Rebuttal - Mr. Enzer

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

2 (3:05 p.m.)

3 THE COURT: Be seated, folks.

4 I just wanted to alert you we did have a note from
5 Juror No. 12 this morning asking Andy to look up a phone number
6 so she could tell somebody she couldn't make something. It is
7 the court exhibit next in order.

8 THE DEPUTY CLERK: K.

9 THE COURT: K.

10 If anybody is curious, you can get it from Andy later.
11 OK.

12 Let's get the jury.

13 (Jury present)

14 THE COURT: OK. Welcome back, everybody.

15 The defendant and the jurors are present. We will now
16 here rebuttal argument by the government.

17 Mr. Enzer.

18 MR. ENZER: Thank you, your Honor.

19 May it please the Court, ladies and gentlemen of the
20 jury, Mr. Touger, defense counsel in his summation he just
21 talked to you about another world that he wanted you to go to,
22 a world that Rosemond lives in, a world that G-Unit lives in.

23 I submit to you it's really a world that Touger lives
24 in. It is a world where you can go to a restaurant and order a
25 hamburger, a bacon cheeseburger, and there's no beef. It is a

Hbsnros5

Rebuttal - Mr. Enzer

1 world where you can refer to meetings where people plan a
2 homicide and just say there was no planning at them, and all of
3 a sudden they magically transform into meetings without
4 planning because he said so.

5 It is a world where evidence disappears when Touger
6 discusses what happened.

7 It is a world where Mr. Touger gets to distort the
8 evidence and the facts of the case to fit his theory of what
9 happened.

10 It is a world where "hit" doesn't mean kill, as in
11 hitman or hit team. In this world "hit" is something else.
12 It's whatever is convenient to Mr. Touger and Rosemond.

13 And it is a world where you can order a team of people
14 with a backup team to use a lethal weapon with a silencer, lure
15 somebody, shoot them, and under the circumstances you have
16 here, with all the planning and all of the statements Rosemond
17 makes, despite all of that, when somebody dies as a result of
18 that shooting, it is an accident. It just a happenstance.

19 Ladies and gentlemen, you should not decide this case
20 in the world of Mr. Touger or the world he wants you to go to.
21 You should decide this case in this world. This is the world
22 we live in.

23 You should decide this case based on the evidence and
24 what really happened in this world, in this trial, in this
25 courtroom.

Hbsnros5

Rebuttal - Mr. Enzer

1 I submit to you virtually everything Mr. Touger said,
2 not everything, but virtually everything was a
3 mischaracterization of the testimony, a mischaracterization of
4 the evidence and just simply turning a blind eye to what the
5 facts show.

6 I am going to walk through some of those
7 mischaracterizations in a moment. This was not an accident.
8 This was an assassination. It was an intended killing. And
9 because of that, Rosemond is guilty.

10 Now, as Judge Kaplan has already told you, and I'm
11 sure he will instruct you again at the end of the trial, the
12 defense has no burden. The government has the burden of
13 proving its case beyond a reasonable doubt. The burden never
14 shifts to the defense. We embrace that burden, and in this
15 case we have met it.

16 But when the defense makes arguments, as they have
17 done in their opening statement, in cross-examination, and now
18 in summation, you have the right to scrutinize those arguments.
19 You should scrutinize them.

20 I am not going to answer every argument Mr. Touger
21 made. I don't have time to, and you don't need me to. You do
22 not need me to answer many of the arguments he made because
23 they are so flatly ridiculous on their own face.

24 Let me give you an example.

25 Do you remember when Mr. Touger suggested to you in

Hbsnros5

Rebuttal - Mr. Enzer

1 his opening statement and then again in summation that Rosemond
2 is some kind of pacifist who turned the other cheek whenever he
3 was wronged by G-Unit?

4 After all the evidence you heard, drive-by shootings
5 and fire bombings of cars and the plot that led to Fletcher's
6 death, do you real really need me to respond to this idea that
7 he's somebody who turned the other cheek; or, as Touger said in
8 his summation, that Rosemond is a polite man because he didn't
9 attack Chris Lighty at a Christmas party? Do you really need
10 me to respond to that?

11 Ladies and gentlemen, what you heard in this case is
12 Rosemond is too savvy, too sophisticated. He's like a snake.
13 He doesn't attack in a public party where there are witnesses.
14 Like a snake, he lies in wait in the grass until the right
15 moment to strike.

16 He doesn't have the courage to fight Lighty in a
17 party. He waits until he can have people handle it in a
18 situation where it's unlikely that they will be caught.

19 Defense arguments like these are so ridiculous, you
20 don't need me to respond, and I am not going to respond to many
21 of the other arguments he made.

22 There is one thing that is important here.

23 Defense counsel in his closing conceded, he conceded,
24 he said Rosemond did set up the shooting, and he's talking
25 about the shooting of Lowell Fletcher.

Hbsnros5

Rebuttal - Mr. Enzer

1 He expressed that idea through different variations.
2 He said it in different ways.

3 One way he said it was that the shooting was McCleod's
4 idea, and then Rosemond gave him the go-ahead and then what
5 happened happened, suggesting that the death Rosemond was not
6 responsible for. The death of Fletcher was an accident.

7 But here is something he did not talk about, and he
8 talked about a lot of things, he talked about a lot of evidence
9 in this case, but you did not hear him at all in his summation
10 talk about one very critical piece of evidence: "The bitch is
11 out of here."

12 Do you remember Mr. Skinner's summation, when he told
13 you the significance of that statement. He told you that
14 statement alone is sufficient to prove that Rosemond intended
15 for Fletcher to be killed.

16 And not once did Mr. Touger talk about it. Why?

17 There is no answer. He can't answer it. Let's just
18 go over what it means.

19 You have to look at the input and the output. The
20 input, the information that Rosemond has when he makes that
21 communication, the input he's given is he gets an encrypted
22 e-mail message from Williams: Everything is good, or
23 everything is all right.

24 That's the input.

25 The output: "That bitch is out of here." That's what

Hbsnros5

Rebuttal - Mr. Enzer

1 he says the very next day.

2 He does not have any report from anyone confirming
3 certainly the details of the murder. No one said Fletcher has
4 been murdered. No one said to him Fletcher has been killed.
5 No one said Fletcher is in a body bag. He doesn't have those
6 details.

7 He doesn't even know necessarily everything is good or
8 everything is all right means Fletcher. The reason he is able
9 to take that input and come up with the output of "The bitch is
10 out of here" is that he knows before this whole thing happened,
11 from the get-go, from the moment he talked to McCleod at Whole
12 Foods in the downstairs, he knew from that moment that the
13 whole goal of this was to kill Fletcher.

14 Knowing that in advance, when he is told everything is
15 good by his driver, that is all he needs to know, that the goal
16 of what he set in motion weeks before had happened. Fletcher
17 was dead; the bitch is out of here.

18 Mr. Skinner explain it. He told you it's enough to
19 convict on. Touger did not respond.

20 For that reason alone, ladies and gentlemen, we've met
21 our burden, and you can check guilty on every single one of the
22 counts that will be presented to you on the verdict form.

23 One of the things that happened in Mr. Touger's
24 summation, and frankly throughout the whole trial, he
25 mischaracterized the record. I have to remind you, and Judge

Hbsnros5

Rebuttal - Mr. Enzer

1 Kaplan will instruct you, only testimony of witnesses and
2 exhibits that are in evidence, that is the evidence. Questions
3 of a lawyer not evidence. Arguments of a lawyer not evidence.

4 Do not be misled by mischaracterizations. If you're
5 confused, if you want to see something, ask for the transcript
6 or the exhibit or the stipulation. You will be allowed to see
7 it in the jury room.

8 Let me go through some examples of
9 mischaracterizations.

10 The point of this, ladies and gentlemen, is you cannot
11 rely on what Mr. Touger told you about what the record says.
12 You just can't. He is too much of a freestyler.

13 The most memorable example of him misrepresenting the
14 record was when Abdullah was testifying, and Touger kept asking
15 him questions mischaracterizing the penalties that Abdullah
16 would face if he didn't testify.

17 And Abdullah tried to explain to him a few times.
18 Mr. Touger just didn't get it, and he kept asking him, Aren't
19 you going to have a mandatory minimum? He wouldn't, because
20 he's already been sentenced. He's already home. He doesn't
21 have that mandatory minimum hanging over his head anymore.

22 Eventually Mr. Abdullah called him out and said,
23 You're just freestyling. He is freestyling. He freestyled
24 then. He freestyled in other cross-examinations, and he just
25 freestyled in his closing.

Hbsnros5

Rebuttal - Mr. Enzer

1 What is another example of his freestyling?

2 Well, he told you that there is no evidence at all in
3 the record that Rodney Johnson was a backup shooter, that he
4 was sent as a backup shooter for the murder.

5 Wrong.

6 When you go back to the jury room, ask for page 538 of
7 the transcript. That's Khalil Abdullah's testimony.

8 Can we bring it up.

9 Here is what Abdullah said.

10 Can we highlight it.

11 Abdullah's describing the meeting he had at Mobay
12 Restaurant with Rosemond and what Rosemond told him.

13 Rosemond said, "That's why I hit you and told you to
14 tell Toree to hit Jason up, because I had Toree up there as the
15 backup shooter.

16 And Abdullah asks Rosemond, "The backup shooter?"

17 He's like, "Yeah," Rosemond's like, "Yeah."

18 That is evidence of Rodney Johnson being there as a
19 backup shooter. You know it's true. He was there. He did
20 have a gun. Why was he there?

21 Defense counsel freestyled and told you he was there
22 as an observer to see if this shooting went down so that
23 Rosemond could confirm whether or not he needed to pay. That
24 never happened in any of the other nonfatal shootings, but, in
25 any event, that was freestyling. This is evidence.

Hbsnros5

Rebuttal - Mr. Enzer

1 It is in the record. It is an example of Mr. Touger
2 mischaracterizing the record.

3 Here's another one. Mr. Touger told you no one, and
4 he said this over and over again, Oh, by the way, the backup
5 shooter thing, do you remember how Mr. Touger said it? Loud
6 and confident.

7 It didn't bother him. He was either unaware or it
8 didn't matter to him that what he was saying was flatly wrong.
9 He can say something to you that is just flatly incorrect as
10 confidently as he says something to you that is true.

11 You can't rely on what he says. Go to the evidence.

12 So he also told you that no one told you that Rosemond
13 ordered a murder.

14 Wrong again.

15 Let's go to page 878. This is McCleod's testimony.

16 McCleod was asked:

17 "Q. What was Rosemond's role in the murder?

18 "A. Rosemond was the individual I went to to orchestrate the
19 whole thing. He was -- I guess you could say he authorized
20 this whole thing."

21 Let's go to Jason Williams' testimony.

22 At page -- I can't really read my handwriting. Is it
23 650?

24 650 of Jason Williams' testimony.

25 Williams was asked:

Hbsnros5

Rebuttal - Mr. Enzer

1 "Q. What was Rosemond's role in the murder?

2 "A. The orchestrator."

3 Those are two examples. There are others. You can
4 look at the transcripts yourself. Do not rely on what
5 Mr. Touger told you? It is not true.

6 Another example.

7 Mr. Touger told you Rosemond didn't want to kill Baja.
8 He's a wealthy man. He could have paid \$75,000. That's why he
9 didn't agree to a hit where people in Brooklyn would kill Baja
10 for \$75,000.

11 Freestyling. Nothing in the record to support that.

12 Go to page 220 of the transcript, please.

13 Here's Mohammed Stewart's testimony on this. You can
14 read it in the jury room.

15 His testimony is that him and Rosemond are talking
16 about having Baja killed. And the issue is not -- Rosemond
17 never says to him, he never says to him, I don't -- I'm not
18 going to agree to pay them. I'm not going to agree to kill the
19 man.

20 Sorry. I'm going to a different one.

21 221. This is page 221.

22 Here's the discussion.

23 Stewart and Rosemond are talking. Jimmy says to
24 Stewart: That's too much. What he's talking about is the
25 75,000 figure.

Hbsnros5

Rebuttal - Mr. Enzer

1 Stewart's upset. And then the question:

2 "You said the guys in Brooklyn said 75 to tear his
3 head off? At that moment it meant to, as you would say, park
4 him, kill him. You said Jimmy said, Nah, it was too much.

5 "A. Too much money. He wasn't worth that."

6 This is not Rosemond saying, I don't want to kill
7 Baja.

8 What he's saying is I don't want to pay \$75,000 for
9 it. Mr. Touger told you the going rate for a murder is
10 \$75,000. There is no evidence of that. The evidence is the
11 going rate is around \$30,000. Because Rosemond was willing to
12 pay 25. That's Stewart's testimony, you can read it. And
13 Rosemond in fact offered 30 for the killing of Fletcher and
14 ended up paying that much.

15 That's the evidence.

16 By the way, another mischaracterization that
17 Mr. Touger asserted, he said Stewart never wanted to kill
18 anyone.

19 Now, there were times when Stewart talked about
20 shootings, he had participated in and said he didn't intend to
21 kill anyone in those shootings.

22 But when it came to Baja, Stewart's testimony was he
23 did want to kill Baja. He wanted to have the guys in Brooklyn
24 do it, and he had discussions with Rosemond and the guys in
25 Brooklyn about knocking the guy's head off, about killing him,

Hbsnros5

Rebuttal - Mr. Enzer

1 and they were talking about the price, another
2 mischaracterization of the record.

3 Here's another example. Mr. Touger told you -- he put
4 up a big poster board of testimony from Jason Williams'
5 cross-examination. I remember it. It was the very last
6 question on cross-examination.

7 And he told you what this testimony showed is that
8 Williams was saying he never knew Fletcher would be killed on
9 the day of the murder.

10 It is a mischaracterization of Williams' testimony.

11 So, here is the actual testimony.

12 On direct examination, Williams testified that he knew
13 this was going to be a murder. That is at page 775 of his
14 testimony. Can we please pull it up.

15 "Q. You testified earlier that you and others, including
16 Rosemond, participated in various aspects the fatal shooting of
17 Fletcher, is that right?

18 "A. Yeah.

19 "Q. When you agreed to participate in the attack on Fletcher,
20 did you have an understanding of the goal of the attack?

21 "A. Yeah.

22 "Q. What?

23 "A. Murder."

24 That was his testimony on direct.

25 Then, on cross-examination at the very last question,

Hbsnros5

Rebuttal - Mr. Enzer

1 after Williams has been questioned for hours, he's tired, the
2 defense counsel asks him a confusing two-part compound
3 question, and Williams goes along with it because I submit to
4 you he was confused. And that is the testimony he puts up on
5 the poster board.

6 Then on redirect -- that's why we have redirect
7 examination, because there are situations when a witness may
8 get confused or may get cut off in an answer or may give
9 testimony that they didn't intend to give on their cross.
10 That's why we have redirect.

11 On redirect he clarified that answer. That's at page
12 865 of the transcript.

13 Williams was asked:

14 "Q. When you brought the gun that day, as Jimmy asked you to,
15 and went to Mt. Eden Avenue on the day of the murder, what did
16 you believe what is going to happen to Fletcher?

17 "A. That he would be killed."

18 That's his testimony, not the misleading excerpt that
19 Touger showed to you.

20 Ask yourself, when Touger showed you that excerpt, did
21 he give you the whole context? Did he show you the direct and
22 the redirect?

23 No.

24 What he does is he takes the little piece out of
25 context that he likes and he presents it to you as though it is

Hbsnros5

Rebuttal - Mr. Enzer

1 a fact. It is something he does throughout this entire trial.

2 That is why you cannot rely on the defense
3 presentation.

4 THE COURT: Members of the jury, I have to interrupt
5 counsel here.

6 It is entirely proper for Mr. Enzer to argue that the
7 evidence was different than Mr. Touger argued it was. You
8 heard it all. You get to decide what the evidence was and so
9 forth.

10 If there's any suggestion here by Mr. Enzer that
11 Mr. Touger in some way behaved unethically or improperly, just
12 put that out of your mind. That would not be an appropriate
13 suggestion, and to avoid your misconstruing anything he said as
14 that, I thought I would bring it to your attention.

15 MR. ENZER: Mr. Touger talked about testimony from
16 Brian McCleod regarding what the \$30,000 would cover.

17 He told you McCleod had testified that \$30,000 would
18 be the price even if Fletcher was going to be shot in the leg.

19 I direct your attention -- you should look at pages
20 970 to 972, page 1113, and page 1169 of McCleod's testimony,
21 and you will see that is not an accurate summary of McCleod's
22 testimony.

23 Those pages give you an accurate summary. What he was
24 saying in a nutshell, and your recollection controls, and you
25 should look at the transcript, what he was saying was, \$30,000,

Hbsnros5

Rebuttal - Mr. Enzer

1 the initial offer, the initial concept was \$30,000 McCleod
2 would bring Fletcher to Rosemond, Rosemond will shoot and kill
3 Fletcher himself. McCleod felt that was a bad idea because of
4 all the surveillance on Rosemond, so he suggested Derrick Grant
5 as the shooter, and he recruited Derrick Grant as the shooter
6 with Rosemond's approval. So he was not saying \$30,000 would
7 cover a leg shot.

8 All the testimony about McCleod and Grant wanting more
9 money that was about the increased work they had to do in
10 executing this plan, because the \$30,000 when it was initially
11 offered up contemplated Rosemond being the shooter, and now you
12 have McCleod not only luring but also recruiting the shooter
13 and you have the shooter, Grant, instead of Rosemond.

14 Another thing defense counsel talked about in his
15 closing was he pointed to the situations where Abdullah and
16 Stewart participated in shootings in which they were not trying
17 to kill anyone, and I argued to you that that casts doubt on
18 whether Rosemond intended for Fletcher to be killed.

19 This is a distraction. Whether or not Abdullah or
20 Stewart acted with the intent to kill and did nonfatal
21 shootings that they committed is not the issue before.

22 There is no evidence that Abdullah or Stewart ever
23 committed a fatal shooting or ever ordered a shooting that
24 resulted in somebody's death. And, in any event, as Mr. Touger
25 acknowledged, the cooperating witnesses are not on trial in

Hbsnros5

Rebuttal - Mr. Enzer

1 this case.

2 There's only one person on trial. That's the
3 defendant, James Rosemond.

4 The question for you is whether Rosemond intended for
5 Fletcher to be killed by the crew of men that he sent to ambush
6 and kill Fletcher, and I submit to you the answer is yes.

7 How do you know that?

8 Mr. Skinner spent a lot of time on how you know it in
9 his opening summation. I am not going to repeat it. But one
10 of the ways you can examine this is you compare the shooting of
11 Fletcher, which resulted in his death, and the nonfatal
12 shootings that Abdullah and Stewart did.

13 When you compare them, you look at the different
14 factors, you will see the factors collectively and as a whole
15 point to one thing: That Rosemond acted with the intent to
16 kill Fletcher.

17 First, you have the statements that Rosemond made
18 beforehand, before ordering the fatal shooting of Fletcher.
19 Rosemond made the "carry a coffin" and funeral statements that
20 you have heard a lot about. There is no evidence that Abdullah
21 or Stewart ever made a statement like that before any of the
22 shootings that they were involved in.

23 You have the number of participants to carry out the
24 fatal shooting of Fletcher. Rosemond recruited four of his
25 criminal associates -- McCleod as a lure man, Grant as a

Hbsnros5

Rebuttal - Mr. Enzer

1 trigger man, Jason Williams as a getaway driver, Rodney Johnson
2 as a backup shooter.

3 There is no evidence that Khalil Abdullah or Stewart
4 ever had that many participants in any of the shootings that
5 they were involved in.

6 You have the extensive and meticulous planning. You
7 heard about this during Mr. Skinner's closing. Rosemond
8 engaged in extensive and meticulous planning.

9 About a month before the murder you have the meeting
10 inside the Whole Foods where Rosemond's plot to murder Fletcher
11 begins to unfold a few weeks before the murder. You have the
12 communications and conversations in which Rosemond had McCleod
13 and Williams go to Queensboro Correctional Facility.

14 (Continued on next page)

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HBSAAROS6

Rebuttal - Enzer

1 MR. ENZER: Now I'm going to come back to that in a
2 moment. Then you have the other meetings, the other calls,
3 other conversations that led up to the murder. They were all
4 described in Mr. Skinner's closing. There is no evidence that
5 Abdullah or Stewart ever engaged in such elaborate planning.
6 You have the payment Rosemond provided \$30,000 worth of cocaine
7 to McCleod and Grant for their roles and Rosemond provided
8 eight thousand dollars as bonus to Jason Williams as payment to
9 him for his assistance in carrying out the murder for a total
10 of \$38,000.

11 In the nonfatal shootings that Abdul and Stewart
12 committed they either didn't pay anyone anything or they paid
13 much, much less than the 30,000 in cocaine and eight thousand
14 bonus to Williams that Rosemond laid out for the murder of
15 Fletcher.

16 In the case of a limiting instruction. Mr. Skinner
17 talked about this in summation. Rosemond never said to anyone
18 involved in the murder of Fletcher, Don't kill the man. Just
19 shoot him in the leg. You didn't hear that because Rosemond
20 didn't want the man just shot in the leg and he didn't want
21 Fletcher to survive. He wanted him to die. However, if you
22 look at some of the shootings that Abdul and Stewart were
23 involved in there are times they are not looking to kill
24 anyone. Abdullah told you when he had others shoot up Yayo's
25 white Bentley in Harlem, Abdullah told them clap the white

HBSAAROS6

Rebuttal - Enzer

1 Bentley up. Pages 502 and three of the transcript he didn't
2 say hit Yayo so fast and hard he won't see it coming because
3 all Abdullah wanted was for the car to get shot up. He didn't
4 want the shooters to kill Yayo. Contrast that. Rosemond did
5 want Fletcher to end up in a coffin.

6 Another point defense counsel made is that there's a
7 gap in the government's proof. He says because McCleod and
8 Williams told you Rosemond never said to kill or to murder
9 anyone. In other words, he never used those specific words.
10 Let's be clear. McCleod and Williams were not saying Rosemond
11 didn't order the murder of Fletcher. What they are saying was
12 Rosemond never expressed or used words like "murder" or "kill"
13 in describing his intentions in describing what he wanted them
14 to do to Fletcher.

15 And you know by now why Rosemond avoided using words
16 like that. Your common sense tells you that a sophisticated
17 and savvy criminal like Rosemond would never use such words
18 which would make it obvious to anyone listening and that then
19 he was speaking about, what he is speaking about with others
20 was a plot to hire hitmen to carry out a murder-for-hire.

21 You heard during this trial the lengths that Rosemond
22 went to, the number of precautions he took to make sure that it
23 was difficult for law enforcement to piece together the proof
24 that he was guilty. He used trusted associates to carry out
25 the deed. He engaged in tactics to avoid surveillance by law

HBSAAROS6

Rebuttal - Enzer

1 enforcement. Meeting at the lower level of Whole Foods, using
2 encrypted Blackberries, using phones that weren't register.
3 Even when he was speaking in these circumstances with these
4 trusted associates he spoke in code and innuendo. That's not
5 somebody who is going to say murder or kill. He is not going
6 to spell it out like that.

7 And by the way, for much the same reasons you would
8 not expect somebody like Rosemond to have a meeting in advance
9 of his murder conspiracy where they layout what code words
10 mean. For the same reason that you are not going to tell
11 somebody, murder the guy, kill the guy, you are not going to
12 draw up a sheet or have a meeting where you say, hey, listen.
13 In the future sometime we're going to talk about a murder plot
14 and when I say "hit" what that means is kill and if I say
15 "quiet" means the .22 with silencer. You are not going to say
16 anything expressly that could later be used in court to decode
17 what you are saying. That's what your common sense tells you
18 about the way Rosemond practiced.

19 But speaking in code is not a defense to plotting a
20 murder-for-hire. The law does not require any magic words to
21 show that a defendant like Rosemond was part of a conspiracy
22 with others to have a victim murdered for hire. As Mr. Skinner
23 explained in his summation, the government need only prove that
24 there was a mutual understanding which can be an unspoken
25 understanding between two or more people to carry out a goal of

HBSAAROS6

Rebuttal - Enzer

1 conspiracy which was to have a member of G-Unit murdered and we
2 have proven that. We've proven through his actions both before
3 and after the murder.

4 Defense counsel argued to you that there is no proof
5 that this was intended to be a murder because a small caliber
6 weapon was used and because the shooting was done from a
7 distance. First, this is kind of like saying a shooter who
8 used a machine gun to murder somebody is not guilty of murder
9 because they could have used a bazooka or didn't, it's a
10 ridiculous argument. Obviously, there are many weapons you
11 could use to kill somebody. But he did pick a lethal weapon, a
12 silencer, one suitable to the circumstances and that is
13 evidence of his intent.

14 If Rosemond had ordered Jason Williams to bring a BB
15 gun to kill Mr. Fletcher, then they would have an argument, but
16 he didn't pick a BB gun. He picked a .22 caliber handgun with
17 a silencer. You heard that it is a lethal weapon. You heard
18 that from Dr. Smiddy that small caliber guns can be just as
19 lethal as large. And Rosemond knew it. You heard about the
20 conversation he had with Mohammed Stewart where he said to
21 Stewart he knew a .22 caliber handgun can be effective because
22 the bullets bounce around inside somebody's body because
23 they're small. They don't pierce through. They bounce around
24 inside once they enter the person's body and cut up arteries
25 and that's what happened here. That testimony that I just

HBSAAROS6

Rebuttal - Enzer

1 referred to from Stewart is at page 203 in the transcript.

2 Another argument the defense counsel made is that this
3 couldn't have been a murder because there was disorganization
4 and chaos on the day of murder. For example, you have
5 McCleod's testimony that at one moment before Grant ultimately
6 kills Fletcher, Jason Williams turned to him and said, we were
7 thinking you would do it. And you also have the fact that the
8 shooting happened a little bit further down the block from the
9 recess where McCleod had hoped and planned that the murder
10 would happen. This is proof of nothing. Just there is no
11 requirement that criminal conspiracies have to be perfectly
12 well organized. If they were then they probably won't get
13 caught and prosecuted. Obviously, not all criminal
14 conspiracies are executed with perfection. That's why we end
15 up in criminal cases like this. The point is although there
16 was some chaos, they got the job done. And look at all the
17 planning and advance and care that is taken in advance to get
18 them to the point where they were able to lure Fletcher to the
19 spot where Grant shot and killed him with a weapon that
20 Williams brought a weapon that belonged to Rosemond.

21 You also have to keep in mind that while that was
22 happening on the ground, that is way below Rosemond's level.
23 Rosemond is the boss. Defense counsel called McCleod the
24 chairman of the board of this murder conspiracy. That is I
25 submit to you not an accurate way to look at this evidence.

HBSAAROS6

Rebuttal - Enzer

1 Rosemond is the CEO. He's the boss. McCleod is the chief
2 operator. The guy on the ground who is going to supervise. He
3 takes care of logistics. But from Rosemond's perspective he
4 sends his team to do it and then he goes to Miami. He doesn't
5 worry about the details, which person shoots? In his mind
6 Derrick Grant was going to do the shooting. But at end of the
7 day he doesn't care. As long as the deed is done, that's what
8 he cares about. He wants the result. He doesn't care how they
9 do it on the ground. So disorganization among the troops
10 doesn't tell you anything about his state of mind.

11 I can't answer all the arguments. I don't have the
12 time to answer all of the arguments that Mr. Touger made
13 regarding intent. But I think you can look at all of them
14 through the lens by now -- to a puzzle. I want you to imagine
15 just because Mr. Touger talked about hamburgers. There's
16 puzzle. When you put all the pieces together it makes out a
17 hamburger.

18 What happened in this case, what Mr. Skinner did in
19 his summation he showed you how all of the evidence together,
20 how all of the pieces fit together and showed you a hamburger
21 with beef, that's what happened when you put the pieces to go.
22 What Mr. Touger did in his summation is he took each individual
23 piece or at least some of them and he said, this is not a
24 hamburger. This is part of the bun. This a lettuce. This is
25 tomato. Each piece in isolation, not the context, not how they

HBSAAROS6

Rebuttal - Enzer

1 all fit together. He wants you to look at each piece in
2 isolation and say that is not evidence of intent. Because
3 that's the only way he can distract you from the proof that
4 Rosemond did intend this murder because if you do put the
5 pieces together it's a clear picture. The defendant is guilty.

6 Your common sense tells you that's not how puzzles
7 work. You can't look at them in isolation. You put the pieces
8 together. That's not how criminal cases work and that's not
9 how the real world works. That is not how this world works.
10 What you should do and I expect Judge Kaplan will instruct you,
11 you should consider all of the evidence, direct and
12 circumstantial in deciding whether or not to convict Rosemond.
13 If you consider all of the evidence and how it all fits
14 together it is clear that Rosemond is guilty as charged.
15 Mr. Skinner already explained the way when you look at all the
16 evidence how it shows Rosemond intended the murder. And then
17 what Mr. Touger did in his summation is he picked a few pieces
18 of it and tried nitpick them.

19 One of them he says there's no physical evidence in
20 this case that proves Rosemond acted with the intent to murder.
21 Wrong. .22 caliber bullets found in a person's body and shell
22 casings found at the scene, that's proof of intent. If it was
23 BB bullets, if it was BBs I expect you would hear argument hey
24 this was an accident. Rosemond only wanted the guy shot with a
25 BB gun. You have physical evidence bullets were used. It

HBSAAROS6

Rebuttal - Enzer

1 confirms what cooperators told you and it shows you he picked a
2 lethal weapon.

3 Mr. Touger he says hit in this case, doesn't mean a
4 murder. It could mean a nonfatal shooting. There's a reason
5 why people call a hired assassin "hitmen". "Hit" it's a common
6 term. You can ask a kindergartener what's a hitman? They'll
7 tell you it's an assassin, somebody who kills.

8 Obviously, like any word, Rosemond may have used that
9 word to mean other things at different times and there's a
10 reason we have dictionaries and thesauruses. What you have to
11 do is look at the context. We are not standing here and
12 telling you because he said "hit" in that first meeting at
13 Whole Foods, therefore, you know this is a murder alone. What
14 we are doing is telling you put all the puzzle pieces together.
15 But it's certainly probative that he meant kill the guy. It's
16 certainly consistent. In fact, that's probably what's more
17 likely to be interpreted as.

18 Another nitpick that you heard about, Mr. Touger said
19 there were other shootings that were not fatal where Rosemond
20 paid a lot. He told you Grant was paid half a kilo to do the
21 shooting at Violator's offices. And he is only given a third
22 of a kilo for shooting of Fletcher. This misrepresents
23 evidence. It is a distortion. So let me unpack it.

24 You have to look at this from Rosemond's perspective,
25 the perspective of the CEO. He offered 30,000. He doesn't

HBSAAROS6

Rebuttal - Enzer

1 care how it's divided. He doesn't get into the weeds of how
2 it's divided. He doesn't know whether Grant's going to get a
3 third or half or 90 percent of that 30,000 kilo payment. He
4 doesn't care. From his perspective he's a businessman, 30,000
5 is the right price for a murder. He offered 30,000 which is
6 twice as much as he paid Grant for a nonfatal shooting and he,
7 in fact, paid the 30,000 after the deed was done. That shows
8 you his intent was to kill. It is one of many indicators, one
9 piece of the puzzle fit right in. And the fact that Grant
10 ended up getting only a third was not the detail Rosemond
11 concerned himself with. He didn't know and he didn't care.

12 The other thing Mr. Touger said, another one of his
13 nitpicks is there were times Rosemond paid for things he didn't
14 authorize. Well, we told you about the shooting that Mohammed
15 Stewart did for The Game right after the Hot 97 incident and
16 you heard what happened. Did Rosemond orchestrate a payment
17 for that? Yes, he did. But did he do it quietly? No. He
18 told Stewart, listen, you should not do things like this
19 because should know your value. You should make sure you are
20 going to get paid. Let Game's people do things like this. He
21 didn't like what Stewart had done. So he didn't just pay him
22 and say nothing. He complained. He did not complain when
23 Fletcher was dead. There was no complaint. There was no, you
24 guys went too far or you shouldn't have kill the man. I only
25 wanted him shot. He provided the payment and he provided a

HBSAAROS6

Rebuttal - Enzer

1 bonus payment to Williams and he made statements bragging about
2 it, like the bitch was out of here. And his meeting at Mobay's
3 Restaurant where he told the details of the murder. You have
4 the meeting where he discusses after the obituary was passed to
5 Stewart where he talks and says we can rest now. This is not
6 the behavior of somebody who is upset about the murder. This
7 is the behavior after the fact which shows you what his
8 intention was before the fact.

9 Mr. Touger pointed out, after the murder of Fletcher
10 you can't join the conspiracy after that point. We agree with
11 that. But you can look at the statements and actions a person
12 makes after a murder and determine how, what it tells you about
13 their intent before the murder. So the fact that Rosemond was
14 happy with the result, the fact that he paid for it, his
15 statement about the "Bitch is out of here", while they happened
16 after the murder in time, they are indicators of what his state
17 of mind was before the murder. They show he intended this to
18 be a killing.

19 Mr. Touger nitpicked the "carry a coffin" and
20 "funeral" statements, he took them total out of context. If
21 you look at the "carry a coffin" statement at page 526 of the
22 transcript, lines 21 through 24. This is Abdullah's testimony.
23 He is describing what Rosemond told him at the barbershop.
24 This is shortly after McCleod had come home from prison and had
25 begun setting in motion with Rosemond the plot to murder

HBSAAROS6

Rebuttal - Enzer

1 Fletcher. And here Rosemond is telling Abdullah at the
2 barbershop Lodi Mack is on his way home. Slim is going to stay
3 in touch with him so he can possibly line him up when he gets
4 home because he says, These dudes ain't gonna be happy until
5 they go to a federal. Let's say "these dudes" means G-Unit.
6 Until G-Unit goes to a funeral. What funeral do you think they
7 are talking about? Mr. Touger tried to suggest to you what
8 he's talking about is G-Unit going to the funeral of somebody
9 in Rosemond's group. Would that make any sense?

10 MR. TOUGER: Objection. I didn't even say that. I
11 can't let him misstate my comments.

12 THE COURT: Overruled.

13 MR. ENZER: Would G-Unit members go to a funeral if
14 Rosemond or somebody in his crew died? No. They're enemies.
15 That's one of the ways you know what he is saying here is he
16 wants somebody from G-Unit to end up in a coffin. He wants
17 Fletcher in a coffin. That's Lodi Mack. It's the context of
18 that statement, another statement that Stewart told you about,
19 page 196.

20 He told me those dudes ain't gonna be happy until
21 they're carrying a coffin. Those dudes are G-Unit. G-Unit
22 dude aren't gonna be happy until G-Unit dudes are carrying a
23 coffin. Would they be carrying a coffin? If somebody in
24 Rosemond's crew got killed would the G-Unit dudes go to the
25 funeral and carry the coffin? No. They would attend the

HBSAAROS6

Rebuttal - Enzer

1 funeral of the death of one of their own.

2 MR. TOUGER: That's exactly what I said and he
3 misstating --

4 THE COURT: All right. That's enough out of you,
5 Mr. Touger. Don't do that again.

6 MR. ENZER: He's saying he wants a G-Unit dude to
7 carry coffins. In other words, he wants a G-Unit member dead
8 in a coffin and the other members have to go to the funeral and
9 carry the coffin.

10 Mr. Touger told you that the testimony about Rosemond
11 instructing Williams to get rid of the gun after the murder is
12 not probative evidence of Rosemond's intent. I think
13 Mr. Touger's argument ignores the context. On the night of
14 murder Rosemond is in Miami. Shortly after the murder, still
15 that day Williams tells him everything is good or everything is
16 all right over encrypted e-mail. No other information is given
17 to Rosemond. Same night Rosemond responds, Make sure you get
18 rid of that. He has the presence of mind when all is told
19 everything is all right or everything is good to say get rid of
20 the weapon. It's similar to the bitch is out of here. The
21 input is not enough for him to know Fletcher is dead and that a
22 murder has occurred unless he knew that going into it. So he
23 must have known going into it this was going to be a murder.
24 Now that he's gotten the confirmation in code he says get rid
25 of the murder weapon. And he didn't do that for any of the

HBSAAROS6

Rebuttal - Enzer

1 other shootings. None of the other shootings resulted in
2 somebody's death. This one did. This is unique. It's
3 evidence, again, that he intended to murder.

4 THE COURT: Let's try to confine this to rebuttal, all
5 right and draw it to a close in some reasonable amount of time.

6 MR. ENZER: Mr. Touger told you that mostly you can
7 believe him, just not when it hurts his case. He told you
8 they're corroborated. He told you the cell sites, he doesn't
9 disagree that those meetings happened. Well, but then he tries
10 to tell you they must be lying. On what? On the points that
11 hurt the defense. On the points that show Rosemond acted with
12 the intent to kill.

13 Ladies and gentlemen, I submit to you that's because
14 he knows if he concedes that, the trial is over with. You
15 believe what the cooperators told you, if you believe it in
16 whole as you should, then have you to convict because their
17 testimony shows Rosemond acted with the intent to kill, shows
18 he is guilty as charged.

19 Now the first thing you should remember is Mr. Touger
20 spent a lot of time talking about how bad these people are and
21 the bad facts that they committed. But we did not choose them.
22 We did not choose those witnesses. The defendant did.
23 Rosemond chose Abdul. He chose when he chose to make him a
24 leader of the drug organization that Rosemond led. Rosemond
25 chose to brag to Abdullah that, the bitch is out of here.

HBSAAROS6

Rebuttal - Enzer

1 Rosemond chose to brag to him about the details of the murder
2 and their meeting.

3 Government Exhibit 1004. Rosemond chose Stewart. We
4 didn't choose him. Rosemond chose hem to commit shootings and
5 acts of violence in a street war against G-Unit. Rosemond
6 chose to make statements to Stewart that Stewart testified
7 about.

8 Government Exhibit 6.

9 Rosemond chose Jason Williams. Rosemond is the one
10 who hired him as a driver. Rosemond is the one who enlisted
11 him to do driveby shootings. Rosemond is the one who had him
12 bring the quiet. And Rosemond is the one who had it thrown in
13 the river afterward.

14 Please publish Government Exhibit Nine.

15 Rosemond chose to befriend Brian McCleod when they met
16 in jail. Rosemond chose to send him money when McCleod was in
17 jail after his drug stash house bust. And Rosemond close to
18 make Brian McCleod a chief operating officer of this murder
19 conspiracy.

20 If we have to pick our witnesses we would pick good
21 samaritans like Elizabeth Marte. But the problem is people
22 like that don't know the intricacies of a murder conspiracy
23 because Rosemond doesn't tap people like that to do a murder
24 conspiracy. He taps people like the cooperators.

25 How do you know they're telling the truth, not about

HBSAAROS6

Rebuttal - Enzer

1 some of it but about all of it? First their demeanor. First,
2 think about how they looked, sounded and acted when they're on
3 the stand. Do they avert eyes when they testified? Did they
4 shift in their chairs? Did they refuse to answer any questions
5 about their past crimes? Were they flustered? No. Never.
6 Each of them calmly gave their testimony even when defense
7 counsel shouted at them or repeated questions at them or tried
8 to interrupt them.

9 And in particular, Mr. Skinner pointed this out,
10 Williams' demeanor spoke volumes. He was uncomfortable
11 testifying. Why? Rosemond is like family to him. Rosemond is
12 like a father to him. He did not want to hurt Rosemond. But
13 he had to tell the truth. That's the only way for him to get
14 out of his sentence and so he did and the truth is damning. He
15 wasn't lying. He wasn't going to embellish any detail but the
16 truth speaks volumes and the truth itself shows Rosemond is
17 guilty.

18 Second, reason. Think about the how cooperating
19 witnesses were with you. Each of them got on the stand and
20 they laid out everything to you. They didn't hold back. They
21 told you about crimes they were arrested for and got out of.
22 Crimes they were never caught for. McCleod told you about drug
23 dealing that he was never caught for. He even told you about
24 embarrassing details about how he urinated in course of the
25 murder on the night of, he urinated while he was talking to

HBSAAROS6

Rebuttal - Enzer

1 Fletcher. How do you know those details? Because McCleod told
2 you.

3 Williams told you about the shooting that he did with
4 Tef's friend where somebody got shot in the leg, a bystander.
5 They want to shoot at a relative of Baja. Didn't find that
6 person and the guy that Williams drove there got out and shot a
7 random person. No one else knew that detail. The only reason
8 you know about it is because Williams told us about it. He
9 told the truth. He told the truth about himself and about
10 Rosemond.

11 Abdullah told you about the -- incident, how he
12 ordered the shooting, how he got arrested and how he got out of
13 it by getting a false affidavit from the victim. Given that
14 the case was dismissed, how would you know? How would any of
15 us know that he actually was guilty of that crime and how he
16 got out of it? You know because he told you the truth about
17 it. He told you the truth about that, just as he told you the
18 truth about Rosemond. Why did they tell you the truth? That's
19 what they were required to do. They told the truth about that
20 and everything else.

21 The third reason you know the cooperators were telling
22 the truth is the incentives that they have. Let's start with
23 under the incentives that, that they have nothing to gain and
24 everything to lose by lying. Let's start with Williams and
25 Stewart. Williams was sentenced to 24 years in prison.

HBSAAROS6

Rebuttal - Enzer

1 Stewart has pleaded guilty to crimes carrying a mandatory
2 minimum of 20 years and up to life in prison. If they
3 cooperate and tell the truth they get a motion from the
4 government to a judge like Judge Kaplan and that motion allows
5 the judge to lower their sentence but it doesn't require it.
6 It doesn't guarantee it. The government may make an assessment
7 about whether or not a cooperator told the truth and thus, you
8 get the motion but we don't decide what sentence they get. The
9 judge decides that.

10 So the cooperators pleasing us is irrelevant. If they
11 don't tell the truth or if they do bad things, the judge will
12 have all of that information and will make the appropriate
13 determination about what sentence to make, not the government.
14 If they lie, their agreements get ripped up and they could
15 spend decades in prison.

16 For Williams if he lies, he gets ripped up. He does
17 the remainder of his 24 year sentence. He could face
18 additional prison time for perjury and on top of that he is now
19 out as a cooperator. He testified at a public trial and he is
20 going to have to live those decades in prison as somebody who
21 is known as a rat.

22 And for Stewart, if he lies he could do at least 20
23 years and up to life in prison.

24 The motion again is not tied to the outcome. Stewart
25 explained that to you. Whether or not your verdict is guilty,

HBSAAROS6

Rebuttal - Enzer

1 regardless of the outcome in this case has no impact on whether
2 these cooperators get a motion. It's determined and based on
3 whether or not they told the truth, not your verdict. And as
4 such, they have no incentive. They have no reason to embellish
5 or make up details that help the government's case. It doesn't
6 matter whether the government prevails in this case and they
7 know that.

8 You have to look at the risk of lying. Would they
9 risk lying when they know how easy it would be to get caught?
10 They know other cooperators, other people were insiders in
11 Rosemond's inner circle were cooperators. That means they know
12 the government could talk to those people and learn if they
13 lied about some detail. The federal investigators could doing
14 things a like checking cell sites, cellphone evidence, talking
15 to civilian witnesses. Given the resources the federal
16 government has to investigate them, do you think they would
17 risk lying in here when it would be so easy to --

18 THE COURT: Let's move along.

19 MR. ENZER: McCleod and Abdullah, they have nothing to
20 gain. They're already home. For them at this point what they
21 get for testimony or truthful testimony is a little bit of a
22 reduction if the judge grants it in the amount of time they're
23 on supervised release. But if they lie they have to go back to
24 prison and everything they did to cooperate is for non. Who
25 would risk lying in that situation?

HBSAAROS6

Rebuttal - Enzer

1 Another way you know they are telling the truth, the
2 cooperators did not embellish. Ask yourself did they blame
3 everything on the defendant? Were they trying to frame the
4 defendant? Absolutely, not. Here is an example. If McCleod
5 and Williams, for example, were lying to you how easy would it
6 have been for them to get on the stand and say, yeah, when I
7 met with Rosemond he said murder. He said kill. They could
8 have easily said that. And then this trial would have been a
9 lot shorter. He didn't do that. They did not because that's
10 not what happened. They told the truth. The truth is this was
11 a murder conspiracy but it was done through covert means, code
12 and innuendo and that's what they told you because that's the
13 truth.

14 Fifth way you know that the cooperators were telling
15 the truth, there's no collusion between them. You know that
16 the cooperators have not seen each other or spoken to each
17 other in years. And in some cases they've never met or spoken
18 to each other at all. If the cooperators were lying, as
19 defense counsel has argued, how exactly were they able to
20 present such coherent interlocking accounts of the crimes the
21 defendant committed? It couldn't possibly be that they got
22 together to get their stories straight. You heard they have
23 been separated from each other for years. Do you remember at
24 the end of each examination, when did you last speak to them?
25 The reason we were doing that is to establish to you the fact

HBSAAROS6

Rebuttal - Enzer

1 to show they haven't spoken to each other in years. They could
2 not possibly have gotten the story together for their
3 testimony. People who were -- from each other all came in here
4 and gave you consistent accounts on main details that matter.
5 why? Because they're telling the truth.

6 Sixth way you know they are telling the truth is the
7 level of detail in their testimony. And here just focus on
8 McCleod's testimony. Who could make up such detail about when
9 meetings happened, when calls happened, when text messages
10 occurred? Who could do that and then have it match up with
11 other records unless they were actually telling the truth? No
12 one could keep that number of details straight. The fact that
13 the testimony was detailed is another indicator they were
14 telling the truth.

15 The seventh way is the corroboration. They
16 corroborated each other on various accounts. When you look at
17 how their testimony matches up on various things they told you
18 it was corroborated by other independent evidence like the cell
19 sites, video, physical evidence.

20 Another way the defense admitted it, they told you
21 they're mostly telling the truth. Why? Because he knows he
22 has to do that. He can't refute it. But what the defense
23 really tried to do is have it both ways. There are some things
24 he admits they're telling the truth on which is the stuff that
25 the defense feels doesn't hurt their case. But so when it's

HBSAAROS6

Rebuttal - Enzer

1 helpful for them the cooperators are telling the truth but when
2 it hurts them like on the issue of intent, then the cooperators
3 must be lying.

4 And you saw this over and over again in the defense's
5 summation, there were times when the defense is citing to the
6 cooperators to prove a point. They are endorsing the
7 cooperator but then turning around and saying to you don't
8 believe them on the other stuff that hurts the defense's
9 argument.

10 Ladies and gentlemen, they can't have it both ways.
11 The simple fact is the cooperators told the truth about all of
12 it and it demonstrates the defendant is guilty.

13 The defense spent a lot of time telling you that there
14 are times when the cooperators have lied in the past. There is
15 no dispute that the cooperators before he entered into
16 cooperation agreements with the government, each of them have
17 lied at times when they thought it would help them. But to be
18 clear, you have to keep straight in your mind what they're
19 talking about. There is no evidence that McCleod or Williams
20 has ever lied to a jury. There is no evidence that McCleod or
21 Williams ever lied to a judge. There is no evidence that
22 McCleod or Williams ever lied under oath. What Mr. Touger
23 tried to do is lump all of them together because Stewart and
24 Abdullah did lie under oath in various circumstances that they
25 told you about but that's not true of McCleod and Williams and

HBSAAROS6

Rebuttal - Enzer

1 you should keep that straight in your mind.

2 Let me McCleod focus on Williams and McCleod for a
3 minute. Both of them told you about times in the past when
4 they had lied. Williams told you about a time in 2010 he
5 hadn't been charged with the murder yet. Agents showed up at
6 his home and asked him to confess to the murder and he did not
7 admit to it. He lied to them because he didn't want to get
8 arrested.

9 Then Stewart and Abdullah told you about various time
10 when they had lied including when they had pleaded guilty to
11 crimes they didn't commit. Ask yourselves, how did you learn
12 that the cooperators had lied in the past? You learned because
13 the cooperators told you. They disclosed it to you. They bore
14 their souls to you because they were telling the truth.

15 In addition, you have to ask yourself why they lied in
16 the past. Because it was in their interest to do so but that
17 is not true any more. Under the arrangements they now have --

18 THE COURT: You've made this argument. Now, let's do
19 your best to wrap it up and you are at the hour mark.

20 MR. ENZER: I have four more pages, your Honor.

21 THE COURT: I'm not interested in pages. Move it
22 along.

23 MR. ENZER: All right. Mr. Touger told you that the
24 cooperators contradict each other, pointed to situations where
25 various things they told you did not match up. And I submit to

HBSAAROS6

Rebuttal - Enzer

1 you that that is perfectly normal. It is normal because
2 cooperators -- and different people have different
3 recollections of varying details. It doesn't mean anyone's
4 lying to you. There's a reason we have a court reporter in
5 this room to take down the transcript of what happened in the
6 proceeding. That's because when you go back to the jury room,
7 I expect different people will remember different things that
8 happened even in this room differently. Does that mean
9 somebody's lying? No. It means humans don't remember every
10 detail the same. What they remember consistently are the big
11 events, the main events, the things that matter.

12 And what you look at the cooperators and what they
13 talked about, if you look at where they differ and where they
14 were the same, where they matched up, where they differed on
15 were insignificant details. Did Grant have the gun before or
16 after he had the bag of chips? What were they consistent on?
17 The things that mattered. The main mattered. That's what you
18 should look at.

19 Also you can look at civilians in this case illustrate
20 people, even noncooperators make mistakes. Crooks, his
21 testimony is that the victim had a bag of chips and dropped
22 them. The person with the bag of chip was Derrick Grant, the
23 shooter. Does at mean he was lying to you? No. He doesn't
24 remember the details of who had the bag of chips. He remembers
25 a bag of chips was dropped. He can't keep straight who did it.

HBSAAROS6

Rebuttal - Enzer

1 He does he remember? The main event, that there was a shooting
2 he saw.

3 I'm almost done.

4 Mr. Touger talked about McCleod and how he had on two
5 occasions changed his testimony, told the government that this
6 was just going to be a shooting not a murder. During his
7 direct-examination and this is the pages 1112 and 1113 of
8 McCleod's testimony. He explain to you why this happened. He
9 told you he did not want to admit to himself that this is going
10 to be a murder because there's a history in his family of men
11 being murdered in Baltimore. It had a serious impact on his
12 mother and his family. His brother was murdered. So he didn't
13 want to admit to himself that he had participated in the same
14 kinds of acts that caused so much pain to his family. But
15 ultimately he told the truth that he did participate in the
16 murder, that he knew it was a murder from the get. And that's
17 at page 1113 of testimony.

18 He said the truth was I knew I was participating in a
19 murder. He pleaded guilty to conspiracy to commit murder. And
20 he faced, to do that he had to testify under oath at a plea
21 allocution before a federal judge. What's important here,
22 ladies and gentlemen, this is a sideshow. McCleod's state of
23 mind doesn't matter. What matters is the facts. McCleod's
24 facts have never wavered. He has never wavered on who said
25 what at what meeting, what meetings occurred, how it is, so

HBSAAROS6

Rebuttal - Enzer

1 when did the meetings occur, who said what, the statements, the
2 actions the actual events? The only thing he wavered on in the
3 past was his own state of mind about whether in his mind he was
4 admitting to himself that this was a murder. that's irrelevant.
5 What matters is what was Rosemond's state of mind? And if you
6 look at the meetings, the facts, if you look at the actual
7 facts of what happened, what Rosemond said and did.

8 I'm going to wrap up now.

9 The defense said that the government has tried to
10 manipulate you, that we are trying to twist your emotions.
11 Don't act on your emotions. We are not trying to manipulate
12 you. We don't want you to convict James Rosemond because he's
13 a bad man or because -- You should decide this case only on the
14 evidence and the law as the judge gives it to you. It can be
15 hard to judge somebody else but the judge will instruct you,
16 your oath in this case is to decide the case without bias,
17 without prejudice, without sympathy. You have to decide the
18 case on the evidence presented and on the law.

19 And if you do that, if you decide the case just on
20 facts, the facts in this world, the evidence in this case and
21 you apply the law as the judge gives it to you, I submit there
22 is only one verdict you can reach and that is the defendant is
23 guilty on all counts.

24 THE COURT: Thank you, Mr. Enzer.

25 We are going to take ten minutes, folks. You are not

HBSAAROS6

Rebuttal - Enzer

1 to discuss the case until I tell you you may later and then
2 we'll come back and I will instruct you.

3 (Jury not present)

4 (Recess)

5 (Jury present)

6 THE COURT: OK. Folks, it's been a long day. It's
7 not going to get any shorter here.

8 The jurors and defendant are all are present.

9 Members of the jury, you are now going to perform your
10 final function as jurors.

11 My instructions are going to be in four parts. I'm
12 going to start by describing the law that you must apply to the
13 facts as you find the facts to have been established by the
14 evidence. That will be about half of what I have to say.

15 Second, I'll instruct you about the trial process.

16 Third, I'll talk to you about your evaluation of the
17 evidence.

18 And finally, I'll say a few words about the conduct of
19 your deliberations.

20 Just to alert you, I may not stay standing the whole
21 time. I may push this contraption down at some point. It's
22 been a long day.

23 Now the indictment in this case charges the defendant,
24 James Rosemond, in four separate counts as you have heard.
25 Each of those four counts charges a separate and different

HBSAAROS6

Rebuttal - Enzer

1 crime. You must consider each count separately and you return
2 a separate verdict of guilty or not guilty on each of the four
3 counts. Whether you find the defendant guilty or not guilty as
4 to one offense should not affect your verdict as to the other
5 of offenses except to the extent that I tell you otherwise
6 which I'm going to do in two instances. I'll explain it.

7 You're welcome to take notes I should say. Feel free
8 but I will also send the type written charge into the jury room
9 so you will have it for your reference. So suit yourself. Do
10 whatever you think is best for you.

11 Now the first thing I want to say is that the
12 indictment itself is not evidence. It is not proof of the
13 defendant's guilt. It doesn't create any presumption. It
14 doesn't permit any inference that the defendant is guilty. It
15 is simply an accusation.

16 I'm now going to summarize the charges in the
17 indictment. You've heard this before but it's been a long
18 trial and a long day.

19 Count One charges that the defendant participated in a
20 conspiracy to commit the crime referred to as murder-for-hire.

21 Count Two charges him with the murder-for-hire of
22 Lowell Fletcher.

23 Count Three charges the defendant with using, carrying
24 or possessing and discharging a firearm and aiding and abetting
25 the same during and in relation to the conspiracy charged

HBSAAROS6

Rebuttal - Enzer

1 that's in Count One.

2 Count Four charges the defendant with committing a
3 murder through the use of a firearm and aiding and abetting the
4 same during and in relation to the crime charged in Count Two,
5 the murder for hire of Lowell Fletcher.

6 Now as I think I told you the day we picked a jury in
7 this case, the defendant has pleaded not guilty to all of the
8 charges in the indictment. The burden is on the prosecution to
9 prove guilt beyond a reasonable doubt. The burden never ever
10 shifts to the defendant. The law presumes the defendant to be
11 innocent of all of the charges against him. I therefore
12 instruct you that he is presumed innocent throughout your
13 deliberations until such time, if ever, that you as a jury are
14 satisfied that the government has proved the defendant guilty
15 beyond a reasonable doubt. If the government fails to sustain
16 that burden on one or more than one count you must find the
17 defendant not guilty on that count or those counts.

18 Now, I've said that the government must prove the
19 defendant guilty beyond a reasonable doubt. A reason
20 reasonable doubt is a doubt based on reason and common sense.
21 It is a doubt that a reasonable person would have after
22 carefully weighing all of the evidence or lack of evidence. It
23 is a doubt that would cause a reasonable person to hesitate to
24 act in a matter of importance in his or her personal life.
25 Proof beyond a reasonable doubt therefore is proof of such a

HBSAAROS6

Rebuttal - Enzer

1 convincing character that a reasonable person would not
2 hesitate to rely on it in the most important of his or her
3 important decisions, his or her own affairs.

4 If after fair and impartial consideration of all of
5 the evidence, you have a reasonable doubt about the defendant's
6 guilt with respect to a charge in the indictment, it is your
7 duty to acquit the defendant on that charge. On the other
8 hand, if after fair and impartial consideration of all the
9 evidence or lack of evidence you are satisfied of the
10 defendant's guilt on a particular charge beyond a reasonable
11 doubt, you should vote to convict on that charge.

12 Now let me go on to the specific counts of the
13 indictment. I am going to discuss each one.

14 Count One charges the defendant with conspiring with
15 others to commit the crime that I've referred to as
16 murder-for-hire and that this conspiracy resulted in the death
17 of Lowell Fletcher.

18 I'm going to read to you from part of Count One of the
19 indictment.

20 It charges, from at least on or about May 20, 2007 up
21 to and including in or about September 2009 in the Southern
22 District of New York and elsewhere James Rosemond, a/k/a "Jimmy
23 the Henchman", the defendant, and others known and unknown
24 willfully and knowingly did combine, conspire, confederate and
25 agree, together and with each other to travel in and cause

HBSAAROS6

Rebuttal - Enzer

1 another to travel in interstate commerce and to use and cause
2 another to use the mail and a facility of the interstate
3 commerce with intent that a murder be committed in violation of
4 the laws of a state of the United States as consideration for
5 the receipt of and as consideration for a promise and agreement
6 to pay a thing of pecuniary value. To wit, Rosemond and others
7 known and unknown agreed and did pay others known and unknown
8 to murder members of a rival music management business in
9 exchange for narcotics and money which arrangements depended in
10 part upon communications through a facility of interstate
11 commerce and which resulted in the death of Lowell Fletcher.

12 That's the language in the indictment. So let me
13 start by telling you what "conspiracy" means.

14 A conspiracy is kind of a criminal partnership, an
15 agreement of two or more perps to join together to accomplish
16 some unlawful purpose. Conspiracy is an entirely separate and
17 different offense from the substantive crime or crimes which
18 may be the goal or the object of the conspiracy. The essence
19 of the crime of conspiracy is an agreement or understanding to
20 violate the law. Thus, if a conspiracy exists it's a crime
21 regardless of whether the conspirators accomplish their illegal
22 purpose. Consequently, in a conspiracy charge there is no need
23 to prove that the crime or crimes that were the objective or
24 the objectives of the conspiracy actually were committed. Let
25 me give you a simple example unrelated to this case to

HBSAAROS6

Rebuttal - Enzer

1 illustrate at that point.

2 If two people agree to rob a bank they have formed a
3 conspiracy to rob a bank. That's true even if nobody ever robs
4 the bank. Of course, if they then go out and rob the bank they
5 may be guilty both of conspiracy to commit bank robbery and the
6 separate crime of bank robbery.

7 That is the distinction I am drawing.

8 By the same token, you may find a defendant guilty of
9 the crime of conspiracy to commit murder-for-hire even if the
10 substantive crime of murder-for-hire actually was not
11 committed.

12 In order to sustain its burden of proof with respect
13 to the allegation of conspiracy to commit murder-for-hire, in
14 other words, Count One, the government must prove beyond a
15 reasonable doubt each of the following two elements:

16 First, the existence of the conspiracy charged in the
17 indictment. That is, an agreement or understanding that
18 someone would commit the crime of murder-for-hire.

19 Second, that the defendant knowingly, willfully and
20 voluntarily became a member of the conspiracy. That is, that
21 he knowingly, willfully and voluntarily associated himself with
22 and participated in the alleged conspiracy to commit
23 murder-for-hire.

24 Now, I am going to discuss in turn how you determine
25 whether the government has satisfied its burden of proving each

HBSAAROS6

Rebuttal - Enzer

1 of these two elements beyond a reasonable doubt.

2 The first element as I said that the government must
3 prove beyond a reasonable doubt is that the alleged conspiracy
4 existed. Just to remind you, a conspiracy is defined as an
5 unlawful agreement between two or more people to accomplish an
6 unlawful purpose charged in the indictment.

7 Now, to prove a conspiracy the government is not
8 required to show that two or more people sat around a table and
9 entered into a solemn pact orally or in writing. What the
10 government must prove is that there was a mutual understanding
11 either spoken or unspoken between two or more people to
12 accomplish the unlawful purpose alleged in the indictment.

13 Since conspiracy by its very nature is characterized
14 by secrecy, you may infer its existence from the circumstances
15 and the conduct of the parties involved that are allegedly
16 involved. The old adage "actions speak louder than words" may
17 be applicable here. In terming whether there has been an
18 unlawful agreement, you must may judge the acts and conduct of
19 the alleged co-conspirators, as well as those of the defendant
20 that are done to carry out an apparent criminal purpose.

21 Now the conspiracy charged in Count One of this
22 indictment has a single object. That is, a single unlawful
23 purpose that the co-conspirators are alleged to have hoped to
24 accomplish which was to violate the federal law that prohibits
25 murder-for-hire.

HBSAAROS6

Rebuttal - Enzer

1 Now I am going to explain the element of
2 murder-for-hire in a few minutes when I instruct you on the
3 substantive murder-for-hire crime charged in Count Two. You
4 should apply those instructions when you consider whether the
5 government has proved beyond a reasonable doubt that the
6 conspiracy charged in this Count One existed.

7 If upon consideration of all the evidence, direct and
8 circumstantial, you find beyond a reasonable doubt that the
9 minds of two or more of the conspirators met. That is, they
10 agreed as I have explained a conspiratorial agreement to you to
11 work together in furtherance of the unlawful object charged in
12 the indictment, then proof of existence of the conspiracy is
13 established.

14 If you are satisfied that the government has proved
15 the existence of the alleged conspiracy, you must consider
16 whether the government's proved the second element, whether the
17 defendant participated in the conspiracy with knowledge of its
18 unlawful purpose and with an intent to aid in the accomplish of
19 its unlawful objective. Briefly, stated, the murder-for-hire
20 of members of a rival music management business.

21 In this regard, the government must prove beyond a
22 reasonable doubt that the defendant unlawfully, knowingly and
23 willfully entered into the conspiracy with a criminal intent.
24 That is with a purpose to violate the law and that is the
25 defendant agreed to take part in the conspiracy to promote and

HBSAAROS6

Rebuttal - Enzer

1 cooperate in its unlawful objective.

2 An act is done knowingly and willfully if it's done
3 deliberately and purposefully. That is, the acts of the
4 defendant must have been the product of his conscious objective
5 rather than the product of mistake or an accident or mere
6 negligence or some other innocent reason.

7 (Continued on next page)

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Hbsnros7

Charge

1 The term "unlawfully" means contrary to law. The
2 defendant does not have to be aware that he was breaking any
3 particular law or any particular rule. The defendant need have
4 been aware only of the generally unlawful nature of his acts.

5 Now, obviously science has not yet devised a way of
6 looking into someone's mind and knowing what that person is or
7 was thinking. A defendant's knowledge is a matter of inference
8 from the facts that have been proved. To become a member of
9 the conspiracy, the defendant need not have known the
10 identities of each and every other member, nor need he have
11 known of all of their activities. Moreover, the defendant need
12 not have been fully informed as to all of the details or the
13 scope of the conspiracy in order to justify an inference of
14 knowledge on his part. The defendant need not have been a
15 person who agreed to make or to receive a payment in exchange
16 for the commission of murder. Proof of a financial interest in
17 the outcome is not essential, but if you find that a defendant
18 had such an interest, that is a factor you may consider in
19 determining whether the defendant was a member of the
20 conspiracy.

21 The duration and extent of a defendant's participation
22 has no bearing on the issue of a defendant's guilt. Each
23 member of a conspiracy may perform separate and distinct acts
24 and may perform them at different times. Some conspirators
25 play major roles, while others play only minor parts. An equal

Hbsnros7

Charge

1 role is not what the law requires. In fact, even a single act
2 may be sufficient to draw a defendant within the ambit of a
3 conspiracy.

4 A defendant need not have joined the conspiracy at its
5 inception. He or she may have joined it at any time, and if he
6 or she joined, he or she still will be held responsible for the
7 acts done before or after he or she joined. In the case of a
8 conspiracy to commit murder for hire that results in death,
9 however, the latest time at which a person can join the
10 conspiracy is the time of the victim's death.

11 However, I want to caution you that mere association
12 does not make a person a member of a conspiracy, and even when
13 coupled with knowledge that a crime is taking place, a person
14 may know or be friendly with or related to a criminal without
15 being a criminal himself. Mere presence at the scene of a
16 crime, even when coupled with knowledge that a crime is taking
17 place, is not enough to support a conviction. Moreover, mere
18 knowledge of or acquiescence without participation in an
19 unlawful plan is not sufficient. Finally, the fact that the
20 acts of a defendant without knowledge merely happened to
21 further the purposes or objectives of a conspiracy does not
22 make a defendant a member.

23 What's necessary is that defendant must have
24 participated with knowledge of the unlawful purpose of the
25 conspiracy, in this case, the commission of the crime of murder

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Charge

1 for hire as I'll explain that concept to you, and with the
2 intention of aiding in the accomplishment of its unlawful
3 objective, in this case the commission of such murder for hire.

4 In sum, then, the government must prove beyond a
5 reasonable doubt that the defendant, with an understanding of
6 the unlawful nature of the conspiracy, intentionally engaged,
7 advised or assisted the conspiracy in order to promote its
8 unlawful goal. The defendant thereby becomes a knowing and
9 willing participant in the unlawful agreement -- that is to
10 say, a conspirator.

11 A conspiracy, once formed, is presumed to continue
12 until either its objective is accomplished or there is some
13 affirmative act of termination by its members. So, too, once a
14 person is found to be a member of the conspiracy, he or she is
15 presumed to continue membership in the venture until its
16 termination or unless it is shown by some affirmative proof
17 that he or she withdrew and disassociated from it.

18 The conspiracy charged in Count One of the indictment
19 is alleged to have existed from at least on or about March 20,
20 2007, up and to including in or about September 2009.

21 It is not essential that the government prove that the
22 alleged conspiracy started and ended on any specific date. The
23 law requires only a substantial similarity between the dates
24 alleged in the indictment and the dates established by the
25 evidence.

Hbsnros7

Charge

1 If you find that the government proved each of the two
2 elements that I have described beyond a reasonable doubt, then
3 you should find the defendant guilty of the crime charged in
4 Count One.

5 If, however, you are not satisfied as to the existence
6 of both of the elements, then you may not find the defendant
7 guilty on Count One. You must in that event find him not
8 guilty on Count One.

9 That brings me to Count Two, which charges that on or
10 about September 27, 2009, the defendant committed the crime of
11 murder for hire of Lowell Fletcher resulting in the death of
12 Lowell Fletcher.

13 Again I read from the indictment:

14 "On or about September 27, 2009, in the Southern
15 District of New York and elsewhere, James Rosemond, also known
16 as Jimmy the Henchman, the defendant, willfully and knowingly
17 traveled in and caused another to travel in interstate commerce
18 and used and caused another to use the mail and a facility of
19 interstate commerce with intent that a murder be committed in
20 violation of the laws of a state and the United States, as
21 consideration for the receipt of and as consideration for a
22 promise and agreement to pay a thing of pecuniary value, to
23 wit, Rosemond, and others, known and unknown, paid others,
24 known and unknown, to murder Lowell Fletcher, in exchange for
25 narcotics and money, which arrangements depended in part upon

Hbsnros7

Charge

1 communications through a facility of interstate commerce, and
2 which resulted in the death of Lowell Fletcher."

3 With respect to the murder for hire charge, you should
4 be aware that there are two alternative theories on the basis
5 of which you may find the defendant guilty. While I will
6 explain both theories in detail, I want to just take a quick
7 second to outline them in the briefest terms so you can better
8 follow what I'm about to say.

9 The government's first theory is that the defendant
10 either committed or caused someone else to commit the crime of
11 murder for hire. I'm going to refer to that theory for short
12 as a theory that relates to a claim that the defendant is
13 guilty of murder for hire as a principal. "Principal" is the
14 key word there, so you follow what comes.

15 The second theory is that someone other than the
16 defendant committed the crime of murder for hire and that the
17 defendant aided and abetted the commission of that crime. I'll
18 refer to that second theory as a claim that the defendant is
19 guilty of murder for hire as an aider and abettor.

20 So now I return to the first theory of liability,
21 liability as a principal.

22 In order to prove that the defendant himself committed
23 or caused someone else to commit the crime of murder for hire
24 of Lowell Fletcher, the government must establish beyond a
25 reasonable doubt each of the following three elements of the

Hbsnros7

Charge

1 offense:

2 First, that the defendant used or caused someone else
3 to use, a facility of interstate commerce -- I should say
4 interstate or foreign commerce.

5 Second, that the defendant did so with the intent that
6 Lowell Fletcher be murdered in violation of the laws of any
7 state or the United States; and,

8 Third, that the defendant intended that the murder of
9 Lowell Fletcher be carried out in exchange for something of
10 pecuniary value or a promise or agreement to pay something of
11 pecuniary value.

12 Please note that proof of the crime of murder for hire
13 does not require that anyone in fact be murdered. The crime of
14 murder for hire has been committed if each of the three
15 elements I just outlined is proven. In other words, if the
16 government proves beyond a reasonable doubt that the defendant
17 used or caused someone else to use a facility of interstate or
18 foreign commerce with the intent that Lowell Fletcher be
19 murdered in exchange for something of value, I will now explain
20 each of these three elements in a little bit more detail.

21 The first element that government has to prove beyond
22 a reasonable doubt on this principal theory is that the
23 defendant used, or caused someone else to use, a facility of
24 interstate or foreign commerce to facilitate or further the
25 commission of the crime of murder for hire. That need not have

Hbsnros7

Charge

1 been the only reason or even the principal reason for the use
2 of a facility of interstate or foreign commerce, but it needs
3 to have been one of the reasons for that use.

4 What's a "facility of interstate or foreign commerce"?

5 That term includes certain means of communication or
6 transportation. Using the Internet, making or receiving a
7 telephone call, whether a cell phone or a landline, and sending
8 or receiving a text message or sending or receiving an e-mail
9 all are uses of facilities of interstate or foreign commerce
10 regardless of whether the particular communication crossed a
11 state line. So, too, is traveling on any portion of the
12 interstate highway system, even if the use of the highway does
13 not involve crossing a state line.

14 To meet its burden of proof on this element, the
15 government need prove beyond a reasonable doubt only that the
16 defendant either himself used or caused someone else to use a
17 facility of interstate or foreign commerce.

18 The second element that the government must prove on
19 this first theory of liability beyond a reasonable doubt is
20 that the defendant acted with the intent that Lowell Fletcher
21 be murdered in violation of the laws of the State of New York
22 in using, causing someone else to use -- I should have included
23 the word "or" -- using or causing someone else to use a
24 facility of interstate or foreign commerce. I instruct you
25 that under the laws of New York a murder occurs when a

Hbsnros7

Charge

1 defendant with intent to cause the death of another person
2 causes the deaths of that person. Under New York law, a person
3 acts with intent to cause the death of another when the
4 person's conscious objective or purpose is to cause the death
5 of another, regardless of whether or not the person who dies is
6 the same person whose death was intended to be caused.

7 In order to satisfy this element, the government does
8 not have to prove that the murder was committed or even that it
9 was attempted, as I said. It must prove, however, that the
10 defendant acted with the intent to further or facilitate the
11 commission of such a murder in using or causing the use of a
12 facility of interstate commerce.

13 You thus are being asked to look into the mind of the
14 defendant and to ask what was the purpose of the defendant in
15 using or in causing another to use a facility of interstate or
16 foreign commerce? You may determine that intent from all the
17 evidence that's been placed before you, including any
18 statements of the defendant as well as his conduct both before
19 and after the use of interstate facilities.

20 The third and final element that the government must
21 prove beyond a reasonable doubt in order to convict on Count
22 Two on the first of the two theories is that the intent was
23 that Lowell Fletcher be murdered in exchange for something of
24 value.

25 This requires that the government prove that there was

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1 a mutual agreement, understanding, or promise that something of
2 value would be exchanged for committing the intended murder.
3 "Anything of value" or "something of value" includes, for
4 example, any amount of money, drugs or other property.

5 Now, that concludes my instructions on the first of
6 the two theories on which the defendant may be convicted on
7 Count Two.

8 If you all agree that the government has proven the
9 defendant guilty beyond a reasonable doubt on Count Two on this
10 theory, the principal theory, the first of the two theories,
11 you need not consider the second theory at all. In that case
12 you will forget about the second theory, and move on to Count
13 Three. But if you do not convict the defendant on this first
14 theory, you then will consider the second theory with respect
15 to Count Two, which is called aiding and abetting.

16 It's not necessary that the government show that the
17 defendant himself committed or caused someone else to commit
18 the crime of murder for hire as charged in Count Two in order
19 for you to find the defendant guilty on Count Two.

20 If the government proves beyond a reasonable doubt
21 that the defendant aid and abetted another to commit the
22 offense charged in Count Two, the defendant is just as guilty
23 of that offense as if he committed it himself.

24 In order to convict the defendant as an aider and
25 abettor, the government must prove beyond a reasonable doubt

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1 two elements:

2 First, it must prove that a person other than the
3 defendant and other than some person he caused to do so,
4 committed the crime charged.

5 Now, obviously, nobody can be convicted of aiding and
6 abetting the criminal acts of another person if that other
7 person committed no crime in the first place.

8 Accordingly, if the government has not proved beyond a
9 reasonable doubt that someone other than the defendant
10 committed the crime charged in Count Two, then you need not
11 consider the second element under this theory, this aiding and
12 abetting theory. But if you do find that a crime was committed
13 by someone other than the defendant, and someone other than a
14 person he caused to commit the crime, then you must consider
15 whether the defendant aided or abetted the commission of that
16 crime.

17 The second element on the aiding and abetting theory
18 is this: The government, to satisfy the second element, must
19 prove that the defendant willfully and knowingly associated
20 himself in some way with the crime and that he willfully and
21 knowingly engaged in some affirmative conduct or some overt act
22 for the specific purpose of bringing about that crime.
23 Participation in a crime is willful if it's done voluntarily
24 and intentionally and with the specific intent to do something
25 which the law prohibits.

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1 As I said I think a moment ago, the mere presence of a
2 defendant where a crime is being committed, even coupled with
3 knowledge by a defendant that a crime is being committed, or
4 merely associating with others who are committing a crime is
5 not enough to establish aiding and abetting. One who has no
6 knowledge that a crime is being committed or is about to be
7 committed but inadvertently does something that aids in the
8 commission of that crime is not an aider and abettor either.
9 An aider and abettor must know that the crime is being
10 committed and act in a way that is intended to bring about the
11 success of the criminal venture.

12 To determine whether a defendant aided or abetted the
13 commission of the crime with which he's charged, ask yourself
14 these questions:

15 Did he participate in the crime charged as something
16 he wished to bring about?

17 Did he knowingly associate himself with the criminal
18 venture?

19 Did he seek by his actions to make the criminal
20 venture succeed?

21 If he did, then the defendant is an aider and abettor.

22 If, on the other hand, your answer to any one of those
23 questions is no, then the defendant is not an aider and
24 abettor.

25 Now, I understand that, depending on your view of the

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1 evidence, there may be a subtle distinction to whether the
2 defendant is guilty, if at all, as a principal or an aider and
3 abettor.

4 The question is what's the difference between a
5 defendant causing someone else to commit a crime as opposed to
6 aiding and abetting someone else to do so.

7 If this question should come up in your deliberations,
8 you should think of it in terms of the difference between
9 causing someone to do something versus facilitating or helping
10 someone to do it. If you're persuaded beyond a reasonable
11 doubt that the defendant caused someone else to commit the
12 crime of murder for hire, you should convict him as a
13 principal. If, on the other hand, you are persuaded beyond a
14 reasonable doubt that the defendant, with the knowledge and
15 intent that I have described, sought by his actions to
16 facilitate or assist that other person in committing the crime,
17 then he's guilty as an aider and abettor.

18 If you find beyond a reasonable doubt that the
19 government has proved that another person actually committed
20 the crime of murder for hire of Lowell Fletcher and that the
21 defendant aided and abetted that person in the commission of
22 that offense, you should find the defendant guilty of Count Two
23 on an aiding and abetting theory. If, however, you do not so
24 find, you should find the defendant not guilty on Count Two and
25 move on to Count Three.

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1 However, before we get to Count Three, I'm going to
2 ask Rachel to distribute the verdict form to you and to counsel
3 so you will better understand what I am about to tell you as
4 the last part of my instructions on Counts One and Two, which
5 is more than halfway through my instructions on the law.

6 While Rachel is doing that, the verdict form is a very
7 simple document on the whole. For each count, Count One, Two,
8 Three, and Four, it asks whether you find the defendant guilty
9 or not guilty, but there are two other questions on this form,
10 and I am going to explain them to you now.

11 Now, if we don't have enough -- do we have enough?

12 THE LAW CLERK: Yes.

13 THE COURT: OK.

14 Now, everybody have one or one you can look at?

15 OK. Great.

16 Now, as you know, the government contends that Lowell
17 Fletcher, in fact, was murdered in furtherance of the
18 conspiracy charged in Count One and as a result of the murder
19 for hire charged in Count Two. Nevertheless, as I instructed
20 you earlier, the government does not have to prove that Lowell
21 Fletcher actually was murdered in order to convict on either
22 Count One or Count Two. That said, this indictment charges
23 that the crimes charged in Counts One and Two "resulted in the
24 death of Lowell Fletcher."

25 For that reason, I am going to be submitting to you,

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1 and you will see them on the verdict form, two special
2 questions, Questions 1A and 2A on the verdict form.

3 Now, this is important. The instructions are printed
4 on the verdict form, and they will be in my written
5 instructions that go into the jury room. It's important that
6 you follow them.

7 You will answer Question 1A if and only if you find
8 the defendant guilty on Count One.

9 You will answer Question 2A if and only if you find
10 the defendant guilty on Count Two.

11 If you find him not guilty on both Count One and Count
12 Two, you will not answer either of the special questions, 1A or
13 2A.

14 This reminds me of high school getting ready for the
15 SAT exams. You do have to pay attention to the instructions.

16 Question 1A asks whether the government has proved
17 beyond a reasonable doubt that the conspiracy charged in Count
18 One resulted in the death of Lowell Fletcher. You will answer
19 it yes or no as appropriate, if you answer it at all.

20 Question 2A asks whether the government has proved
21 beyond a reasonable doubt that the murder for hire charged in
22 Count Two resulted in the death of Lowell Fletcher. You will
23 answer yes or no if you answer it at all.

24 Of course, your answer has got to be unanimous in
25 either case.

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1 OK. That's Counts One and Two. We are done with that
2 part.

3 I turn to Count Three.

4 The first thing I need to tell you is that you are
5 going to consider Count Three if and only if you have found the
6 defendant guilty of participating in the conspiracy to commit
7 murder for hire that is charged in Count One.

8 So, if you acquit the defendant on Count One, that is,
9 if you find him not guilty on Count One, the conspiracy count,
10 you are going to skip Count Three.

11 Count Three charges the defendant with using,
12 carrying, or possessing firearms or causing another to use,
13 carry or possess firearms in connection with the murder for
14 hire conspiracy charged in Count One.

15 Count Three charges the defendant also with aiding and
16 abetting the use or carrying of a firearm during and in
17 relation to the murder for hire conspiracy charged in Count
18 One.

19 I am now going to read from Count Three of the
20 indictment.

21 "From at least on or about March 20, 2007, up to and
22 including on or about September 27, 2009, in the Southern
23 District of New York, James Rosemond, also known as Jimmy the
24 Henchman, the defendant, and others known and unknown, during
25 and in relation to a crime of violence for which he may be

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Charge

1 prosecuted in a court of the United States, namely, the offense
2 charged in Count One of this indictment, knowingly did use and
3 carry firearms and in furtherance of such crime did possess
4 firearms and did aid and abet the use, carrying, and possession
5 of firearms, at least one of which firearms was discharged."

6 Now, on Count Three there are also two theories of
7 liability, alternative theories of liability on the basis of
8 which you may find the defendant guilty.

9 The first is that the defendant himself unlawfully
10 used, carried, or possessed a firearm in relation to or in
11 furtherance of the conspiracy alleged in Count One or caused
12 another to do so.

13 The second is that the defendant aided and abetted
14 someone else who unlawfully used, carried, or possessed a
15 firearm in relation to or in furtherance of the conspiracy
16 alleged in Count One.

17 As to the first theory of liability, in order to prove
18 that the defendant himself unlawfully used, carried, or
19 possessed a firearm in relation to or in furtherance of the
20 conspiracy charged in Count One, or caused another to do so,
21 the government must prove beyond a reasonable doubt the
22 following two elements:

23 First, that at any point during the period from at
24 least on or about March 20, 2007, up to and including on or
25 about September 27, 2009, the defendant knowingly used or

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Charge

1 carried or possessed a firearm or knowingly caused another to
2 do so;

3 Second, that the defendant used or carried the firearm
4 during and in relation to the murder for hire conspiracy
5 charged in Count One or possessed the firearm in furtherance of
6 that crime, or, in either case, that he caused another to do
7 so.

8 Let me explain these elements.

9 The first element the government must prove beyond a
10 reasonable doubt is that the defendant knowingly used, carried,
11 or possessed a firearm during the period charged in Count One
12 of the indictment or caused another to do so.

13 So now let me define terms.

14 A firearm means any weapon which will or is designed
15 to or readily may be converted to expel a projectile by the
16 action of an explosive, or the frame or receiver of any such
17 weapon. It doesn't matter whether the firearm was operable at
18 the time the defendant possessed it.

19 "Use" of a firearm means active employment of a
20 firearm by the defendant. This does not mean that the
21 defendant necessarily must have actually fired or attempted to
22 fire the weapon, although those obviously would constitute uses
23 of the weapon. Brandishing or displaying or even referring to
24 the weapon so that others know that the defendant has the
25 firearm available if needed all constitute use of a firearm.

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1 But the mere possession of a firearm at or near the site of a
2 crime without active employment as I just described it is not
3 enough to constitute use of the firearm.

4 Now, "carrying" a firearm is different from "use."
5 While use requires active employment of a firearm, carrying
6 does not. A defendant carries a firearm when he has the weapon
7 within his control in such a way that it furthered the
8 commission of the murder for hire conspiracy. The defendant
9 did not necessarily have to hold the firearm physically, that
10 is, to have had actual possession of the firearm on his person.
11 If you find that the defendant had dominion and control over
12 the place where the firearm was located and had the power and
13 the intention to exercise control over it in such a way that
14 furthered the commission of the murder for hire conspiracy, you
15 may find that the government has proved that the defendant
16 carried the firearm.

17 The legal concept of "possession" may differ from the
18 everyday use of the term, so I need to explain that to you
19 also. Actual possession is what most of us think of as
20 possession, that is, having physical custody or control of an
21 object in the sense that I possess this pen that I am holding
22 up in front of me. If you find that the defendant had the
23 firearm on his person you therefore may find that he had
24 possession of it.

25 But a person does not have to have had actual physical

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1 possession, that is, physical custody of an object, in order to
2 be in legal possession of it. If an individual has the ability
3 to exercise substantial control over an object, even if the
4 individual doesn't have the object in his physical custody at a
5 given moment and that person has the intent to exercise such
6 control, then the person is in legal possession of that
7 article. We lawyers and judges call that "constructive
8 possession," but legally, it's possession, whether it's actual
9 or constructive. Control over an object may be demonstrated by
10 the existence of a working relationship between one person
11 having the power or the ability to control the item and another
12 person who has actual physical custody. The person having
13 control possesses the object because that person has an
14 effective working relationship with whoever has actual physical
15 custody and because he can direct the movement or transfer or
16 disposition of the object.

17 Let me give you a couple of examples of possession.

18 Actual possession is the most simple.

19 First, the way we use the word every day. The example
20 here is the pen that I held up a minute ago.

21 As for constructive possession, here's a good example:
22 Let's say I loaned a book to one of my law clerks. Rachel
23 sitting over there, my law clerk, has immediate physical
24 control of the book. It's in her hand, so she has actual
25 possession of it. But if my law clerk would bring me the book

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1 or do whatever else I might want her to do with it, I too would
2 have possession through my relationship with Rachel, my law
3 clerk.

4 Possession of a firearm means that the defendant
5 either had physical possession of the firearm or that he had
6 the power and intention to exercise control over the firearm.

7 Now, the government must prove also beyond a
8 reasonable doubt that the defendant knew that what he was
9 carrying or using was a firearm as that term is generally used
10 and that he acted willfully.

11 You will recall that I instructed you earlier that to
12 determine that someone acted knowingly requires that you make a
13 finding as to the person's state of mind. An act is done
14 knowingly if it's done purposefully and voluntarily, as opposed
15 to mistakenly or accidentally. For the government to satisfy
16 this element, it must prove that the defendant knew what he was
17 doing -- for example, that he knew that he was carrying or
18 using a firearm during and in relation to the commission of the
19 murder for hire conspiracy. It's not necessary, however, for
20 the government to prove that the defendant knew that he was
21 violating any particular law.

22 Now, before I go on to the second element, I think
23 it's time for me to have a seat for a while, if you'll bear
24 with me. This was Andy's wonderful idea, and it helps.

25 The second element the government must prove beyond a

Hbsnros7

Charge

1 reasonable doubt with respect to Count Three is that the
2 defendant used or carried a firearm during and in relation to
3 the murder for hire conspiracy in Count Two, or that he
4 possessed a firearm in furtherance of that crime, or, in either
5 case, that he caused another to do so.

6 The phrase "in relation to" means that the firearm
7 must have had some purpose or effect with respect to the
8 charged conspiracy. The firearm's presence or involvement
9 cannot have been the result of an accident or coincidence.

10 The phrase "in furtherance of a crime" means that the
11 possession of the firearm was incident to and an essential part
12 of the charged conspiracy. The mere possession of the firearm,
13 even at the scene of the murder, is not sufficient under this
14 definition. The firearm must have played some part in
15 furthering the crime to meet this definition.

16 Those remarks conclude my instructions on the first of
17 the two theories on which the defendant may be convicted Count
18 Three.

19 If you all agree that the government has proved each
20 of those two elements beyond a reasonable doubt, then you
21 should find the defendant guilty on Count Three on this theory,
22 and you need not consider the aiding and abetting theory.

23 In that case, you will skip aiding and abetting and
24 move on to Count Four. But if you do not convict the defendant
25 on this theory, you will consider the second theory, aiding and

Hbsnros7

Charge

1 abetting.

2 You should find the defendant guilty of Count Three if
3 you find beyond a reasonable doubt that the government has
4 proved that another person actually unlawfully used, carried,
5 or possessed a firearm in relation to or in furtherance of the
6 conspiracy charged in Count One, and that the defendant aided
7 or abetted that person in the commission of the offense.

8 You should use the instructions I gave you on aiding
9 and abetting liability in relation to Count Two, but I need to
10 give you an additional instruction that applies to aiding and
11 abetting the use, carrying, or possession of a firearm.

12 To convict the defendant on a theory of aiding and
13 abetting another's use, carrying, or possession of a firearm in
14 relation to or in furtherance of the conspiracy charged in
15 Count One, the government must establish also that the
16 defendant actively participated in the underlying conspiracy to
17 commit the murder for hire of members of a rival music
18 management business and that he did so with advance knowledge
19 that a participant in the conspiracy would use, carry, or
20 possess a firearm in relation to or in furtherance of the
21 charged murder for hire conspiracy.

22 Now, what do I mean by actively participated? I mean
23 that the government must prove beyond a reasonable doubt that
24 the defendant did something to participate actively in the
25 conspiracy charged in Count One, that is to say the conspiracy

Hbsnros7

Charge

1 to murder for hire members of a rival music management
2 business, resulting in the death of Lowell Fletcher.

3 The defendant does not need to have facilitated every
4 part of the criminal venture charged in Count Three in order to
5 be found guilty as an aider and abettor. Furthermore, the
6 defendant does not need to have done something to further
7 another's use, carrying, or possession of a firearm in relation
8 to or in connection with the conspiracy charged in Count One.
9 As long as the defendant facilitated some part of the
10 underlying murder for hire conspiracy, for example, by ordering
11 the alleged murder for hire, he will be deemed to have
12 satisfied the active participation requirement for aiding and
13 abetting liability.

14 As to the second part, in order for the defendant to
15 have had advance knowledge of another's use, carrying, or
16 possession of a firearm in relation to or in furtherance of the
17 murder for hire conspiracy, the defendant needs to have had
18 that knowledge at a point before the commission of that crime
19 when the defendant still had the opportunity to walk away from
20 participating in the offense if he chose to do so. If a
21 defendant who has an opportunity to walk away from
22 participating in an offense chooses to continue to participate
23 in the offense after learning that another participant will
24 use, carry, or possess a firearm in relation to or in
25 furtherance of a murder for hire conspiracy, that defendant has

Hbsnros7

Charge

1 the advance knowledge required to make him an aider and abettor
2 of the crime.

3 I remind you that knowledge, like other elements of a
4 crime, can be proved either directly or by circumstantial
5 evidence. The government is not required to prove knowledge by
6 direct evidence.

7 If you find beyond a reasonable doubt that the
8 government has proved that another person actually committed
9 the crime charged in Count Three and that the defendant aided
10 or abetted that person in the commission of the offense, you
11 should find the defendant guilty of Count Three on an aiding
12 and abetting theory. If, however, you do not so find, you
13 should find the defendant not guilty on Count Three and move on
14 to Count Four.

15 Now, as I read from the indictment with respect to
16 Count Three, you may remember the indictment alleges that the
17 firearm that was allegedly used, carried, or possessed was
18 discharged. The government does not have to prove that any
19 firearm was discharged for you to convict the defendant on
20 Count Three. But, that said, the indictment alleges that a
21 firearm was discharged, so I'm submitting to you again on the
22 verdict form a special question asking whether you find beyond
23 a reasonable doubt that at least one of the firearms used,
24 carried, or possessed in relation to or in furtherance of the
25 conspiracy charged in Count One actually was discharged in

Hbsnros7

Charge

1 connection with that crime. That special question is question
2 3A. You will answer question 3A if and only if you find the
3 defendant guilty on Count Three on either of the two theories
4 of liability I've discussed already.

5 If, on the other hand, you find that the government
6 has not proved beyond a reasonable doubt that the defendant is
7 guilty of the Count Three, you should skip question 3A and go
8 on to Count Four.

9 The first thing I need to tell you about Count Four is
10 that you will consider Count Four if and only if you found the
11 defendant guilty of Count Two.

12 If you find him not guilty on Count Two, you will skip
13 question 4, and indeed at that point you will be done.

14 Count Four charges the defendant with using or
15 carrying a firearm during and in relation to or possessing a
16 firearm in furtherance of a crime of violence that can be
17 prosecuted in a federal court -- specifically, the murder for
18 hire of local Fletcher that's charged in Count Two -- and that
19 in the course of committing that crime of violence caused the
20 murder of a person through the use of a firearm or caused
21 another to do so. Count Four charges the defendant also as an
22 aider and abettor.

23 As I now read from the indictment, Count Four charges
24 specifically, and I quote:

25 "On or about September 27, 2009, in the Southern

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1 District of New York, James Rosemond, also known as Jimmy the
2 Henchman, the defendant, and others known and unknown, during
3 and in relation to a crime of violence for which they may be
4 prosecuted in a court of the United States, namely, the offense
5 charged in Count Two of the indictment, willfully and knowingly
6 did use and carry a firearm, and, in furtherance of such crime,
7 did possess a firearm and did aid and abet the use, carrying,
8 and possession of a firearm, and in the course of that crime
9 did cause the death of a person through the use of a firearm,
10 which killing is murder as defined in Title 18, United States
11 Code, Section 1111(a); to wit, Rosemond and others caused the
12 death of Lowell Fletcher, who was shot and killed in the
13 vicinity of Jerome Avenue and Mt. Eden Avenue in the Bronx, New
14 York."

15 Now, as I indicated, you must not consider Count Four
16 unless you first have determined that the defendant is guilty
17 on Count Two. However, if you convict the defendant on Count
18 Two, you must then consider whether the government has proved
19 beyond a reasonable doubt that the defendant is guilty of Count
20 Four. On this Count Four there are two theories of liability
21 on the basis of which you may find the defendant guilty.

22 The first is that defendant himself committed murder
23 through the use of a firearm or caused another to do so in
24 relation to or in furtherance of the murder for hire alleged in
25 Count Two.

Hbsnros7

Charge

1 The second is that the defendant aided and abetted
2 someone else who committed murder for hire through the use of a
3 firearm in relation to or in furtherance of the murder for hire
4 alleged in Count Two.

5 To prove the defendant guilty of the Count Four on the
6 first theory of liability, the government must prove each of
7 the following elements beyond a reasonable doubt:

8 First, that or on about September 27, 2009, the
9 defendant used, carried, or possessed a firearm or caused
10 another to do so.

11 Second, that the defendant used or carried the firearm
12 during and in relation to the murder for hire of Lowell
13 Fletcher charged in Count Two, or possessed a firearm in
14 furtherance of such crime or caused another to do so;

15 Third, the defendant caused the death of a person
16 through the use of a firearm or caused another to do so;

17 Fourth, the death of Lowell Fletcher was murder as I
18 will define that term for you in a moment;

19 Fifth, that the defendant acted knowingly, unlawfully,
20 and willfully in using or carrying a firearm (or in causing
21 another to use or carry a firearm) during and in relation to,
22 or in possessing (or in causing another to possess) a firearm
23 in furtherance of the murder for hire of Lowell Fletcher
24 charged in Count Two.

25 Let me talk about the first element, which requires

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1 the government to prove beyond a reasonable doubt that on or
2 about September 27, 2009, the defendant used, carried, or
3 possessed a firearm or caused another to do so.

4 I previously defined the terms "firearm," "use,"
5 "carry," and "possess" in Count Three. You apply those
6 definitions here. I won't repeat them.

7 The second element of Count Four that the government
8 must prove beyond a reasonable doubt is that the use or
9 carrying of a firearm occurred during and in relation to the
10 substantive murder for hire charged in Count Two or that the
11 possession of a firearm was in furtherance of -- which means
12 incident to and an essential part of -- the substantive crime
13 for murder for hire charged in Count Two.

14 I previously explained the terms "in relation to" and
15 "in furtherance of" in Count Three. You will apply those
16 definitions here, too.

17 The third element of Count Four that the government
18 must prove beyond a reasonable doubt is that the defendant
19 caused the death of a person through the use of a firearm or
20 caused another to do so.

21 A person causes the death of another if his conduct
22 has such an effect in producing that individual's death as to
23 lead a reasonable person to regard the defendant's conduct as a
24 cause of death.

25 The death of a person may have one or more than one

Hbsnros7

Charge

1 cause.

2 You need not find that the defendant shot the victim
3 or that he committed the final fatal act in order to find that
4 his conduct was a cause of death. The government need prove
5 only that the conduct of the defendant was a substantial factor
6 in causing the victim's death.

7 The fourth element the government must prove beyond a
8 reasonable doubt is that the death of Lowell Fletcher
9 constituted murder. For purposes of Count Four, murder is the
10 unlawful killing of a human being with malice aforethought.
11 Every murder perpetrated by lying in wait or any other kind of
12 willful, deliberate, malicious, and premeditated killing or
13 committed in the perpetration of or attempt to perpetrate any
14 arson or perpetrated from a premeditated design unlawfully and
15 maliciously to effect the death of any human being other than
16 him who is killed is murder.

17 Malice is the state of mind that would cause a person
18 to act without regard to the life of another. A killing is
19 done with malice aforethought if it is done deliberately and
20 consciously and with the intent to kill another person. The
21 government, however, need not prove a subjective intent to
22 kill. It would be sufficient to satisfy this element if the
23 government proved reckless and wanton conduct on the part of
24 the defendant which grossly deviated from a standard of care
25 such that he was aware of the serious risk of death.

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Charge

1 In order to establish this element, the government
2 must prove also that the defendant acted willfully, with a bad
3 or evil purpose to violate the law. However, the government
4 need not prove spite, malevolence, hatred, or ill will toward
5 Lowell Fletcher.

6 Finally, I note that this definition of murder is a
7 little bit different than the definition of murder that I
8 instructed you upon when I explained Count Two. If anybody
9 wants to know why when the case is over, I will be happy to
10 explain it. But, trust me, that's the way it is. You should
11 take care to use this definition when you consider whether the
12 defendant is guilty or not of Count Four.

13 The final element the government must prove beyond a
14 reasonable doubt in order to convict on Count Four on the first
15 of the two alternative theories is that the defendant knew that
16 he was using, carrying, or possessing a firearm, and that he
17 acted willfully in doing so. To satisfy this element, the
18 government must prove that the defendant knew that what was
19 being carried or used was a firearm as that term is generally
20 understood.

21 As I mentioned earlier, an act is done knowingly if
22 it's done purposely and voluntarily, as opposed to mistakenly
23 or accidentally. The government must prove that the defendant
24 knew what he was doing -- for example, that he knew that he was
25 carrying or using a firearm, or causing another to do so, in

Hbsnros7

Charge

1 the commission of the murder for hire of Lowell Fletcher. It
2 is not necessary, however, for the government to prove that the
3 defendant knew that he was violating any particular law.

4 Now that concludes my instructions on the first of the
5 two theories on which the defendant may be convicted on Count
6 Four.

7 If you all agree that the defendant has proved -- I
8 misspoke. If you all agree that government has proved the
9 defendant guilty beyond a reasonable doubt on Count Four on
10 this first theory, you will not consider the second theory,
11 which is aiding and abetting. But if you do not convict the
12 defendant on the first theory, you will consider the second
13 theory, aiding and abetting.

14 You should find the defendant guilty of Count Four if
15 you find that the government has proved beyond a reasonable
16 doubt that another person actually committed murder through the
17 use of a firearm during and in relation to or in furtherance of
18 the murder for hire of Lowell Fletcher and that the defendant
19 aided or abetted that person in the commission of the offense.

20 If you consider this second theory of liability, you
21 should use the instructions I gave you earlier on aiding and
22 abetting liability in Count Two and the additional instructions
23 as to active participation and advance knowledge that I gave
24 you with respect to Count Three.

25 If you find beyond a reasonable doubt that the

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Charge

1 government has proved that another person actually committed
2 the crime charged in Count Four and that the defendant aided or
3 abetted that person in the commission of that offense, you
4 should find the defendant guilty of Count Four on an aiding and
5 abetting theory. If, however, you do not so find, you should
6 find the defendant not guilty on Count Four.

7 You will note that the indictment charges that certain
8 act occurred on or about various dates. It doesn't matter if
9 the evidence you heard at trial indicates that a particular act
10 occurred on a different date. The law requires only a
11 substantial similarity between the dates alleged in the
12 indictment and the dates established by the evidence.

13 Now, folks, those are the instructions on the law.

14 What remains is to talk to you about the trial
15 process, how you go about evaluating the evidence, and the
16 conduct of your deliberations.

17 I haven't intended to do this, but frankly I could use
18 a ten-minute break. I am sure you could.

19 The rest is all important also, but it's not quite as
20 heavy going in terms of legal doctrine as what you have been
21 listening to, and I think it will in that respect be easier.

22 So, ten minutes, and we will go on.

23 (Recess)

HBSAAROS8

Jury Charge

1 (Jury present)

2 THE COURT: OK. Defendant and the jurors all are
3 present as defendant has been throughout.

4 OK. So, let's get on to talk about the trial process.

5 I told you on day one that you are the sole and
6 exclusive judges of the facts. I don't mean to indicate any
7 opinion about the facts or about what your verdict should be.
8 The rulings I've made during the trial, any questions that I've
9 asked if I did that usually do but I don't remember in this
10 case and any comments I may have made to the lawyers in
11 managing the trial are no indication of any views I might have
12 as to what the decision ought to be in this case or as to
13 whether or not the government has proved its case.

14 You're obliged as I told you at the start of the trial
15 to accept these instructions on the law and apply them to the
16 facts that you find the evidence to prove the facts regardless
17 of whether or not you agree with my instructions. You're not
18 to show any prejudice against an attorneys or attorney's client
19 because the attorney objected to the admissibility of evidence
20 or asked for a side bar or asked me to rule on points of law.
21 In addition, the fact that I might have asked questions or made
22 comment to counsel was not intended to suggest that I believed
23 or didn't believe any witness or witnesses or have any views at
24 all about how this case should come out.

25 You are to disregard entirely the fact that I may have

HBSAAROS8

Jury Charge

1 asked some questions though of course if I did and if the
2 witness answered the questions, you may consider the answers.
3 Any comments I made to counsel are to be disregarded.

4 You should find the facts in this case without
5 prejudice as to any party. The fact that the case is brought
6 on behalf of the United States does not entitle the government
7 to any greater consideration than is accorded to the defendant.

8 By the same token, the government is entitled to no
9 less consideration. Both sides stand equal before the law.

10 Let's talk about your evaluation of the evidence.

11 The evidence in this case as I've told you and as
12 you've heard from counsel I think at least one of them and they
13 were right in this, the evidence in this case is the sworn
14 testimony of the witnesses, the exhibits that were received in
15 evidence and the stipulations between the parties.

16 The indictment as I told you is not evidence. Nor is
17 any question, any argument or any objection by a lawyer
18 evidence. Any statements that I struck or told you to
19 disregard must be disregarded. It's for you alone to decide
20 the weight, if any, to be given to the testimony you've heard
21 and the exhibits you've seen. Now there are two kinds of
22 evidence that you may use in reaching your verdict. Anybody
23 who has watched much television in the last 30 years certainly
24 knows it, at least if you are addicted to lawyer shows as
25 believe it or not I am -- holiday far me. One type is known as

HBSAAROS8

Jury Charge

1 direct evidence.

2 Direct evidence is when a witness testifies about
3 something the witness knows by virtue of having perceived it
4 with his own senses or her own senses, something the witness
5 saw, felt, touched, heard or I suppose in another coin of case,
6 tasted.

7 The direct evidence may also be in the form of an
8 exhibit. Example, I'm holding up a folio of transcript.
9 Imagine it were an exhibit in this case. Imagine it were
10 somehow relevant to know what color the backer is. You can all
11 look at it. You can all perceive with your senses that it's
12 red. That's direct evidence. The exhibit itself is direct
13 evidence of its color. Likewise, a document is direct evidence
14 of what's in the document not necessarily the truth of what's
15 in it but the word on the printed page.

16 OK. That's direct evidence. Assuming the document is
17 of course in evidence.

18 The other kind of evidence is circumstantial evidence.
19 So let me tell you what that's all about. It is evidence that
20 continues to prove some disputed fact by proof of another fact
21 or facts. In other words, it refers to the process of
22 inferring on the basis of reason and experience and common
23 sense from one or more established fact or facts the existence
24 or nonexistence of something else. Now, there's an example
25 that judges have been using in this court forever. This

HBSAAROS8

Jury Charge

1 Court's been in business since 1789 and has been in business
2 within a couple of blocks of here for over 200 years and I
3 rather imagine this goes back most of the way.

4 Suppose, just imagine hard it is to believe we've all
5 been sitting here since ten o'clock this morning. When we all
6 came in this morning it was a beautiful day, as indeed it was
7 and now night has fallen and we can't see out of the room.
8 There are shades up and suppose it felt to you to determine
9 whether the weather was still beautiful, maybe not sunny any
10 more, maybe that we can all figure out but whether it was still
11 clear.

12 Now you can't tell that by direct evidence because you
13 can't lookout the window. Have you no idea from direct
14 evidence. But imagine people starting walking in through those
15 doors in back with dripping umbrellas and raincoats. Ah-hah
16 you would say. I can see those are all wet. They're dripping.
17 It's pretty reasonable you might think to infer from the wet
18 umbrellas and wet raincoats that the weather had changed and
19 that it was raining. The wet and dripping umbrellas and
20 raincoats are circumstantial evidence with respect to whether
21 the weather had changed. A process of reasoning from one to
22 the other, that's what circumstantial evidence is all about.

23 Now, the reason I take care in explaining that
24 distinction and exactly what the difference between the two
25 kinds of evidence is is because I've heard more nonsense on TV

HBSAAROS8

Jury Charge

1 lawyer shows about direct and circumstantial evidence than I'd
2 want to shake a stick at. Much of it is wrong. And so I have
3 explain it to you and the punchline, the money line here is
4 that circumstantial evidence is of no less value than direct
5 evidence. The general rule is that the law makes no
6 distinction between the two. It's simply required that you
7 base your verdict on your conscientious and careful evaluation
8 of all the evidence, direct and circumstantial.

9 Now, a word about the stipulations. I remind you
10 there are two kinds. A stipulation of testimony is a
11 stipulation that someone an imaginary John Jones or Jane Jones
12 if called as a witness would testify X, Y and Z. In the case
13 of a stipulation of that kind and there were several in this
14 case, you must accept that the witness if called would have
15 taken the oath and sworn to what the stipulation says. You
16 must accept that the witness would have said that. It's up to
17 you however, to decide what, if any, effect you give to that
18 testimony. Do you buy it? Do you think it's important or not
19 important? All matters for you.

20 There's also been a stipulation, indeed, more than one
21 stipulation, that certain facts were agreed to be true. In
22 those cases as distinguished from stipulations as to what
23 someone would have testified, you must accept the fact is true.

24 Just to take an example that wasn't used here if it
25 were somehow an issue in this case what day of the week

HBSAAROS8

Jury Charge

1 November 17th of this year fell on and the parties stipulated
2 that it was Tuesday, even though we all know it was Friday, you
3 would be obliged to accept that it was Tuesday for purposes of
4 deciding the case. Different kind of stipulation, different
5 effect.

6 Now of course lawyers don't normally stipulate to
7 facts that are blatantly wrong like that and there's certainly
8 no suggestion that they've done so. Here, I'm just
9 illustrating the principle that in that kind of stipulation you
10 must accept it as true.

11 OK. Now, you've heard an awful lot in the course of
12 today about the credibility of witnesses and you have had the
13 opportunity to observe a goodly number of them. It is now your
14 job to decide to the extent that it matters and you are the
15 judge of that, how believable each witness was in the witness's
16 testimony. You are the sole judges of the credibility, in
17 other words believability but credibility of each witness and
18 of the importance of each witness's testimony.

19 In making that judgment you should use your common
20 sense and apply all of the tests for truthfulness and accuracy
21 that you would apply with respect to important matters in your
22 everyday life. Your decision whether or not to believe a
23 witness may depend on how the witness impressed you, was the
24 witness candid, frank and forthright or did the witness seem as
25 if he or she was hiding something, being evasive or suspect in

HBSAAROS8

Jury Charge

1 some way? How did the witness testify on direct-examination
2 compared with how the witness testified on cross-examination?
3 Was the witness consistent in his or her testimony or did the
4 witness contradict himself or herself? Did the witness appear
5 to know what he or she was talking about? Did the witness
6 strike you as someone who was trying to report his or her
7 knowledge accurately or not?

8 Now, if you find that any witness willfully lied to
9 you about a material matter you may either disregard all of
10 that witness's testimony or you may accept whatever part of it
11 you think deserves to be believed and disregard the rest.

12 In other words, if you find that a witness lied under
13 oath about a material fact, you can treat it as a slice of
14 toast which has been partially burned. You can either throw
15 the whole piece of toast out or you can scrape off the burned
16 bits and eat the rest. Ultimately, the determination of
17 whether and to what extent you accept the testimony of any
18 witness is entirely up to you.

19 In evaluating the credibility of witnesses you should
20 take into account any evidence that a witness may benefit in
21 some way from the outcome of the case. An interest in the
22 outcome may create a motive to testify falsely and it may sway
23 a witness to testify in a way that the witness perceives as
24 advancing the witness's own interests. Keep in mind though
25 that it doesn't automatically follow that the testimony given

HBSAAROS8

Jury Charge

1 by an interested witness should be disbelieved. It's for you
2 to decide based on your own perceptions and common sense to
3 what extent, if at all, the witness's interest has affected his
4 or her testimony.

5 Now you've heard the testimony of law enforcement
6 officials in this case. Some of it you heard in person. Other
7 testimony was stipulated. The fact that a witness may be or
8 may previously have been employed by the government in law
9 enforcement doesn't mean that that witness's testimony is
10 necessarily more or less deserving of credit or of
11 consideration or of weight than any other witness. At the same
12 time in considering the credibility of law enforcement
13 witnesses you're entitled to consider whether the testimony may
14 be colored by a professional or personal interest in the
15 outcome. It's up to you after reviewing all the evidence
16 whether and to what extent to accept the testimony of law
17 enforcement or government employee witnesses and to give that
18 testimony whatever weight you think it deserves.

19 Now, you've heard testimony from certain government
20 witnesses who testified that they were actually involved in
21 planning and carrying out certain of the crimes charged in the
22 indictment. There has been a great deal said about these
23 so-called cooperating or accomplice witnesses in the summations
24 of counsel and whether or not you should believe them.

25 Let me say some things about that. Experience will

HBSAAROS8

Jury Charge

1 tell you that the government frequently must rely on the
2 testimony of witnesses who participated in the criminal
3 activity about which they testified in a trial. For those very
4 reasons the law allows the testimony of cooperating or
5 accomplice witnesses. In fact in federal court the law is that
6 the testimony of a cooperating or accomplice witness in itself
7 may be enough for conviction if the jury believes it proves
8 guilt beyond a reasonable doubt. So the testimony of the
9 cooperators, the accomplice witnesses is properly considered by
10 you. The government argues as its entitled to do that if such
11 testimony couldn't be used there would be many cases in which
12 there was real guilt and conviction should be had but in which
13 convictions would be unattainable.

14 However, the testimony of accomplice witnesses,
15 cooperators, should be scrutinized with special care and
16 caution because such witnesses may believe that it's in their
17 interests to give testimony favorable to the government. The
18 fact that a witness is an accomplice or a cooperator can be
19 considered by you as bearing upon his or her credibility. It
20 does not follow however that simply because a person has
21 admitted to participating in one or more crimes that the person
22 is incapable of giving a truthful version of what happened.

23 Like the testimony of any other witness, accomplice or
24 cooperator testimony should be given the weight that you think
25 it deserves in light of the facts and circumstantial before you

HBSAAROS8

Jury Charge

1 taking into account the witness's demeanor, candor, strength
2 and accuracy of recollection, their backgrounds and the extent
3 to which their testimony is or is not corroborated by other
4 evidence in the case.

5 You may consider whether an accomplice witness or a
6 cooperator or anybody else has an interest in the outcome of
7 case and if so, whether it has affected his or her testimony.

8 You heard testimony about various agreements between
9 the government and these witnesses. I must caution you that it
10 is of no concern to you why the government made an agreement
11 with a particular witness. Your sole concern is whether the
12 witness has given truthful and accurate testimony here in this
13 courtroom before you. In evaluating the testimony of these
14 witnesses you should ask yourselves whether they would benefit
15 more by lying or more by telling the truth. Was their
16 testimony made up in any way because they believed or hoped
17 that they would somehow receive favorable treatment by
18 testifying falsely or did they believe that their interests
19 would be served best by testifying truthfully?

20 If you believe that a witness was motivated by hopes
21 of personal gain, was the motivation one that would cause him
22 to lie or was it one that would cause him to tell the truth?
23 Did that motivation color the witness's testimony? If you find
24 that the testimony was false, you should reject it. If
25 however, after a cautious and careful examination of the

HBSAAROS8

Jury Charge

1 testimony of such a witness and the witness's demeanor, you're
2 satisfied that the witness told you the truth, you should
3 accept it as credible and act on it accordingly.

4 As with any witness, let me emphasize that the issue
5 of credibility does not have to be decided on an all or nothing
6 basis. Even if you find that a witness testified falsely in
7 one part you still may accept their testimony in other parts or
8 you may disregard all of it. That's entirely up to you.

9 You've heard testimony from government witnesses who
10 pled guilty to charges arising out of the same facts that are
11 at issue in this case. You are not to draw any conclusions or
12 inferences of any kind about the guilt of the defendant on
13 trial here from the fact that one or more prosecution witnesses
14 pled guilty to similar charges. The decision of those
15 witnesses to plead guilty was a personal decision they made
16 about their own guilt. It may not be used by you in any way as
17 evidence against or favorable to the defendant on trial here.

18 You've heard evidence during the trial that some
19 witnesses have discussed the facts of the case and their
20 testimony with lawyers before the witnesses appeared in court.
21 Although you may consider that when you are evaluating a
22 witness's credibility, I should tell you that there is nothing
23 either unusual or improper about a witness meeting with lawyers
24 before testifying so that the witness can be aware of the
25 subjects that the witness will be questioned about, focus on

HBSAAROS8

Jury Charge

1 those subjects and have the opportunity to review relevant
2 exhibits before being questioned about them. Such consultation
3 helps conserve your time and the Court's time and in fact I can
4 tell you that it would be very unusual for a lawyer to call a
5 witness without such consultation.

6 Again, the weight you give to the fact or the nature
7 of the witness's preparation for testimony and the inferences,
8 if any, that you draw from such preparations are matters
9 entirely up to you.

10 We're all awake are we?

11 THE JUROR: Yes.

12 THE COURT: Just checking. I rest my eyes sometimes
13 too. Take no offense.

14 Now, you've heard reference in testimony and in the
15 arguments of counsel to the fact that certain investigative or
16 other techniques weren't used by the government. There's no
17 legal requirement that the government prove its case through
18 any particular means. While you are to consider carefully the
19 evidence that the government as presented, you are not to
20 speculate about why it used the techniques it did or why it
21 didn't use others. The choice of law and techniques is not
22 your concern.

23 Now, you're all aware at this point that the defendant
24 did not testify here. Under our Constitution a defendant never
25 is required to testify or present any evidence because it's the

HBSAAROS8

Jury Charge

1 government's burden to prove a defendant guilty beyond a
2 reasonable doubt. A defendant never is required to prove that
3 he is innocent. You may not attach any significance at all to
4 the fact that the defendant didn't testify. You may not draw
5 any adverse inference against the defendant because he didn't
6 do so. You may not consider this in any way in your
7 deliberations.

8 Now, you've already heard evidence that the defendant
9 on earlier occasions engaged in a variety of crimes or other
10 misconduct that are not charged in this indictment. And you've
11 heard also that he was incarcerated at one point. The
12 defendant is not on trial for committing those other acts or
13 the acts that led to the incarceration.

14 Accordingly, you may not consider the evidence about
15 other uncharged bad acts or of prior incarceration as a
16 substitute for proof that he committed the crimes with which he
17 is charged in this case. Nor may you consider that evidence as
18 proof that he has a criminal personality or a bad character.
19 That evidence was admitted in for limited purposes and you may
20 consider it only for those purposes.

21 So let me explain. The evidence you've heard
22 concerning an alleged narcotics organization of which the
23 defendant allegedly was the leader may be considered by you
24 only as it relates to whether the defendant was in a position
25 to do what the government alleges in this case he did. For

HBSAAROS8

Jury Charge

1 example, order associates in his alleged drug organization to
2 commit a murder. You may consider it also to explain whether,
3 why and how the defendant knew and trusted the people he
4 allegedly recruited to commit the alleged murder and how
5 payment was to be made for the murder. Finally, you may
6 consider it to explain why and how people who allegedly were
7 parts of that drug organization knew and trusted one another.

8 You've heard evidence also concerning an alleged feud
9 between the defendant and his music management business Czar
10 Entertainment and a rival business known as G-Unit and the acts
11 of violence that were allegedly were part of that feud. Apart
12 from the four counts of this indictment, Mr. Rosemond is not
13 charged in this case with crimes that may have been committed
14 part of that alleged feud. Accordingly, that evidence may be
15 considered by you only for certain purposes.

16 First, you may consider it as evidence of the
17 background and context of Lowell Fletcher's death. You may
18 consider it insofar as it establishes the relationships among
19 the alleged conspirators. You may consider it also as
20 suggesting a motive for the defendant to commit or cause the
21 commission of the murder of Mr. Fletcher.

22 You may consider it also to explain why and how the
23 defendant knew and trusted the people he allegedly recruited to
24 commit the alleged murder and how payment was to be made for
25 that murder.

HBSAAROS8

Jury Charge

1 That evidence, all of that evidence I've just referred
2 to may be considered by you only on the issues I've just
3 mentioned and not for any other purpose. Specifically, you may
4 not consider as evidence that the defendant has a bad character
5 or has a propensity to commit crime.

6 Now, some of the people who may have been involved in
7 the offense leading to this trial obviously are not on trial
8 here today. You may not draw any inference favorable or
9 unfavorable toward the government or the defendant from the
10 fact that any person other than the defendant is not on trial
11 in this case. Nor may you speculate as to the reasons that is
12 so. Those matters are wholly outside your concern. You may
13 not consider them in any way in reaching your verdict as to the
14 defendant in this case.

15 I should have said those "matters" are wholly outside
16 your concern.

17 Your task is limited to considering the charges in the
18 indictment and the defendant before you.

19 The question of possible punishment of the defendant
20 is not a concern of you, the jury, and it should not in any
21 sense enter into your deliberations. The duty of imposing a
22 sentence rests exclusively upon the Court. Under your oath as
23 jurors you cannot allow a consideration of punishment that may
24 be imposed in the event of conviction to influence your verdict
25 in any way.

HBSAAROS8

Jury Charge

1 OK. We are now down to the last part of your
2 deliberations.

3 In just a few minutes you are going to retire to
4 decide the case. It's your duty as jurors to consult with one
5 another and to deliberate with a view to reaching an agreement.
6 Each of you must decide the case for yourself. But you should
7 do so only after considering the case with your fellow jurors
8 and you should not hesitate to change an opinion if you're
9 convinced that it is erroneous. Your verdict whether guilty or
10 not guilty must be unanimous but you are not bound to surrender
11 your honest convictions concerning the effect or the weight of
12 the evidence for the mere purpose of returning a verdict or
13 solely because of the opinion of other jurors.

14 Discuss and weigh your respective opinions
15 dispassionately without regard to sympathy and without regard
16 to prejudice or favor for or against either side and come to
17 the conclusion which in your good conscious appears from the
18 evidence to be in accordance with the truth.

19 I need to say a word about your notes. Your notes are
20 for your personal use only. You each may consult your own
21 notes during deliberations but any notes you may have taken are
22 not to be relied upon in deliberations as a substitute for the
23 collective memory of the whole jury. Your notes should be used
24 as a memory aid but should not be given precedence over your
25 independent recollection of evidence. If you didn't take

HBSAAROS8

Jury Charge

1 notes, you should rely on your own independent recollection of
2 the proceedings and you should not be influenced by the notes
3 of other jurors. I emphasize that notes are not entitled to
4 any greater weight than the recollection or impression of each
5 of you as to what the testimony and the evidence may have been.

6 Now as I told you, you'll be having written copies of
7 my instructions in the jury room for your reference. You will
8 find that they contain at various points legal citations. I
9 don't think we have a lawyer on the jury and unless we have a
10 lawyer on the jury, you're not going to understand them anyway
11 and it doesn't matter. You are to disregard them entirely.
12 They are there for my convenience and the convenience of the
13 lawyers. They are in affect an audit trail. They are what I
14 relied upon in formulating each section of the instructions and
15 you must accept my instructions as correct in any event whether
16 you agree with them or not. So they are of no concern to you.
17 Ignore them.

18 You're not to discuss the case unless all jurors are
19 present. When you retire you should elect one member of the
20 jury as your foreperson. That person will preside over the
21 deliberations and speak for you here in open court. The
22 foreperson will send out any notes and when you have reached a
23 verdict will notify the officer that the jury has a verdict.

24 Let me speak to you for a brief moment about the
25 mechanics of a verdict.

HBSAAROS8

Jury Charge

1 You also have the verdict form. First of course,
2 follow the instructions to the letter. They're in the written
3 charge. They are on the verdict form. Follow them to the
4 letter. When you've reached a unanimous decision, you are to
5 record your answers on one copy of the verdict form. Please do
6 not add anything that's not called for by the verdict form. I
7 can tell you from past experience it only causes trouble. No
8 editorial comments. Don't answer questions that the
9 instructions dictate should not be answered. Just check the
10 right boxes as you decide the evidence warrants. Once you have
11 a verdict the foreperson should fill-in the form. Then each of
12 you should review it and sign at the bottom. The foreperson
13 should hold onto the verdict form. Put it in an envelope. You
14 will not give it to the officer. The foreperson will simply
15 tell the officer there is a verdict, not what the verdict is,
16 just there is a verdict. We will then assemble everybody in
17 court. We'll bring you into the courtroom. The foreperson
18 will clutch to his or her breast the envelope with the verdict
19 until I ask for it.

20 I stress to you that each of you should be in
21 agreement with the verdict when it's announced in court. Once
22 it's announced by the foreperson in open court and officially
23 recorded it ordinarily cannot be revoked or changed.

24 Now, if during your deliberations you want me to
25 discuss further any of the instructions on the law that I've

HBSAAROS8

Jury Charge

1 given you, the procedure is that the foreperson will write a
2 note, put it in a sealed envelope, give it to the officer and
3 the note will explain in as much detail as you can what the
4 question is.

5 You will see when you get the written jury
6 instructions that every page and every line is numbered. And
7 if the question relates to a passage in the instructions and
8 you can do so, indicate by page and line numbers what the
9 question's about and then explain the question.

10 The reason for that is that when we get a question
11 from a deliberating jury, the first thing we have to do is
12 understand what you're really driving at. The lawyers then
13 have a right to be heard about what they think the right answer
14 is. If they don't agree or if I don't agree, I then have to
15 decide the right answer and the more clearly I understand just
16 exactly what it is you're asking, that process will go much
17 quicker and you will be much more likely to get a precise
18 answer to just what you need to know.

19 If during your deliberations you want me to discuss --
20 I skipped something.

21 If during your deliberations want to have any
22 testimony read back or you want to see any of the exhibits, you
23 will let me know.

24 Now two different procedures. Once you retire to
25 deliberate, the parties will go over the exhibits that are in

HBSAAROS8

Jury Charge

1 evidence with Andy and with one possible exception, I believe
2 they will be brought into the jury room for you. That may take
3 a little time because they have to go and make sure they've got
4 the right ones but they'll do their best to do it promptly.

5 The only exception that I have in mind though is that you saw
6 some video and we have to make special arrangements if we are
7 to send a video into the jury room because it has to go in on a
8 computer that we're sure is clean of anything else, and I don't
9 think we have one here at this moment. So if a video is
10 important and you want to see a video, send out a note saying
11 you want to see it and either we'll have a clean machine at
12 that point or we'll bring you in and show you the video here in
13 court.

14 So far as testimony is concerned, you are well aware
15 from the summations that there is a transcript. So if you want
16 any testimony reviewed or want to review any testimony, the
17 procedure is the same as with notes. The foreperson will send
18 a note saying with as much precision as you can exactly what
19 you want to hear, what witness, what subject, direct or
20 cross-examination if you can remember. Just be as precise as
21 you can. We have to agree or I have to decide what the
22 relevant passage is.

23 The other thing that of course has to happen is
24 although there is a transcript, the transcript has to be
25 scrubbed before we can send it in to you to eliminate colloquy

HBSAAROS8

Jury Charge

1 or any side bars that were deliberately out of your hearing.
2 You know sometimes we get a request for a read back and it's a
3 matter of giving you two pages and it takes three minutes and
4 other times there is a lot of colloquy and side bars and it
5 takes longer. Just be aware that if there is a request like
6 that, we'll get it to you as fast as we can. That's the best I
7 can do.

8 With respect to hours tonight, once you retire I'm
9 going -- I normally keep the lawyers here in case there's a
10 verdict or in case there's a question. But they have had a
11 long day as we all have. And for one hour after you retire,
12 we're not going to respond to questions and we will not take a
13 verdict for the first hour should you reach a verdict and I'm
14 not suggesting you should or shouldn't. That's up to you.
15 Just to everybody can catch a sandwich or something.
16 Thereafter, we'll be ready to respond very promptly and we
17 won't sit later than eight o'clock and the cars are being
18 arranged and so forth.

19 OK. I remind you folks that you have taken an oath to
20 render judgment impartially and fairly without prejudice or
21 sympathy and without fear solely on the evidence in the case
22 and the law as I've given it to you. It would be improper for
23 you are to consider in coming to your conclusion about whether
24 the government has sustained its burden of proof, any personal
25 feelings you may have about race, religion, national origin,

HBSAAROS8

Jury Charge

1 gender or age of the defendant. If you let prejudice or
2 sympathy interfere with clear thinking there is a risk that you
3 will not arrive at a just verdict. Both sides are entitled to
4 a fair trial here and you must come to a fair and impartial
5 decision in order that you do justice in this case. If you
6 have a reasonable doubt as to the defendant's guilt you should
7 not hesitate for any reason to find a verdict of acquittal, in
8 other words, not guilty.

9 Indeed, if you have a reasonable doubt as to guilt on
10 a particular charge, you must find the defendant not guilty of
11 that charge. On the other hand, if you find the government has
12 met its burden of proving guilt beyond a reasonable doubt, you
13 should not hesitate because of sympathy or any other reason to
14 render a verdict of guilty.

15 Now, counsel, are there any objections that I haven't
16 heard previously to the charge as I have given them? If so,
17 side bar.

18 MR. JOHNSON-SKINNER: One very short thing.

19 (Continued on next page)

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HBSAAROS8

Jury Charge

1 (side bar)

2 MR. JOHNSON-SKINNER: If you want to say the sentence
3 on page 49, lines eight to ten about if you communicate with
4 the Court before reaching a verdict, don't indicate how you're
5 divided.

6 MR. TOUGER: No objection.

7 THE COURT: Do you have any objections?

8 MR. TOUGER: Only thing I would say, your Honor, is
9 when you were doing the aiding and abetting, seemed like -- I
10 don't know if I was hearing it differently but seemed like it
11 wasn't the same -- charge when you did the aiding and abetting
12 act and I think that's part of it no matter what the proof is.
13 I know it was a long time ago.

14 THE COURT: Well, I gave it as written.

15 MR. TOUGER: Right. It just --

16 THE COURT: And we had a charge conference and you
17 made your objection.

18 MR. TOUGER: It just didn't sound the same when --

19 MR. JOHNSON-SKINNER: We think it was legally and
20 properly given.

21 THE COURT: I think the objection at this point is
22 untimely and in any case I would overrule it on to the merits.

23 (Continued on next page)

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HBSAAROS8

Jury Charge

1 (In open court)

2 THE COURT: Counsel have drawn to my attention that I
3 skipped one sentence when I was talk to you about any notes
4 that might be sent in during your deliberations, and it's this.

5 If you communicate with the Court before you come to a
6 verdict, you must never indicate in a note to the Court or in
7 open court how you are divided, what the vote is, unless I ask
8 you for it. Never.

9 OK. Now, we come to the trusty alternates who have
10 been here faithfully throughout and paying careful attention.

11 You are not going to retire to deliberate now and I'm
12 going to let you go home now, but I am not discharging you.
13 You remain alternates. You may not discuss this case with
14 anyone. You may not read anything about it. You may not do
15 any research about it. You may not allow anybody to talk to
16 you about it unless and until you know that the jury has been
17 discharged.

18 The reason for that is that in rare circumstances but
19 circumstances that do occur and happened in the New York area
20 recently in another case in another court, you may be called-in
21 to deliberate if for example something happened to one of the
22 deliberating jurors and therefore, that's the reason for the
23 instruction.

24 At this time I'll ask the alternates to go into the
25 jury room with Andy, give your notes to Andy and I hope we meet

HBSAAROS8

Jury Charge

1 again under more distinguishable circumstances and pleasant
2 circumstances. Thank you much very much for your service and
3 possible future service.

4 As soon as Andy comes back he will swear the officer
5 and you will retire.

6 (Alternates dismissed)

7 THE COURT: All right. Andy, swear the officer
8 please.

9 COURTROOM DEPUTY: (Marshal sworn)

10 THE COURT: Members of the jury, you will now retire
11 to deliberate upon your verdict.

12 (Jury retired to deliberate; 6:20 p.m.)

13 THE COURT: All right. Be seated folks.

14 I'm going to ask Andy to mark as Court Exhibit L, I
15 think one copy of the charge. And assuming everyone agrees, we
16 will send other copies into the jury room.

17 You are welcome to review them if you want.

18 MR. JOHNSON-SKINNER: No, we don't need to.

19 MR. TOUGER: No, your Honor.

20 THE COURT: On the exhibits counsel will before I
21 disappear here go over with Andy the exhibits that go in. If
22 there's any disagreement, obviously, I will resolve it. If
23 there's no disagreement, is it acceptable to both sides for
24 Andy to take in the exhibits upon which you do agree to the
25 jury room without any on the record proceedings?

HBSAAROS8

Jury Charge

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MR. JOHNSON-SKINNER: It is to the government.

MR. TOUGER: Yes, your Honor.

THE COURT: All right. We'll proceed in that way and we will not have anything from the jury before 20 after seven at the earliest.

OK. Thank you, folks.

(Deliberations)

(Continued on next page)

Hbsnros9

1 (In open court; jury not present)

2 (7:51 p.m.)

3 THE COURT: OK. We, as you know, had a note asking
4 for the direct testimony of the witness Crooks, which will be
5 Court Exhibit M.

6 And I have just been handed proposed -- I assume
7 counsel have seen the note, right?

8 MR. TOUGER: Yes, your Honor.

9 THE COURT: And I have just been handed -- I am told
10 we have a verdict. Bring in the jury.

11 Hold one minute. We are going to wait a moment before
12 taking the verdict. I will find out if the cars are here. I
13 will return as soon as we iron out an issue.

14 (Recess)

15 THE COURT: OK. Let's bring in the jury.

16 The defendant is present.

17 (The jury entered the courtroom at 7:59 p.m.)

18 THE COURT: Be seated.

19 The defendant and the jurors all are present. Who is
20 the foreperson. Have you reached a verdict?

21 THE FOREPERSON: Yes.

22 THE COURT: Would you please pass the envelope to
23 Andy.

24 The clerk will publish the verdict.

25 THE DEPUTY CLERK: As the Count One, conspiracy to

Hbsnros9

1 commit --

2 THE COURT: The defendant will rise. Excuse me.

3 THE DEPUTY CLERK: Conspiracy to commit murder for
4 hire, guilty.

5 As to Count Two, murder for hire, guilty.

6 As to Question 1A, Has the government proved beyond a
7 reasonable doubt that the conspiracy charged in Count One
8 resulted in the death of Lowell Fletcher?

9 Answer: Yes.

10 Question 2A. Has the government proved beyond a
11 reasonable doubt that the murder for hire charged in Count Two
12 resulted in the death of Lowell Fletcher?

13 Answer: Yes.

14 Count Three, firearm possession during the
15 murder-for-hire conspiracy.

16 Answer: Guilty.

17 Question 3A. Has the government proved beyond a
18 reasonable doubt that at least one of the firearms used carried
19 or possessed in relation to or in furtherance of the conspiracy
20 crime charged in Count One actually was discharged in
21 connection with that crime?

22 Answer: Yes.

23 Count Four, murder through the use of a firearm.

24 Answer: Guilty.

25 THE COURT: Is there a request for a poll?

Hbsnros9

1 MR. TOUGER: Yes, your Honor.

2 THE COURT: Poll the jury please.

3 THE DEPUTY CLERK: Juror No. 1, is that your verdict?

4 JUROR: Yes.

5 THE DEPUTY CLERK: Juror No. 2, is that your verdict?

6 JUROR: Yes.

7 THE DEPUTY CLERK: Juror No. 3, is that your verdict?

8 JUROR: Yes.

9 THE DEPUTY CLERK: Juror No. 4, is that your verdict?

10 JUROR: Yes.

11 THE DEPUTY CLERK: Juror No, 5 is that your verdict?

12 JUROR: Yes.

13 THE DEPUTY CLERK: Juror No. 6, is that your verdict?

14 JUROR: Yes.

15 THE DEPUTY CLERK: Juror No. 7, is that your verdict?

16 JUROR: Yes.

17 THE DEPUTY CLERK: Juror No. 8, is that your verdict?

18 JUROR: Yes.

19 THE DEPUTY CLERK: Juror No. 9, is that your verdict?

20 JUROR: Yes.

21 THE DEPUTY CLERK: Juror No. 10, is that your verdict?

22 JUROR: Yes.

23 THE DEPUTY CLERK: Juror No. 11, is that your verdict?

24 JUROR: Yes.

25 THE DEPUTY CLERK: Juror No. 12, is that your verdict?

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1 JUROR: Yes.

2 THE DEPUTY CLERK: Verdict unanimous, your Honor.

3 THE COURT: All right. Counsel, any reason why the
4 jury shouldn't be discharged.

5 MR. JOHNSON-SKINNER: None, Judge.

6 THE COURT: Mr. Touger?

7 MR. TOUGER: No, your Honor.

8 THE COURT: Members of the jury, in just a moment I'm
9 going to discharge you and send you on your way. I just want
10 to say a couple of things before I do that.

11 First of all, it was the invariable practice of
12 probably the greatest judge ever to sit on this Court never to
13 thank juries. It was his view that this is a privilege of
14 citizenship, and it's just doing your part in this great
15 country of ours. I agree with him about that, but I don't
16 think he got to the right answer on that one.

17 Of course we thank you. I thank you, I know counsel
18 thank you because you have taken time out of busy lives to do
19 something that is really vitally important and that is
20 virtually unique in the world.

21 You've all come here out of your everyday life to
22 decide this case. I didn't decide this case. You decided it.

23 It's essential to our system, and I thank you for your
24 time and your effort. I make no comment on the verdict one way
25 or the other. That is your business. Not mine. But you

Hbsnros9

1 certainly have my thanks, and, I'm sure, thanks of counsel.
2 You did your duty, and that is all we can reasonably ask.

3 Now, once you leave here, you will leave your notes,
4 whatever they are, in the jury room, and once you walk out that
5 jury room door it is up to you whether you discuss this case
6 with anyone or not. You are entirely free to do so if you
7 wish.

8 I would just say this to you. Number one, it is
9 possible that lawyers or other people associated in some way
10 with one side or the other in this case may approach you and
11 may want to talk to you. What you do about that is up to you,
12 but if you don't want to talk or you want to stop talking once
13 you start and whoever it is doesn't take no for an answer,
14 please call Andy, and I'm reasonably confident I can take care
15 of that problem very quickly.

16 Secondly, I would just urge upon each of you, if you
17 discuss anything that happened in the jury room or your service
18 as a juror just to bear in mind the golden rule, if you talk
19 about your fellow jurors or anybody on the jury, just think
20 about the fact that you all have a right to privacy about this,
21 and just think before you speak as to anything you might want
22 to say about any other individual or the whole process.

23 With that, I repeat my thanks to you, and you now are
24 free to go up get anything you have in the jury room other than
25 the notes, and good wishes for the holiday season.

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1 Thank you.

2 (Jury excused)

3 THE COURT: Be seated, folks.

4 Anything else before setting a sentencing date?

5 MR. JOHNSON-SKINNER: Nothing from the government.

6 MR. TOUGER: No, your Honor.

7 I assume we will do motions on the sentencing date.

8 THE COURT: Not necessarily. There are time limits
9 under the rules, and you will make any motions you want within
10 the time limits or you will seek an extension.

11 Obviously, I am not too likely to sentence before any
12 motions have been decided.

13 Are we going to have a new PSR in this case?

14 MR. JOHNSON-SKINNER: I would think so, Judge.

15 THE COURT: All right. So I'll set sentencing for --
16 let me just check my calendar -- March 13 at 3 o'clock.

17 Defense submissions are to be filed at least two weeks
18 before sentencing; any response from the government at least a
19 week before sentencing.

20 Anything else?

21 MR. JOHNSON-SKINNER: Nothing from the government.

22 THE COURT: OK. Thanks, folks.

23 (Trial concluded)

24

25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____X

UNITED STATES OF AMERICA,

-against-

10 Cr. 431 (LAK)

JAMES J. ROSEMOND,

Defendant.

_____X

**MOTION FOR A NEW TRIAL PURSUANT TO
RULE 33 OF THE FEDERAL RULES OF
CRIMINAL PROCEDURE**

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PRELIMINARY STATEMENT

This motion is submitted pursuant to Rule 33 of the Federal Rules of Criminal Procedure, seeking a new trial. Annexed to this motion as exhibits are an Affidavit from the defendant James J. Rosemond (Exhibit A) and an Affidavit from the attorney who represented him at trial, David Touger (Exhibit B). As these affidavits make clear, Mr. Touger adopted a trial strategy over the express opposition of Mr. Rosemond. Specifically, Mr. Touger chose 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. In contrast, Mr. Rosemond wanted to pursue a defense in which he would deny that he had directed, requested or authorized the alleged shooting. Although this type of strategic choice traditionally has been considered the province of counsel, we submit that *McCoy v Louisiana*, 138 S.Ct. 1500 (2018) – which the Supreme Court decided after Mr. Rosemond’s conviction – indicates that defendants have a Sixth Amendment “right of autonomy” entitling them to control the decision whether to contest certain types of allegations and present certain defenses. Violation of that right, the Supreme Court held, constitutes “structural error,” not subject to harmless error review. Because Mr. Touger pursued a defense strategy which Mr. Rosemond emphatically opposed – and we submit in contravention of his right of autonomy – there should be a new trial. In any event, this Court may resolve this motion without an evidentiary hearing since there are no factual disputes.

THE FACTUAL BACKGROUND

The facts underlying this motion are straightforward. The theory of the prosecution was that Mr. Rosemond paid others to shoot and murder Lowell Fletcher in retaliation for his assaulting Mr. Rosemond’s son. During trial, Mr. Touger conceded that Mr. Rosemond had directed the shooting,

but contested that Mr. Rosemond possessed the requisite intent to kill. As set forth in their affidavits, Mr. Touger pursued this strategy over the express opposition of Mr. Rosemond. Before and during the trial, Mr. Rosemond expressly told Mr. Touger that he wanted to deny that he had ordered the shooting of Lowell Fletcher, rather than merely dispute that he did so with the intent to murder. More specifically, Mr. Rosemond wanted to adopt the same approach as at his prior trial: i.e., assert that he had paid Brian McCleod for the limited purpose of bringing Fletcher to him without any intention of either shooting or assaulting him. Nevertheless, Mr. Touger pursued his strategy on the assumption that, as the trial attorney, such strategic choices were solely within his province. *See*, Touger Affidavit; Rosemond Affidavit.

Thus, during summation Mr. Touger explicitly stated that Mr. Rosemond “paid for a shooting,” T1446, and that “the only thing planned here was where the shooting was going to take place **** There was never a plan to shoot Lowell Fletcher to death.” T1454. Rather, “the plan was for Lowell Fletcher to survive.” T1455. Similar comments were made throughout the summation. For example, Mr. Touger argued that: the amount paid indicated that the services were for a shooting, but not a homicide, T1446, 1460; the planning and manner of the shooting was consistent with other shootings that did not result in homicides, T1451-52, 1479, 1488; and that the choice of weapons indicated that the shooting was not intended to be a homicide, T1456. In one typical comment, Mr. Touger argued that this shooting was “nothing different from many other shootings that they’ve done without the intent to kill *****” T1479.

Understandably, the government emphasized in rebuttal that defense counsel had made an important concession:

“There is one thing that is important here. Defense counsel in his closing conceded, he conceded, he said Rosemond did set up the shooting, and he’s talking about the shooting of Lowell Fletcher. He expressed that idea through different variations. He said it in different ways.” T1495-96.

On November 28, 2017, the jury convicted Mr. Rosemond of all counts. On March 20, 2018, Mr. Touger was replaced by Mr. Rosemond’s current counsel. Thereafter, on May 14, 2018, the Supreme Court decided *McCoy v Louisiana, supra*, providing the basis for this motion.

ANALYSIS

Initially, we submit that this motion may be considered timely. Fed. R. Crim. P. 33(b) provides as follows:

(1) *Newly discovered evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty ****

(2) *Other grounds.* Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

Nevertheless, such time can be extended pursuant to Rule 45 of the Federal Rules of Criminal Procedure if there was “excusable neglect.”

The Second Circuit has set forth four factors to consider in determining whether “excusable neglect” has been demonstrated:

“(1) the danger of prejudice to the party opposing the extension; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the party seeking the extension; and (4) whether the party seeking the extension acted in good faith.” *Anderson v Beland (In re Am. Express Fin. Advisors Secs. Litig.)*, 672 F.3d 113, 128 (2nd Cir. 2001).

Applying this standard, courts have held that “excusable neglect” may be shown where a motion alleges ineffective assistance and trial counsel continued to represent the defendant for months after the 14-day deadline. *See e.g., United States v Kenner*, 272 F.Supp.3d 342, 420 (E.D.N.Y. 2017); *United States v Velazquez*, 197 F.Supp.3d 481, 509 (E.D.N.Y. 2016). In addition, “[t]here is no dispute that a significant intervening change in law constitutes a valid basis to extend the time under Rule 45(b)(1)(B).” *United States v Kirsch*, 151 F.Supp.3d 311, 315 (W.D.N.Y. 2015) (citations omitted).

Here, Mr. Rosemond was represented by trial counsel until March 20, 2018, long after the 14-day deadline passed. Moreover, the basis of this Sixth Amendment claim is a Supreme Court case that was not decided until May 14, 2018. Accordingly, there was good reason why Mr. Rosemond did not assert his claim until now. Further, because this application rests on undisputed facts and should not require any evidentiary hearing (which is due to the nature of the claim, as explained *infra*), it may be resolved expeditiously and without causing any delay in the sentencing proceedings (should the motion be denied).¹ If anything, denying this application as untimely would likely result in a waste of judicial resources by necessitating that the claim be brought later pursuant to 28 U.S.C. § 2255.

For these reasons, and since the government is not prejudiced by permitting this application to proceed, Mr. Rosemond should be permitted to submit this motion at this time. *Compare, United States v Kirsch, supra* (defendant permitted to file motion for a new trial 37 days after an intervening change in law occurred, since there was no allegation of bad faith, no discernible prejudice to the

¹ The defense intends to file a sentencing submission and be prepared for sentencing according to the schedule previously set by this Court.

government and no significant delay in the proceedings); *United States v Kenner, supra* (motion permitted over a year after the verdict where trial counsel represented the defendant for months after the verdict, new counsel needed time to become familiar with the record and the delay did not prejudice the government); *United States v Velazquez, supra* (similar).

The merits of this claim depend upon *McCoy v Louisiana, supra*, where the Supreme Court considered the constitutional ramifications of an attorney, over express opposition by his client, conceding guilt at the guilt phase of a death penalty case, ostensibly as strategy for defeating the death penalty at the penalty phase. The Court began by observing that “[t]o gain assistance, a defendant need not surrender control entirely to counsel.” 138 S.Ct. at 1508, *supra*. Citing *Gonzalez v United States*, 553 U.S. 242, 248 (2008), the Court recognized that :

“trial management is the lawyer’s province: Counsel provides his or her assistance by making decisions such as ‘what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence.’” 138 S.Ct. at 1508.

Still, the Court emphasized that some decisions have always remained for the client, including whether to plead guilty, waive a jury, testify on one’s own behalf or forgo an appeal. *Id.*, citing *Jones v Barnes*, 463 U.S. 745 (1983).

Most significantly, the Court declared that the latter category also includes “[a]utonomy to decide that the objective of the defense is to assert innocence *****” *Id.* The Court elaborated:

“Just as a defendant may steadfastly refuse to plead guilty in the face of overwhelming evidence against her, or reject the assistance of legal counsel despite the defendant’s own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial. There 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*.” *Id.* (emphasis in original).

Thus, while an attorney may reasonably assess that a concession about guilt is the best strategy to avoid the death penalty, “the client may not share that objective.” *Id.* Indeed, the Court recognized that the client:

“may wish to avoid, above all else, the opprobrium that comes with admitting he killed family members. Or he may hold life in prison not worth living and prefer to risk death for any hope, however small of exoneration.” *Id.*; *citing*, Hashimoto, Resurrecting Autonomy: The Criminal Defendant’s Right to Control the Case, 90 N.U.L. Rev. 1147, 1178 (2010) (for some defendants “the possibility of an acquittal, even if remote, may be more valuable than the difference between a life and a death sentence”).

“When a client expressly asserts that the objective of ‘*his* defense’ is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and override it by conceding guilt.” *Id.* at 1509.

The Court cautioned that, even when honoring the defendant’s right to decide whether to maintain innocence, counsel retains the “trial management” role, which involves many choices that do not require client consent, such as “the objections to make, the witnesses to call, and the arguments to advance.” *Id.* (quoting *Gonzalez*, 553 U.S. at 248, *supra*). But counsel, in any case, “must still develop a trial strategy and discuss it with her client, explaining why, in her view, conceding guilt would be the best option.” *Id.*

Accordingly, because the attorney representing McCoy had conceded guilt of three murders, despite McCoy’s express disagreement, the Court concluded that McCoy’s Sixth Amendment right of autonomy had been violated, requiring a new trial. *Id.*, at 1509. In reaching that conclusion, the Court distinguished *Florida v Nixon*, 543 U.S. 175, 181 (2004), where the client had remained silent rather than expressly voice disagreement with counsel’s trial strategy. For McCoy had opposed his

attorney's concession of guilt both before and during trial, both in conference with his lawyer and in open court. *Id.*, at 1509-10. Finally, the Court noted that, because it was the client's autonomy at issue – rather than counsel's competence – a reversal did not require a showing of prejudice, as in *Strickland v Washington*, 466 U.S. 668 (1984) and its progeny. *Id.* at 510-11. “Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called “structural”; when present, such an error is not subject to harmless error review.” *Id.* at 511.

In this case, we recognize, that the circumstances are different than those presented in *McCoy*. Unlike *McCoy*, this case is not a death penalty case. And unlike in *McCoy*, trial counsel here did not concede guilt altogether. But trial counsel here *did* concede facts over the express opposition of Mr. Rosemond. Moreover, we submit that the nature of the facts conceded are comparable to the type of admission made in *McCoy*. For one thing, the fact conceded here – participating in a shooting conspiracy – is tantamount to an admission of a crime, albeit not the crime charged. Relatedly, the concession could be construed as amounting to an admission of the *actus reus*, though not the *mens rea*.

In addition, as noted in an excerpt quoted above, the Supreme Court recognized that a defendant “may wish to avoid, above all else, the opprobrium that comes with admitting he killed family members.” 138 S.Ct. at 108. Similarly, it would be understandable for a defendant, such as Mr. Rosemond, to want to avoid the opprobrium of admitting that he paid another person to commit a shooting (even while denying an intent to kill). Indeed, Mr. Rosemond states in his Affidavit that, “I opposed [Mr. Touger's] approach not just as a matter of trial strategy, but also because I viewed it as a concession that I had committed an immoral and shameful act.”

Notably, the question is not whether Mr. Rosemond – or the defendant in *McCoy* - had a rational reason for believing that the concession at trial would actually result in any additional public shame. Nor is the question whether the trial strategy he pursued more likely to result in acquittal, in view of all the circumstances. If those were the questions, then harmless error would apply, which *McCoy* rejected. The question, instead, is simply whether the Sixth Amendment’s “right of autonomy” granted Mr. Rosemond final authority to decide whether to concede that he had asked, directed or paid anyone to commit the shooting.

To put the issue more squarely, we posit that *McCoy* may be interpreted as modifying the scope of counsel’s “trial management” authority in the following way: counsel may not concede facts which either: (1) amount to an admission of a crime (even if not the crime charged); (2) amount to an admission of the *actus reus*; or (3) amount to an admission of facts that one could perceive as resulting in opprobrium. Interpreting *McCoy* as such, it follows that Mr. Touger’s concession – over Mr. Rosemond’s express objections - violated his Sixth Amendment right of autonomy, thereby requiring a new trial. *Cf., Belitsky v United States*, 2018 WL 2317796, *7 (M.D. Florida 2018) (counsel retained authority to concede interstate commerce element after *McCoy*); compare, *Krogmann v State*, 2018 WL 3084028 *19-25 (Iowa 2018) (defendant’s right of autonomy was impinged by inappropriate asset freeze, which prevented him from expending funds to control his defense).

Dated: August 1, 2018
New York, NY

Respectfully submitted,

/s/

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____ X

UNITED STATES OF AMERICA,

-against-

JAMES J. ROSEMOND,

_____ X

AFFIDAVIT

10 Cr. 431 (LAK)

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

JAMES ROSEMOND, being duly sworn, deposes and says:

1. I am the defendant named in the captioned matter and have personal knowledge of the facts related herein. I submit this affidavit in support of a Rule 33 motion for a new trial, and to clarify the facts relating to my discussions with my trial attorney, David Touger.

2. Several times before and during the trial, Mr. Touger and I discussed trial strategy. During these discussions, I learned that Mr. Touger intended to pursue a trial strategy which I strongly opposed.

3. Specifically, Mr. Touger advised me that he planned to argue to the jury that, even if I had paid individuals to shoot at the victim, I did so without the intent to murder the victim. In other words, his strategy was, in effect, to concede that I had authorized the shooting, while disputing that I possessed the necessary intent.

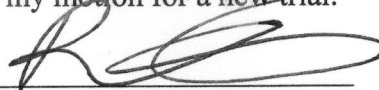
4. I made clear to Mr. Touger, before and during the trial, that I vehemently disagreed with his strategy. I asked him to argue to the jury instead that I had never asked, directed or paid anyone to shoot at Lowell Fletcher. Instead, I wanted to assert that I had paid Brian McCleod only to bring Fletcher to me. I explicitly told Mr. Touger that I did not want to limit the defense to the argument that I lacked an intent to murder Fletcher. I made these statements to Mr. Touger repeatedly before and during the trial.

5. During the trial, I declined to bring this dispute to the attention of this Court because my understanding was that Mr. Touger had final authority about what trial tactics to pursue and what arguments to present to the jury. Accordingly, I did not think that there would be any benefit to informing this Court about our disagreement.

6. Nevertheless, I was very upset during the trial about Mr. Touger's decision to pursue his trial strategy. Indeed, I opposed his approach not just as a matter of trial strategy, but also because I viewed it as a concession that I had committed an immoral and shameful act.


7. Since my conviction, I have been informed by my new attorney, James E. Neuman, that the Supreme Court has recently decided a case which arguably changes the scope of a lawyer's authority to rely upon a defense opposed by his client:

8. For these reasons, I ask that this Court grant my motion for a new trial.


JAMES ROSEMOND

[

Sworn to before me this
19th day of July, 2018


NOTARY PUBLIC
STEPHEN A. ESPINET
Notary Public, State of New York
No. 01ES6194593
Qualified in Kings County
Commission Expires October 6, 2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____X

UNITED STATES OF AMERICA,

-against-

JAMES J. ROSEMOND,

_____X

AFFIDAVIT

10 Cr. 431 (LAK)

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

DAVID TOUGER, being duly sworn, deposes and says:

1. I represented James Rosemond in the captioned matter at his 2017 trial and am submitting this Affidavit at the request of James Neuman, the attorney who replaced me after the conviction.

2. My understanding is that this Affidavit will be included as an Exhibit to a motion pursuant to Rule 33 of the Federal Rules of Criminal Procedure. Specifically, Mr. Neuman has informed me that – based upon a Supreme Court decision which was decided after the trial,


McCoy v Louisiana – Mr. Rosemond intends to argue that he was deprived of his Sixth Amendment right to decide whether to admit certain facts during the trial.

3. Before and during the trial, I made the determination that the best defense strategy would be to argue that, even if the government establishes that Mr. Rosemond asked other individuals to commit a shooting, the government could not prove the necessary element that he did so with the intent to murder the victim. I believed the Government did not have enough evidence to prove Mr. Rosemond intended to kill Mr. Fletcher beyond a reasonable doubt.

4. I discussed this strategy with Mr. Rosemond before and during the trial. Mr. Rosemond repeatedly told me that he disagreed with the strategy. He said 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.

5. Despite Mr. Rosemond's preferences, however, I did not adopt his strategy.

6. My view at the time of the trial was that, as the designated defense attorney, I had the authority to decide upon the best trial strategy and the best trial tactics for gaining an acquittal.



DAVID TOUGER

Sworn to before me this
~~23rd~~ day of July, 2018



NOTARY PUBLIC

NICOLE WAKNINE
Notary Public, State of New York
No. 02WA6327922
Qualified in New York County
Commission Expires July 20, 2019

EXHIBIT A

March 2, 2015

Theresa Buckson, MD, FACOG
2002 Medical Parkway, Suite 635
Annapolis, MD 21401

To Whom It May Concern:

There are many words that I can think of to describe James Rosemond such as hard working, smart, friendly, caring, and empathetic. He is an entrepreneur and a humanitarian. I am an OB/GYN physician who has been practicing medicine for almost 20 years. We have been friends for 25 years, which at my current age of 46, spans more than half of my life. I am proud to be called his friend. I am hoping that my letter communicates to you an accurate characterization of the James Rosemond that I have been friends with for 25 years.

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. I was always impressed by his entrepreneurial drive and his work ethic. I often joked with him that he was the hardest working person that I had ever met. When I moved away from New York to attend medical school in Virginia, we did not see each other very often, but we remained the best of friends and during most times, talked everyday. He visited me during medical school and I could always count on Jimmy whenever I needed a problem solved. He has always been a faithful friend who has been more than happy and willing to lend a hand when needed and who has never asked for anything in return. In today's society, that is rare. Regardless of the time or of the place, Jimmy always made it known that he was only a phone call away. Many people say this, and do not necessarily mean it. Jimmy meant those words to be taken literally and exhibited this at all times. In fact, his kindness and concern for others was clear during many difficult times in my own life. For example, he offered to come to South Carolina to help me to watch over my mother when she was hospitalized with a severe illness. He also offered his assistance in helping to find my brother a job when he moved to the east coast after suffering a nervous breakdown due to personal and professional losses. It was Jimmy who phoned me at 7:35 am on the morning of my son's surgery to check to see if all was going well. And, when I had an abusive boyfriend, he helped me to garner up

Rosemond letter page 1 of 3

A1710

enough courage to end the relationship. For many family members and friends, Jimmy was the person to call during a time of crisis, and he was never "too busy" to help. He was a wonderful and caring son to his mother when she was living and always took the best care of her. He is a loving father who is actively involved in his children's lives and who always encourages them to do their best in school. He is actually one of the most caring and empathetic people that I have ever been blessed to know.

He is a humanitarian. In 2007, he traveled to Haiti on a charitable mission in order to raise awareness about the plight of Haiti due to its poverty stricken state. At the same time, the goal was to promote tourism to try to help the country evolve from its economic crisis. I remember how excited he was to be able to travel to his native country and to do something positive which ideally would help to encourage tourism and thus promote economic growth. He packed as many of his own clothes that he could travel with and planned to give them to anyone in need. He also pledged to donate hundreds of new articles of clothing and shoes. He hoped that his good will efforts along with the efforts of others traveling on the mission trip would influence people to act in kind, and inspire others to reach out to help his impoverished homeland. I cannot remember seeing him that excited about anything, at any other time. It was doing for others that brought him this certain joy and inner satisfaction. I believe that he feels that it is his purpose.

A few years later, in February 2010, James jumped at the opportunity to become one of the executive producers of the "SOS: Saving Ourselves: Help for Haiti" telethon which was organized to raise money for Haiti after the deadly earthquake that occurred in January 2010.

It is my belief that if given the opportunity, he will have learned from any mistakes that he has made and use this knowledge as a reminder to himself and to educate others of the paths that one should strive to avoid. He has had the ambition and drive to overcome great adversity in life and to build a major entertainment company.

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.

James Rosemond is a dedicated and loving father, a hard working entrepreneur, a respectful gentleman, a role model, and a treasured friend. As a working professional, he takes the time to give back to the community. He is a deeply religious man who prays every day and fasts often, to strengthen his faith even

further. The unfortunate events that have placed him in this situation do not define him. I am hoping that you will consider all of these positive attributes when making your decision about his sentencing.

As long as I have known Jimmy he has been unwavering in his faith and persistent in his efforts to help others. I have always trusted him and will continue to trust him. The crimes that he has been charged with are crimes that are totally out of character for the James Rosemond that I have always known and loved so dearly. If he is given leniency, he will have the opportunity to again offer guidance and encouragement to those who may feel hopeless, just as he offered me hope and encouragement after college to pursue the profession of becoming a medical doctor. If he is given leniency, he will be able to continue his good works and humanitarian efforts, and I am confident that this will be done with renewed fervor.

Respectfully submitted,

A handwritten signature in cursive script that reads "Theresa Buckson MD". The signature is written in black ink and is positioned above the typed name.

Theresa Buckson, MD, FACOG

January 12, 2015

From: Cassandre Henriquez
170 East 4th Street, Apt. 7L
Brooklyn, NY 11218
(917) 363-8299

To Whom It May Concern,

I am writing this letter in support of James Rosemond. He is the fiancé of my cousin Tamika Woolley and I resided with them for six months from December 2009 until June 2010 at the home they shared at 365 Bridge Street, Apt. 20 BC, Brooklyn, 11201 while I was going through a divorce.

I met James through my cousin during the summer of 2009 when we took holiday together as a family. Tamika had explained to James the hardship I was enduring in having to relocate to NYC and my impending divorce. He welcomed me warmly and showed me tremendous support. He would often check in with me to ensure I was okay and offered empathy as he too had experienced a divorce.

James always struck me as a family-oriented and warm person. He made sure everyone was taken care of and in good spirits. While I lived with James and Tamika, Tamika was pregnant with their first and only child together Nevaeh Rosemond and James was an attentive doting fiancé, making sure Tamika had everything she needed socially and emotionally in welcoming their child.

I am aware that James Rosemond's charges are for serious crimes and his confinement is for life. I am aware that this letter is one of the many that will be used to determine whether James Rosemond should receive leniency. James is someone who truly cares for others and it is my hope that he receives consideration for these great characteristics. I must say that I was truly shocked at the severity of the charges and subsequent decision of the courts as that is truly not the James I knew and experienced the time I knew him – which was in close proximity to his daily life – his comings and goings. 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 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. While he was a free man, he was a doting son to his mother and a loving father to all his children, an uncle to many nieces and nephews, a brother and a friend to many. I saw firsthand how much his daughter and son loved being around their father. He was gentle and very loving with a funny playful side with them. His son James Jabulani had struggled with school and he did his best as a father to support him by talking to him, changing schools to ensure he had proper supports and/or reaching out to his network of people that could help his son truly determine the right path for his life. He wanted the best for all he knew. I witnessed the man described above firsthand. I truly believe that should the courts offer leniency to James he can be rehabilitated and re-enter society with no issue continuing to be a blessing and overall strong supporter of all those who truly know and love him.

Sincerely,


Cassandre Henriquez

January 16, 2015
From: Jessica Evangelista
111 W 135th street apt 5B
New York, NY 10030
(646) 363 - 8307

To Whom It May Concern,

My name is Jessica Evangelista, I am from Harlem, New York, and I am 32 year old. I will graduate from Western Michigan University Cooley Law School on January 25, 2015 and I plan to take the New York Bar Exam in July 2015. I am a single mom with two amazing boys ages 6 and 4. I have an interest in Entertainment Law and Intellectual Property, which is how I met James Rosemond.

I have known James Rosemond for about 10 years now. James and I met while I was working in a boutique hotel in midtown. We started a conversation based on what his does for a living and I mentioned that I had an interest in the entertainment industry. I was the front desk agent so I would see him often if he was going to the restaurant at the hotel or if he was staying at the hotel. Each time we would have a conversation about his next career move or I would ask him for advice about what should be my next career move. We established a friendship and he would invite me to parties or take me out to dinner. He would tell me about his journey and how he reached his goals in starting his Management Company. He told me about all the artists he has helped in launching their career and assisting them in taking it to the next level. I was a sponge soaking in all his knowledge and experiences. I was motivated and inspired by him. 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 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 firms 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 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 of great memories and experiences in which James laid down the first piece for which I am internally grateful.

James Rosemond made a great impact on my life and the lives of many.

A1714

He has been a role model and a friend. When James gave advice people listen and took notes. Tons of people have called on him for help and James has always lent out a helping hand. He has provided jobs or recommended many for positions through out the entertainment industry. While working at the law firm we handled some of the legal work for some of his artist so I witnessed first hand how he treated his employees. The way he supervised over his employees and the way they were all a unit in getting the job done. Everyone was happy, they wanted to be there, and they were employee of his for years. James would convince his artists to avoid violence, settle rival wars with other artist and maintain the peace. I over heard him have conversations with others in which he was sincere, caring and understanding. James was acknowledged in many magazines and left many impressed by his exceptional resume of success.

I'm aware that James Rosemond's charges are for serious crimes and his confinement is Life. I am aware that this letter is one of the many that will be used to determine whether James Rosemond should receive leniency. Please consider a man whom I still call my friend, as a contributor to the community. He was a contributor to the economy and a taxpayer. He is an asset and these crimes are out of character for James. I still trust James and in his potential of rehabilitation. I am positive that James understands and has learned from this experience. He has made such an impact in the entertainment community and no one can say otherwise. Gossip sells stories and bad new for some reason out shines the good. But I have faith in James that he can overcome these obstacles and if released early he can still be a major asset to society. I have faith in his chooses, his path and his crime free life. Allow him to continue to be a great father and a great influence on his children. Please consider this man as someone who should be out in society where he can be influencing the lives of others positively as he has already done for many others and me.

Respectfully Submitted,

Jessica Evangelista

Jessica Evangelista

Direct Managing Solutions LLC

January 12, 2015

From: Jarrod Whitaker; CEO & Managing Director

820 Boynton Avenue Suite 18G

Bronx, NY 10473

(917) 420-8108

To Whom It May Concern,

My name is Jarrod Whitaker and I am the CEO & Managing Director of Direct Managing Solutions LLC, a New York City based real estate development firm. My company currently manages nearly 2,000 luxury and affordable units in Manhattan and the Bronx. I completed my undergraduate studies at Columbia University and am currently in pursuit of my Master's degree at NYU.

I have known James Rosemond for nearly 15 years and met him when I was active songwriter and producer in the music industry. With the tutelage of James, I was able to successfully secure a record deal with Blackground Records and have contributed to the sale of more than 5 Million noteworthy artists and acts in the music business. By the grace of God, when the music industry began to slow down because of free downloadable music in the mid 2000's, I was able to use the mechanical royalties and business skills shown to me by James Rosemond to gain acceptance into the School of General Studies at Columbia University and graduated in May of 2013. James taught me the ins and outs of the music business including contract negotiation, royalties and publishing, touring revenue and bookings, video production, and music engineering. Under James guidance, I was able to travel to Los Angeles, Chicago, Miami, and New York City to work with some of the music industry's biggest names. In fact, I met my wife of 12 years through James, as she served as his Office Manager at the time.

I state all this to say that growing 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.

I'm aware that James Rosemond's charges are for serious crimes and his confinement is Life. I am aware that this letter is one of the many that will be used to determine whether James Rosemond should receive leniency. I still trust and believe in James that leniency granted to him can impact thousands of other young men from America's ghettos who come from impoverished neighborhoods with no access to social capital and solid life chances. James' sentence defies all my knowledge of him, as I know him to be a shrewd businessman and a person whose door has always been open to me with no strings attached. I have personally witnessed James Rosemond mentor and shape other notable rappers, actors, athletes, and business persons who run successful companies and provide opportunities for those less fortunate.

It is with my deepest sincerity that I ask your leniency at Mr. Rosemond's sentencing and that he may be released at some point in the future to work with at risk youth and share his life experiences.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'James Rosemond', with a long horizontal line extending from the bottom of the signature.

TO WHOM IT MAY CONCERN

I write this letter for James Rosemond who I've known for several years now since my incarceration at the MCC-NY facility. I am 24 years old black male and have been in and out of trouble for a long time. My name is Eban Carrion.

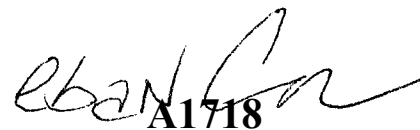
When I met and saw Jimmy Rosemond I had envision something totally different as things that I read about him either online or in the newspapers were different from the person I have come to know and respect. Somehow the negative is more exposed than the positive things that Mr. Rosemond have done.

Because I lack a father image growing up in the neighborhood that I grew up in and my mother being a single mother since I could remember, Mr. Rosemond have taken on that fatherly image for me. Especially since he has a son that is around my age I came to him for advise and guidance on life an general and understanding. I have 2 children myself and would hope that I am not like my father who was never there that I attribute to my situation. At a very young age I placed in a group/foster home and that was the turning point for me that I searched the streets for love and guidance. At age 13 I spent time in Spoffard juvenile center and there was no turning back from there. My life have been on a spiral down spin since.

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 posible if you really want it. I never could relate to my prior counselors or mentoprs before but with Mr. Rosemond he told me his youth and how it was simular to mines and how he had a single mother and how he received his education in jail and was determèned and how he ended up managing some of the top artist and athletes in the business. Its 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.

I just completed my G.E.D and have read books that I never thought I could read and was very intimidated by. But I almost forgot why I admise Mr. Rosemond so much. I have a cousin the headed up the same path as me when we were younger and did a stint in Rikers Island for 8 months. During his stay he told me that various speakers would come to the jail and speak and Jimmy Rosemond was one of them. Im not going to say it was Jimmy Rosemond who made my cousin go to college but he always talked about the speach Mr. Rosemond gave about walking through the very halls they walked through and how he sat and listened to others like they were and that always enspired him to do better. Jimmy Rosemond was one of those influences, and now I was able to have one of those moments with him and I take that as a blessing.

I hope this would give you some insight on the man, father, brother and inspirator that I've come to know and you give him any leniency that you can. Thank you.


A1718



THE MOSQUE OF ISLAMIC BROTHERHOOD INC.

**130 WEST 113TH STREET
NEW YORK, N.Y. 10026**

20 Rabiuth-Thaani 1436 A.H.
9 February 2015 C.E.

Southern District of New York Court
One St. Andrews Plaza
New York, New York 10007

Attn: Honorable Judge Collen McMahon .

Dear Judge McMahon:

I am writing in advocacy of James Rosemond, whom I have known for approximately 17 years. I initially met him in my capacity as a Muslim Chaplain working in New York City, while he was incarcerated under the authority of the New York City Department of Corrections.

Once he 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.

Needless to say, his arrest and subsequent conviction in two different trials years later, including the one which you presided over last year, was both sad and disappointing for those of us who had faith in his human potential.

Surely crimes resulting in the loss of human life are the most egregious. However not withstanding the requirements of mandatory legal sentencing, I felt moved to appeal to you for the law to be applied with justice tempered by mercy, through application of concurrent sentencing in this case

Yours Respectfully,

Al-Hajj Talib 'Abdur-Rashid
Imam

M.I.B. Inc.

Cc: attorney
File

State of New York
County of N.Y.

Subscribed and sworn to before me,
the 9th day of FEB. 2015 by

Notary Public

JACKSON LEE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LE6121031
QUALIFIED IN QUEENS COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
COMMISSION EXPIRES JANUARY 3, 2017

phone: (212) 662-4100
fax: (646) 476-6709
website: mibnyc.org
e-mail: mibsec@aol.com

1/15/15
Cavario Hunter
2020 Howell Mill Rd. NW
Atlanta, GA 30318
(404) 808-9281

To Whom It May Concern,

My name is Cavario Hunter; I am a journalist, author and publisher. I'm 47 years of age and I live in Atlanta, GA with my wife and 11-year old daughter.

I have known James Rosemond 15 years, and consider him a dear personal friend. We first became associated when he launched his entertainment company and sought marketing and promotion through my then publication, Don Diva magazine, for his various music projects. From that time we proceeded to build a strong bond as I found his character to be solid and his word to be trustworthy. As the years progressed and his business grew I would often call upon Jimmy for access to entertainment related events, or a chart topping artist, and it always amazed me how he seemed to go out of his way to accommodate my requests, which he virtually never failed to do. As a result of our common professional interests we found ourselves *collaborating quite often and before long we'd become like brothers, supporting one another morally and professionally.*

My friend, Jimmy's beneficent nature was not exclusive to me as he often went the extra mile to assist everyone he came into contact with, whether they were an aspiring young musician in need of counsel or recommendation or a young professional in need of employment, if Jimmy didn't have a job for you he'd find someone who did. He was always making an effort to help someone else along. He encouraged others to do what they could for others because he understood that the difference between a dream realized and a dream deferred was often the belief that the people in an individual's life expressed in them. He wasn't afraid to share with the young people in his company that he was able to give them a chance only because someone had given him a chance. His stern leadership and kind heart earned him the loyalty of all in his employ and visiting his Manhattan office was reminiscent of visiting a large family.

I'm aware that James Rosemond's charges are for serious crimes and his confinement is Life. I am aware *that this letter is one of the many that will be used to determine whether James Rosemond should receive leniency.* I trust Mr. James Rosemond and will always consider him a dear friend. Knowing my friend's ambitious nature, his feeling about family and providing for those close to him, I can see how he lost his way but it my sincere opinion that his potential rehabilitation certain. If he were to be released early, I believe he can he overcome this obstacle with great potential to succeed and again become an asset to society.

Respectfully Submitted,



Cavario Hunter

Marc Wright
50 Paladino Avenue, #5C
New York, NY 10035
January 3 , 2015

To whom it may concern

I thank you, in advance, for taking the time to read this letter and for taking it into consideration when you sentence James (Jimmy) Rosemond. I am honored to be writing this letter of support for him.

I first met Jimmy around 20 years ago when I worked in the music industry. We were introduced by a mutual friend. We hit it off professionally from day one and, over time, developed a lasting friendship based. We shared many core beliefs: love of family, loyalty to loved ones, fair treatment to all, the importance hard and smart work, and that hard work and education are essential to breaking a cycle of poverty.

While in my presence, Jimmy was always courteous, gracious, and professional . . . , unlike many other music industry executives who, often times, carried themselves with an air of entitlement.

On many occasions, I had the opportunity to see Jimmy exhibit a side of himself that was barely ever seen by the public. I would regularly see Jimmy buy food for homeless people and provide encouragement for the less fortunate. When I asked him why he always seemed to go out of his way for others (especially those experiencing hard times), he simply replied that, although he had worked hard to get where she was, he felt that he had been blessed and had an obligation to help out as many others as he could. His words always made me think of the old adage (which I paraphrase): "From those to whom much is given, much is expected."

I am aware of the fact that Jimmy is about to be sentenced for the crimes for which he was recently convicted. Knowing Jimmy as long as I have, I probably know more about his character than most.

I know Jimmy to be a proud and hard working man. He is also down-to-earth and very generous with his time and money. He has often provided financially for those for whom he cares.

He's also not one to prejudge people. Instead, he forms his opinions on people based on their actions and how they interact with not only him, but others.

I offer no excuse for his involvement in the criminal activity for which he is about to be sentenced

Having grown up in Harlem, and having known others who have been incarcerated, I have learned that prison appears to do very little to rehabilitate inmates. For "real

Page 2

criminals”, it tends to make them better criminals while, for others, it tends to break their spirits.

I understand that you are charged with the sentencing of Jimmy and, if you feel that his sentence should be severe, I respect your decision. I do ask that you consider the following suggestion and make a significant portion of his sentence community service based.

Jimmy is well known in many circles and has (what most would consider) celebrity status. He would be more beneficial providing community service than sitting in a jail cell. I envision him speaking to impressionable, at risk, inner-city youth and telling them of the mistakes he’s made in life while advising them to stay on the “straight and narrow.” He could have a much more lasting impression than someone who has no street credibility, has not experienced financial success, and who has not had a fall from grace.

Please strongly consider how many youth Jimmy can influence to be productive citizens in society.

Thank you, in advance, for reading this letter. Please have compassion in sentencing Jimmy.

Respectfully submitted,



Marc Wright

Character Letter for James Rosemond

January 9, 2014

From: Shanae Hall -Author, TV/CBS Radio personality
233 Kigian Trail
Woodstock GA 30188
(818)665-6103

To Whom this may concern,

Hello. My name is Shanae Hall, I am writing you in reference to my dear friend James Rosemond, who is appearing before you to request an early release date.

I am writing this letter, not because I was told too, but because I feel strongly about James Rosemond, and about his future, and I would like to take a moment to try and make you care for his well being the way that I do.

James is very generous with his time and his money. I can remember many times when I was still trying to establish my footing in my career and he would say "I know its getting cold in Atlanta, give me your kids clothes sizes (I have 3 kids) let me get them some winter clothes so you don't have to worry about that. Normally within two days my kids would have new jackets, sweaters and new shoes. I never asked James to do that. Its because he is a loving caring man that he would extent his helping hand to anyone in need. This is just one example of how James demonstrates his generosity and compassion to others. On many different occasions I saw James give freely to waiters, waitress, valet attends, black, white, short, tall, fat, ugly or other, it didn't matter. If James could make someones life a little bit easier, even if it was only for a day, he did it. And this is what I have grown to love about him over the past 6 years.

I am not saying these things to you to make you think that he walks on water, however James is a person of good moral character. I realize that might seem hard to believe, given the circumstances, but it's true nonetheless. I have seen him move people to tears with his kind heart and generosity. James has made mistakes, and he is incredibly remorseful, and is willing to do whatever it takes to make reparations, financially and emotionally, if possible. But to do that, he needs you to give him an opportunity to have a second chance. I recognize that James broke the law, and I do not believe that he has gone without punishment. At his age every moment without his friends and

family is an eternity. Having a man like James Rosemond behind bars is a disservice to everyone. I just hope you will recognize the power you wield with regard to the future of this man, and make a fair decision.

Thank you in advance for your consideration,

Shanae Hall

Shanae Hall

Fatima Rosemond
445 Thomas S. Bogland street
Brooklyn N.Y 11212 Apt #1D

To whom it may concern:

I Fatima Rosemond niece of James Rosemond come to you as humble as possible asking for leniency for my uncle. He was my father and my father figure when my father was not there for my brothers and I. He always push me to follow my dreams as I took the step to become a New York City Police Officer in 2008 later on in my career I wanted to change direction and become a New York City Correction Officer he stood right behind me and said go for it. My three children know him to be the best uncle in the world. I have seen my uncle take care of my Grandmother his Mother as she fought breast cancer twice then finally losing her battle in 2010. I know my uncle to be a great father to his three children and a great man to everybody in our family. He was a shoulder to lean on a ear to all. I'm asking to shine light on his life so that his kids can still have a father that I knew growing up. There's no words to explain my love I have for him as a person as a father figure as a uncle. Once again I'm asking for leniency for his life. Use him to mentor young men that are coming up in the Criminal Justice system and maybe he can stare them in a different direction. I'm asking you to have MERCY on my family we have been through enough from losing my grandmother to breast cancer a few years ago to losing my uncle. It feels like I got a life sentences as well because my family will never be the same without him and his words to push forward to be great to make my GRANDMOTHER PROUD. I thank you for your time.

Respectfully,

Fatima Rosemond

Fatima Rosemond

Date: Jan 3, 2015
From: Kareem Saleem / 731 Union Member / Construction
Address: 368 Putnam Ave Skilled Laborer
Brooklyn N.Y. 11216
Phone # 917 683 8022

To Whom This May Concern,
My Name is Kareem Saleem. I lived
in Brooklyn N.Y. James Rosemond
is a very good friend of mine.
I have known him personally
for about 35 years. We grew up in
same neighborhood. Our environment
had a terrible impact on our lives.
We where poor and uneducated; therefore
that led us to crimes; and as
a result of that, prison was our
dewelling place. We lost contact for
about 15 years due to my incarceration
as well as his.

Moreover, prison allowed us the
time to improve our education and develop
moral values, and spiritual growth. We
where in different prison, but the
word spread fast how James Rosemond
was changing his life; he was a spiritual
leader = assistance to outside man. ~~He~~ He
was attending college and always strongly advising
A1726

the young men and brothers the important of family life and education. Even during our days of growing up, he never appear restless. Therefore I wasn't surprise about his change. When you are chosen for a spiritual leader, its done by a community. Therefore there have to be a certain character one must have. And that knowledge of Quran, the Sunna Pathway of Prophet Muhammad (P.B.U.H) and most of all integrity, honesty, loyal, and compassionate toward people, and to be very patience and have the ability to solve problems well.....

Subsequently, In 2003 I was shopping an inspiring rap artist (Spot) and Jimmy (James Rosemond) signed him to Czar Entertainment. This occurred around 2004 or so. Moreover, what stuck in my mind the most how James Rosemond operated a staff of about 10 to 15 people out of his office on 25 street, in Manhattan. I was often there during Spot recording sessions. James was often at office very early in morning, conducting the affairs of his artists like manager. I recall clearly one ~~such~~ incident where a artist didn't get payed and James made it clear to his staff to write a check immediately and advise the responsible person, that in the future never delay a person they

money. He was diligent about anybody he worked with that they get paid and on time. I never saw nobody express the importance of a person getting there rightly due than James Rosemond. I also recalled a time when he was asked to go and speak to the adolescents. Without hesitation he ~~agreed~~ agreed. James was very kind to his staff. He would give gifts he paid on time to his staff and if they had a crisis he supported them.

When my father died James Rosemond was the first to help my family with my father's burial. He didn't make no excuses. He was very inspiring. I saw him come to office early and leave late. Always he was first at his office and last to leave a lot of nights. He wanted to expand in the music industry and empower people by giving them jobs. He was a very devoted and dedicated father. He often done many things with his children and loved them unconditionally. Also his brothers were close to him and he loved his mother a great deal. He was always concern about her health before she died. So yes he is very family orientated. Jim and his family often visit his mother in Atlanta before she passed away.


I'm aware that James Rosemond charges are serious crimes and his confinement is life. I also know that this letter along with others will be use to determine whether James Rosemond ~~receive~~ should receive leniency. As long as he is a live, along with me/breathane, I will remain my friend. I saw him change once for the best and believe he could do it again. He never turned his back on nobody. I trust him wholeheartly Always. He been a very sincere friend and sincere person. I was quite surprise about the offense, cause we often talked about how he never wanted to ever go to jail again.

I truly believe from the bottom of my heart that James Rosemond will never stop evolving into a morally value growing person. His relentless efforts in being a productive individual is part of his character. I witness it in his attitude when we communicate. James Rosemond never showed malice during this whole ordeal, he accepted his fate and continue to be patience and humble, the mark of a true man. If release early in my opinion, he will be productive in society.....

TO WHOM IT MAY CONCERN:

I asked James Rosemond if I could write this letter for him because he has done so much for me and others while his incarceration at the Metropolitan Correctional Center. My name is **Christopher Thomas** and have been incarcerated since 2012 and I am a drug abuser and have been really down on life when I first entered the system. I was contemplating suicide because of my psychological issues which compounded by my incarceration. I am also a gay man which made my stay here more strenuous. Regardless of who I am and the usual prejudices I faced it was James Rosemond that looked at me as a human being and single handedly helped me during my tough time of detoxing. Mr. Rosemond never judged me and just the basic things like advise and encouragement was enough to get me through these times. He encouraged me to take the drug programs that the facility offers. These programs have assisted me to take one day at a time to stay away from drugs but I may not have gone to them if Mr. Rosemond did not push me to do so.

I am scheduled to go home soon in a few years but I know that Mr. Rosemond have a considerable amount of time to do, I sincerely petition to the board/courts that they show any leniency for a man who genuinely cares about people and helping anyone that needs help. Its not on myself that he have done this for I have watched him do the same for others that are less fortunate than I as I do have family that visit me and care for me; other who dont have that I personally watch Mr. Rosemond share his commissary or buy things for them because he cares and that can make a difference from someone have a bad experience or a decent one that may prevent coming back to jail.

 A1730

Wednesday, January 14, 2015

Renai Strother
230 West Main Street, 2
Stamford, CT 06901

Dear Sir/Madam:

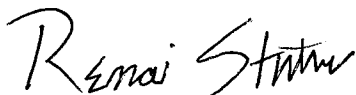
I'm writing this letter to attest to the character of James Rosemond.

I've known James for over 20 years. James and I met when I lived in New York City. James and my boyfriend, at the time, we're really good friends. When my boyfriend and I would hit a rough patch in our relationship, I would go to "Jimmy" to talk to him about it. I found Jimmy to be attentive, compassionate, very intelligent and genuine. We became very close. Jimmy's the kind of person that would intuitively sense that something was wrong with you and call. And would be right.

Jimmy is also the kind of person that doesn't mind giving to people that are in need. I know that he's assisted in paying people's rent. Buying food for people in need; and even helping with moving expenses. As a matter of fact, he gave me \$1,000 to help move me out of a detrimental housing situation. I also know him to have a strong moral compass. When he found out that teenagers were being sexual exploited, he spoke up about it and exposed it.

I'm aware that Jimmy's charges are serious. I can only request that the court would take the account of the Jimmy I know, and apply leniency when it comes to his sentencing. I know that he has committed crimes many, many years ago. But the Jimmy today has not been that person for at least 10 years. Before Jimmy became incarcerated, he was successful in the music industry, while continuing to help people in the community. He's helped people from the lowest levels of society to the upper-echelon. I believe his continuous incarceration would be a misstep for society at large.

Sincerely,



Renai Y. Strother

Dear Sir/Madam:


My name is Glen Thomas and I'm currently incarcerated at the Metropolitan Corr. Center. I am 22 years old and have known Mr. James Rosemond for several years now. During that time I have come to know Mr. Rosemond for who he is and what he stand for. So I write this letter for Mr. Rosemond the mentor, the motivator and inspirer.

The way I've come to know Jimmy Rosemond is alot of guys in my age group and younger do not have our G.E.D and usually sit around here in the units doing nothing or congregating with others about negative things that will only get us in trouble in here or when we are released. But when we talked to Mr. Rosemond he always had positive things to say and told us to spend our time useful. We looked up to Mr. Rosemond because he is in the music business that is amazing to be in.

Jimmy Rosemond have used his influence to encourage individuals including myself to take the G.E.D and to read books that can give us hope and give us aspiration. He set up reward systems challenging us to take and pass our G.E.D and no one have done that before that I have seen. Most guys Mr. Rosemond age talks about the old days when they were doing negative things.

Let me explain to you what he have personally done for me while I have been around him. I do look up to him and I am glad that he is a positive force in my life along with others in my age range. But I was here without a G.E.D and Mr. Rosemond took the time out to give me the one on one attention I needed to get prepared to take the test and passing it. I always had difficulty reading and Mr. Rosemond was patient enough to help me along that journey and told me that reading would strengthen my vocabulary and those was the exercises he put me through to where I have taken my G.E.D and passed it. He explained that he reached to his heights starting with a G.E.D and it made me believe that I am one step closer to being a better and productive person in society. But its the initial step that Mr. Rosemond helped me with. There is not too many people who would do that if they are not getting paid for it or rewarded some how. Mr. Rosemond sincerely wanted to help me and he did and He have done that for many individuals like me, I'm just one of many.

I hope that this letter helps shine a different light on Mr. Rosemond than some of the negative stuff that is out there about him alot of it is urban legend, he genuinely care about his peers, younger generation and those he care for. My testimony will always be that Mr. Rosemond gave me the spark that makes me want to be a better person for me, my family and society. We need Mr. Rosemond to do that for others in society where it can count more before young guys end up in here.

 A1732



January 5, 2015

Wills J. Felin

Jitter Flix, LLC
502 Palm Street
West Palm Beach, FL 33401

Telephone: (1800) 366 - 9843

To Whom It May Concern,

My name is Wills J. Felin, I'm 45 years old and currently reside in Loxahatchee, FL.

I've known James Rosemond for over 13 years. We were introduced through a mutual friend. Shortly after the introduction, Mr. Rosemond and I developed a business relationship in which he periodically contracted me for various video production assignments for his company. I was given the opportunity to document Mr. Rosemond and his colleague, Mr. Wyclef Jean in the island of Haiti while they were on a humanitarian expedition. During that trip I witnessed Mr. Rosemond's unconditional acts of kindness to the people of Haiti - literally giving the clothes off his back and suitcase to those in need. Upon further conversation, it was quite evident that for all of his professional life, he was utilizing his music industry success to assist people who aspired to live dignified lives.

The fact is I'm one of these people who've benefited from Mr. Rosemond's kindness. Our interaction exceeded far beyond monetary transactions; through the years, Mr. Rosemond would become a mentor whom I could rely on for personal and business advice. I was given an open

A1733

door policy in which I could observe his business prowess and acumen. The thing that impressed me more than his business "power moves" was his ability to balance fatherhood and the grueling demands of the music business simultaneously. On many occasions he would be taking care of business in the office while also assisting his young daughter and son with their homework. As I really got to know Jimmy, it was evident that his desire was to become a world-class music mogul in the likes of Clive Davis, Jimmy Iovine, David Geffen, Russell Simmons, etc. He wanted to be judged on his merits as a music business entrepreneur who was responsible for molding young aspiring artists to become major super stars, many who are still relevant today.

I'm aware that James Rosemond's charges are for serious offenses; however, it saddens me to know that his confinement is life. And though our friendship was estranged during the time of his arrest and subsequent conviction, I strongly felt compelled to vouch for his character. I still consider him a friend and honestly believe that given the chance, he would, more than ever, become an asset to his community and society in general.

Respectfully Submitted



Wills J. Felin
Jitter Flix, LLC
502 Palm Street
West Palm Beach, FL 33401
(1800) 366 - 9843
wills@jitterflix.com

1/19/15

To Whom it May Concern:

I am writing this letter on behalf of Mr. James Rosemond.

I have personally known Mr. Rosemond since our early teenage years in Brooklyn, New York. I am the God-Father of his children and I spent a lot of time With Mr. Rosemond throughout our lives. I was fortunate to work alongside him thru his Management Company CZAR ENTERTAINMENT For about three years – 2003 – 2007.

I knew of a great many philanthropic endeavors that Mr. Rosemond took upon himself, from helping a person in need, To speaking to youths at Riker's Island, To paying for funerals for people that were destitute, To helping start-up businesses, to helping the Haitian community before and after the earthquake.

While assisting with him at CZAR ENTERTAINMENT, I saw first hand how Mr. Rosemond dealt with situations as an owner, as a supervisor and also matters in and out of his office. He was called upon to meditate and advise many individuals in the entertainment industry and other matters.

Nevertheless, in the present state, Mr. Rosemond is in front of your court and I ask you to consider that Mr. Rosemond is an individual whom is worth leniency. I cannot think of another individual that deserves a second opportunity to be a contributing member of this society.

I am hoping that this Court sees that Mr. Rosemond is a candidate to be considered for leniency

Respectfully,

A handwritten signature in black ink, appearing to read "Courtney L. Sterling". The signature is fluid and cursive, written in a professional style.

Courtney L. Sterling/CEO

Moving On Up Enterprises, LLC

2815 Cortelyou Rd. Suite 1

Brooklyn, New York 11226

Sibrena Stowe 63 W. 30th Street, #102 Bayonne, New Jersey 07002

February 5, 2014

Dear Your Honor,

I'm writing this letter of character for James Rosemond who, a gentleman who will be sentenced soon.

My name is Sibrena Stowe and I've know Mr. Rosemond for approximately 15 years, as both of us are business colleagues in the music and entertainment industries. Since knowing James Rosemond, I've admired his working spirit and ethics and was impressed by how he accomplished a successful career as a music and sports manager and eventually television shows and films.

While I can not attest to any crimes in which he's been found guilty of and it is not my place to do so, I can only express with honesty, the person that I've know and worked with and at some period in time, I've work on behalf of and he's been very upfront and direct with me and my staff. I've never witness him in any aggressive or abusive manner, and he's been a complete gentleman and respectful towards me and others *that we were in the our presence. I ask the court to be lenient on James Rosemond* and consider this letter. I'd also ask that this letter remain in your possession and I sincerely hope you consider my request. If you have any further questions and need to contact me, my address is listed above. I thank you in advance for your consideration.

Respectfully,
Sibrena Stowe

A handwritten signature in cursive script, appearing to read "Sibrena Stowe".

Wednesday 14th January 2015

Tim Westwood
17, Clifford Haigh House
280 Fulham Palace Road
London
SW6 6HP
United Kingdom

To Whom It May Concern,

My name is Tim Westwood and I am regarded as the leading hip hop DJ in the UK. I was on BBC Radio 1 for twenty years, and have recently joined a station called Capital Xtra, part of Global which is the largest independent broadcasting group in Europe. I have a YouTube channel (www.youtube.com/timwestwoodtv) which is one of the largest urban channels in the world, with nearly a quarter of a billion video views. I am based in London, but I DJ extensively throughout the UK and Europe, as well as frequently touring Africa.

I have known James J. Rosemond for over twenty years in his role as an entertainment manager. His managerial talent has undoubtedly contributed to the success of many recording artists' careers including some of the biggest names in hip hop and RnB music, such as The Game, Sean Kingston, Brandy, Gucci Mane, Salt-n-Pepa and Akon.

I have met James many times professionally in New York, and have had many dealings with his management company Czar Entertainment in relation to the artists he was managing. This was to arrange radio and television interviews, appearances, and to give advice on touring the UK. After building up a working relationship I then went on to meet him socially both in New York and Miami, the last time being in 2008 to celebrate his birthday at a private dinner party in Miami. I have also visited him several times at his apartment in Miami.

I now regard James as a friend as well as a professional colleague. I have found James to be a very sincere, decent and genuine person, which is very rare in the music business. I have always been impressed by his gentlemanly manner and his generosity. I have always regarded him as a man of his word and to be very trustworthy.

His business conduct was always of the highest standard. He was dedicated to performing the best for his artists and had a strong work ethic. He often gave opportunities to young people trying to get into the music industry by employing them to work at Czar Entertainment.

I'm aware that James J. Rosemond's charges are for serious crimes and his confinement is Life. I am aware that this letter is one of the many that will be used to determine whether James should receive leniency.

After all that has happened I would still regard James as a trustworthy friend. I am truly shocked at the offences, as I do regard them to be totally out of character, and not the man that I know. I feel he has the potential to be totally rehabilitated and become an asset to society. I feel the music industry has lost a valuable and talented executive.

Respectfully Submitted



Tim Westwood