

No. 20-\_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM, 2020

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ANGNEM GREEN,  
*Petitioner,*

v.

STATE OF NEW YORK,

*Respondent.*

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ON PETITION FROM THE NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

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**PETITION FOR A WRIT OF CERTIORARI**

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JOHN A. CIRANDO, Esq.  
*Counsel of Record*  
D.J. & J.A. CIRANDO, PLLC  
101 South Salina Street,  
Suite 1010  
Syracuse, New York 13202  
315.474.1285  
cirandolaw@outlook.com

*Counsel for Petitioner*

## **QUESTION PRESENTED**

Petitioner an African-American man, was tried for the crime of Criminal Sale of a Controlled Substance, namely cocaine. During the prosecutor's closing statement, he mockingly imitated Petitioner's African-American voice in an alleged phone call with one of the prosecution's witnesses, and also made racial inflammatory comments during closing arguments.

The question presented, thus, is whether the New York Appellate Division, Fourth Judicial Department erred in finding Petitioner's Constitutional right to a fair trial was not violated, where not a single judge commented or admonished the prosecutor's conduct.

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Angnem Green, the petitioner herein, prays that a Writ of Certiorari be issued to review the judgment of the New York Appellate Division, Fourth Department, which appears as Appendix C.

## **JURISDICTION**

The date upon which the New York Court of Appeals denied application for rehearing was July 24, 2020. Petitioner timely filed this Petition within one hundred and fifty days after the Order denying reconsideration pursuant to the Court's March 19, 2020 Order modifying Rules 13.1 and 13.3.

The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1257(a).

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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**IN THE SUPREME COURT OF THE UNITED STATES**

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ANGNEM GREEN,  
*Petitioner,*

v.

PEOPLE OF THE STATE OF NEW YORK,

*Respondent.*

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**ON PETITION FROM THE NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT**

---

**PETITION FOR WRIT OF CERTIORARI**

---

Petitioner herein, respectfully petitions that a Writ of Certiorari be issued to review the Memorandum and Order of the New York Supreme Court, Appellate Division, Fourth Department rendered in the above-entitled proceeding which appears at Appendix C.

The conduct of the prosecutor during the Petitioner's trial was unprofessional and completely unacceptable in our modern society. The prosecutor in this prosecution impermissibly injected race into the instant trial during his closing summation to an all-white jury.

## **CONSTITUTIONAL PROVISIONS**

This case involves Section 1 of the Fourteenth Amendment of the United States Constitution and Article I, Section 11 of the New York State Constitution.

United States Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution, Article I, Section 11:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

### **STATEMENT OF THE CASE**

The Petition concerns an important and significant question of importance regarding the Constitutional right to a fair trial where the prosecution impermissibly injects race into a criminal trial.

Petitioner was convicted following a jury trial in Ontario County Court (Frederick G. Reed, A.J.), New York.

Petitioner's judgment of conviction was affirmed but Petitioner's sentence on each count was unanimously modified as a matter of discretion in the interest of justice by Memorandum and Order of the Appellate Division, Fourth Department, decided and entered January 31, 2020. The Memorandum and Order is published at 179 A.D.3d 1516 [4<sup>th</sup> Dep't 2020] and is reproduced in Appendix C, *infra*.

Among other arguments on appeal, Petitioner argued that he was deprived of a fair trial. First, the Appellate Division held Petitioners argument that he was deprived of a fair trial due to the prosecutor’s comments during *voir dire* that crack cocaine, unlike marijuana was “hardcore stuff” is a contention that was unpreserved and that even so even if the comment was improper “it was not so egregious or prejudicial” to deprive Petitioner of a fair trial (Appendix C, 3a).

Second, the Appellate Division, rejected Petitioner’s argument that he was deprived of a fair trial because the trial court failed to excuse a juror with suspect impartiality [juror admitted during *voir dire* that she knew someone “high up in the state troopers” and when asked about that replied “I don’t think it would affect me”] to serve as a juror. Appendix C, 3a-4a). The Appellate Division found the error did not require reversal because Petitioner did not challenge the juror for cause, and that even if the trial court erred in failing to excuse the juror for cause, Petitioner had not “exhausted his peremptory challenges and did not peremptorily challenge” the juror during *voir dire* (Appendix C, 3a-4a).

The Appellate Division, rejected Petitioner’s remaining arguments that he was deprived of a fair trial finding “none warrants further modification or reversal of the judgment” (Appendix C, 4a).

Petitioner filed an Application for Leave to Appeal to the New York Court of Appeals which was denied by Order (Janet M. DiFiore, C.J.) entered May 28, 2020. The Order Denying Application for Leave to Appeal is included in Appendix B *infra*.

Petitioner filed an Application for Reconsideration of Leave to Appeal to the New York Court of Appeals which was denied by Order (Janet M. DiFiore, C.J.) entered July 24, 2020 (Janet M. DiFiore, C.J.). The Order Denying Reconsideration of the Application for Leave to Appeal is included in Appendix A *infra*.

. On February 7, 2017, an Ontario County, New York Grand Jury returned an Indictment charging Petitioner, with the crimes of Criminal Sale of a Controlled Substance in the Third Degree (3 counts), and Endangering the Welfare of a Child. The Indictment alleged that on July 1, 22, and 31, 2014, Petitioner knowingly and unlawfully sold cocaine, and on July 31, 2014, did so in the presence of his children. Petitioner was arraigned on February 23, 2015. On May 23, 2016, jury selection occurred (Trial Tr. 54-308).

Trial continued, on May 24, 2016, and summations were given. During the prosecutor's summation he claimed that it was "undisputed" that one of the state's witnesses "purchased crack cocaine from this defendant [Petitioner], undisputed" (Appendix D, 58a). The prosecutor asserted that a Geneva Police Officer who testified at trial, had no credibility issues, no motive to lie, and knew appellant's voice "beyond question" (Appendix D, 60a).

The prosecutor then characterized Petitioner as "savvy" and, attempted to imitate Petitioner's African-American voice stating:

Why would I stick my own neck out on the line? Whoa, whoa, whoa, whoa, whoa. Let's switch it up. I'm going to send my boy to do the deal. He's going outside in the middle of the park. I'm not getting out there. I'm going to send my boy Nicky Phelps [sic], out to do that deal (Appendix D, 61a).

The prosecutor continued to offer statements that he believed Petitioner said during the events of July 1, 2014 (Appendix D, 61a). The prosecutor indicated, without any evidence in the Record, that drug dealers never use their real name, or their real phone, because “That’s not how drug dealers work.” (Appendix D, 62a). The prosecutor then asserted that the reason Petitioner used different phone numbers was to remain elusive and avoid detection (Appendix D, 62a).

The prosecutor, while referring to what one state’s witness risked by testifying said:

...a small town like Geneva, where word travels fast, and the drug dealer who sold her drugs is sitting right across from her. And not only that, it gets better. *All the drug dealers’ homeboys and homegirls are staring at her in the courtroom.* (Appendix D, 63a) (emphasis added).

Defense counsel objected and the trial court sustained, but the prosecutor continued speaking (Appendix D, 63a). Defense counsel moved to strike, and the trial court overruled (Appendix D, 63a). Following the prosecutor’s summation, defense counsel indicated that it was improper for the prosecutor to refer to those in the gallery as ‘homeboys’ and for the prosecutor to emulate an African-American sounding voice when talking about the phone calls (Appendix D, 64a). Defense counsel indicated that Petitioner’s wife and family members indicated to him that the prosecutor looked directly at them when he used the term ‘homeboys’ and was waving his arms (Appendix D, 66a). Defense counsel emphasized that such comments were inflammatory, especially considering appellant is black and had an all members of the jury were white (Appendix D, 66a-67a).

In response, the trial court instructed the jury that their decision must be reached based on the evidence alone, without prejudice, and without sympathy, but did nothing to mitigate the effect of the prosecutor's racial and inflammatory comments (Trial Tr. 698). The trial court did not instruct the jury to disregard the prosecutor's comments and decided to "leave the record as is"; and stated that in the South, Caucasian individuals, such as his relatives have been referred to as "crackers" (Appendix D, 68a-69a). After deliberation, the jury found Petitioner guilty of the crime of Criminal Sale of a Controlled Substance in the Third Degree (3 counts) (Tr. Tr. 750-751).

Notice of Appeal was filed on February 8, 2017.

### **REASONS FOR GRANTING THE WRIT**

The Court should grant the instant Petition for a Writ of Certiorari because the New York State Supreme Court Appellate Division, Fourth Judicial Department failed to address the issue presented to that Court. This Petition presents a perfect vehicle to resolve an important issue of Federal and State Constitutional importance regarding the improper insertion of race into a criminal trial.

#### **I. PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL UNDER THE FOURTEENTH AMENDMENT AND ARTICLE ONE, SECTION ELEVEN OF THE NEW YORK STATE CONSTITUTION.**

This Court has previously held that "the Constitution prohibits racially biased prosecutorial arguments." McCleskey v. Kemp, 481 U.S. 279, 309 n.30, [1987]. This Court has also noted that appeals to racial prejudice "tend to degrade the administration of justice." Battle v. United States, 209 U.S. 36, 39 [1908].

Moreover, “appeals to racial passion can distort the search for truth and drastically affect a juror’s impartiality.” United States v. Doe, 903 F.2d 16, 25 [D.C. Cir. 1990]. Members of this Court have previously condemned a prosecutor’s injection of race into the trial. Calhoun v. United States, 568 U.S. 1206 [2013]. In describing the prosecutor’s actions Justice Sonia Sotomayor stated:

[the prosecutor] tapped a deep and sorry vein of racial prejudice that has run through the history of criminal justice in our Nation. . . Such conduct diminishes the dignity of our criminal justice system and undermines respect for the rule of law. We expect the Government to seek justice, not to fan the flames of fear and prejudice....I hope never to see a case like this again.

Calhoun, supra, at 1209.

Further, in Georgia v. McCollum, 505 U.S. 42, 68 [1992], Justice Sandra Day O’Connor observed that, “[i]t is by now clear that conscious and unconscious racism can affect the way white jurors perceive minority defendants and the facts presented at their trials, perhaps determining the verdict of guilt or innocence.”.

The prosecutor in this underlying prosecution injected race into the instant trial for the purpose of prejudicing the jury with racial animus against Petitioner. The statements of the prosecutor in this case were employed as racially-tinged triggers though a process known as “priming.” Priming prompts the human mind of its implicit associations and invites it to follow the well-worn paths those implicit associations have formed. Implicit biases and priming have an immense impact when invoked by a prosecutor. See Buck v. Davis, 580 US \_\_ ; 137 S. Ct. 759 [2017] (Brief of *Amicus Curiae* Lawyers’ Committee For Civil Rights Under Law In Support of Petitioner, at 3). As a result, the jury in this case was likely to take the

Petitioner's race into account when rendering their verdict since the weight of the evidence in this case was not overwhelming and did not support Petitioner's conviction. The sole purpose of the prosecutor's comments in this prosecution were to "thug up" Petitioner and inflame the passions of the jury.

Moreover, an appellate court's overriding responsibility is to ensure that the cardinal right of a defendant to a fair trial is respected in every instance (People v. Crimmins, 36 N.Y.2d 230, 238 [1975]; People v. Ballerstein, 52 A.D.3d 1192, 1193 [4th Dept. 2008]). A defendant may be denied his constitutional right to a fair trial through a single error that is more formalistic, or an aggregation of numerous errors (see Crimmins, supra at 238; People v. Kitchen, 55 A.D.2d 575, 575 [1st Dep't 1976]).

The right to a fair trial is fundamental, and even overwhelming proof of guilt cannot be used as a basis for overlooking egregious conduct committed during trial (Crimmins, supra at 238; People v. McMillan, 66 A.D.2d 830, 830-831 [2d Dep't 1978]). A defendant's "entitlement to a fair trial...must be scrupulously safeguarded" (People v. Robertson, 71 A.D.2d 1008, 1008 [2d Dep't 1979]). The trial court, therefore, has an obligation to ensure a fair trial and to take prompt curative measures, even without such a request by the defense (People v. Tucker, 133 A.D.2d 787, 788-789 [2d Dep't 1987]). Failure to have a fair trial necessitates a reversal of the conviction, and an order for a new trial, despite possible strong evidence of guilt (see Robertson, supra at 1008; McMillan, supra at 831).

The Chief Judge of the Court of Appeals for the State of New York has stated: “Our courts, above all institutions, have a solemn obligation to lead the way in ensuring that every person is treated with equal justice, with dignity, and with respect. And we must lead by example”. See Message from Chief Judge Janet DiFiore, Jun. 15, 2020, available at <https://www.nycourts.gov/whatsnew/pdf/June15Message-ChiefJudge.pdf> [last visited December 10, 2020]. She more recently stated:

The public rightly looks to the courts, above all institutions, for fair and equal treatment. The existence or even the perception of bias or racism anywhere in our institution undermines public trust and confidence in the important work of our courts. Without the public's trust and confidence in our ability to deliver equal justice, the Judiciary cannot carry out its mission or uphold the rule of law. And most importantly, we need to eliminate any bias or racism because it is the right thing to do.

See Letter from Chief Judge Janet DiFiore, Oct. 29, 2020, available at <http://www.courts.state.ny.us/whatsnew/pdf/JDFletter-jehjohnson.pdf> [last visited December 10, 2020]. Yet, no New York Court led by example or strove to eliminate bias or racism in this case by commenting or ruling that the prosecutor's injection of race into Petitioner's trial during closing summation was not only prejudicial but racist. Petitioner was faced with entirely white courtrooms. The injustice that occurred in injecting racially inflammatory and derogatory language throughout trial, especially during closing summation denied Petitioner his right to a fair trial under the Fourteenth Amendment of the Constitution and the New York State Constitution.

It is respectfully submitted that such conduct merits review by this Court. The

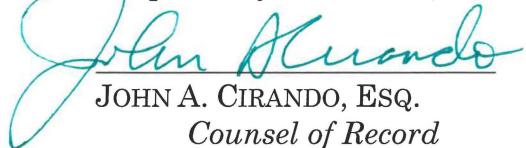
trial court abused its discretion by not instructing the jury to disregard the prosecutor's racially inflammatory comments during summation (Appendix D, 60a-72a). The trial court sustained defense counsel's objection to the prosecutor calling appellant's family in the gallery 'homeboys' and 'homegirls', but denied defense counsel's motion to strike such comments (Appendix D, 63a). The trial court's response, therefore, did not adequately safeguard Petitioner's right to a fair trial (Appendix D, 63a, 66a-72a). The trial court's failure to safeguard Petitioner's right to a fair trial are firmly established by the fact that the trial court stated that in the South, Caucasian individuals, such as his relatives, were referred to as "crackers" (Appendix D, 68a). Clearly, the prosecutor's conduct was condoned rather than condemned (see People v. Lovello, 1 N.Y. 2d 436, 438-439 [1956]).

As such, but for the aforementioned errors that occurred in the trial court, especially considering the lack of overwhelming evidence, the outcome of the instant case would have been different (see Crimmins, supra; Pyne, supra; Kitchen, supra). Therefore, due to the cumulative effect of each constitutional violation, appellant was denied a fair trial by an impartial jury, and manifest necessity requires that this Petition be granted (see McMillan, supra).

CONCLUSION

FOR THE REASONS STATED ABOVE, THE PETITION  
FOR CERTIORARI SHOULD BE GRANTED.

Respectfully Submitted,



JOHN A. CIRANDO, ESQ.

*Counsel of Record*

D.J. & J.A. CIRANDO, PLLC  
101 South Salina Street,  
Suite 1010  
Syracuse, New York 13202  
315.474.1285  
cirandolaw@outlook.com

*Counsel for Petitioner*

Dated: December 21, 2020

# APPENDIX

State of New York  
Court of Appeals

BEFORE: HON. JANET DiFIORE, Chief Judge

# THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,  
-against-

**ORDER  
DENYING  
LEAVE**

ANGNEM G. GREEN Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;\*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: May 28, 2020

Jenex DiFise

### Chief Judge

\*Description of Order: Order of the Appellate Division, Fourth Department, entered January 31, 2020, modifying a judgment of the County Court, Ontario County, rendered May 26, 2016, and, as so modified, affirmed.

**State of New York**  
**Court of Appeals**

BEFORE: HON. JANET DiFIORE, Chief Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,  
-against-

ANGNEM G. GREEN, Appellant.

**ORDER  
DENYING  
RECONSIDERATION**

Appellant having moved for reconsideration in the above-captioned case of an application for leave to appeal denied by order dated May 28, 2020;

UPON the papers filed and due deliberation, it is

ORDERED that the motion for reconsideration is denied.

Dated: 7/24/20

  
\_\_\_\_\_  
Janet DiFiore

Chief Judge

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1217**

**KA 16-01992**

PRESENT: CARNI, J.P., LINDLEY, CURRAN, WINSLOW, AND BANNISTER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANGNEM G. GREEN, DEFENDANT-APPELLANT.

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LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA, D.J. & J.A. CIRANDO, PLLC, SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (JEFFERY FRIESSEN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Ontario County Court (Frederick G. Reed, A.J.), rendered May 26, 2016. The judgment convicted defendant, upon a jury verdict, of criminal sale of a controlled substance in the third degree (three counts).

It is hereby ORDERED that the judgment so appealed from is unanimously modified as a matter of discretion in the interest of justice by reducing the sentence imposed on each count to a determinate term of imprisonment of seven years and three years of postrelease supervision, and as modified the judgment is affirmed.

Memorandum: On appeal from a judgment convicting him following a jury trial of three counts of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]), defendant contends that he was deprived of a fair trial because the prosecutor stated during voir dire that crack cocaine, unlike marihuana, was "hardcore stuff." Inasmuch as defendant did not object to the prosecutor's comment, his contention is unpreserved for our review (see CPL 470.05 [2]). In any event, even assuming, arguendo, that the comment was improper, we conclude that it was not so egregious or prejudicial as to deprive defendant of a fair trial (see generally *People v Jackson*, 108 AD3d 1079, 1080 [4th Dept 2013], lv denied 22 NY3d 997 [2013]; *People v Miller*, 104 AD3d 1223, 1223-1224 [4th Dept 2013], lv denied 21 NY3d 1017 [2013]; *People v South*, 233 AD2d 910, 910 [4th Dept 1996], lv denied 89 NY2d 989 [1997]).

We reject defendant's further contention that he was deprived of a fair trial because County Court failed to excuse a juror who said during voir dire that she knew "a gentleman who was high up in the state troopers. He's retired now." When asked by defense counsel how she would feel about serving on the jury, the juror answered "I don't think it would affect me. I just wanted to let you know that I did

know him." Neither side challenged the juror for cause. Even assuming, arguendo, that the court erred in failing, *sua sponte*, to excuse the prospective juror for cause, we conclude that "the error does not require reversal because defendant had not exhausted his peremptory challenges and did not peremptorily challenge that prospective juror" (*People v Arguinzoni*, 48 AD3d 1239, 1241 [4th Dept 2008], *lv denied* 10 NY3d 859 [2008]; see *People v Simmons*, 119 AD3d 1343, 1344 [4th Dept 2014], *lv denied* 24 NY3d 964 [2014], *reconsideration denied* 24 NY3d 1088 [2014]).

We agree with defendant, however, that the 10-year determinate sentence is unduly harsh and severe considering that defendant has no violent crimes on his record and was offered the opportunity to plead guilty to the charges in the indictment in exchange for a prison sentence of five years. It does not appear that any facts were revealed at trial that were unknown to the People or the court at the time the sentence promise was made. Under the circumstances, we modify the judgment as a matter of discretion in the interest of justice by reducing the sentence on each count to a determinate term of imprisonment of seven years plus three years of postrelease supervision (see CPL 470.15 [6] [b]).

We have reviewed defendant's remaining contentions and conclude that none warrants further modification or reversal of the judgment.

STATE OF NEW YORK

COUNTY OF ONTARIO

COUNTY COURT

X

THE PEOPLE OF THE STATE OF NEW YORK

: INDMT# 14-10-166

-VS-

:

ANGNEM G. GREEN,

:

Defendant.

: Jury Trial

X

Ontario County Courthouse  
Canandaigua, New York  
May 23-26, 2016

ONTARIO COUNTY CLERK'S OFFICE  
FILED

JUL 02 2018

MATTHEW J. MOOSE, County Clerk  
By ~~ACTING DEPUTY CLERK~~

B e f o r e

HON. FREDERICK G. REED

County Court Judge

A p p e a r a n c e s

For the People

R. MICHAEL TANTILLO, ESQ.  
Ontario County District Attorney  
27 North Main Street  
Canandaigua, New York 14424  
By: JASON A. MacBRIDE, ESQ.  
Assistant District Attorney

For the Defendant

FRANK M. BOGULSKI, ESQ.  
286 Delaware Avenue, Suite B  
Buffalo, New York 14202

1 MR. MacBRIDE: -- pretty unstylish garb and  
2 keep an open mind before you decide whether or not to  
3 believe her?

PROSPECTIVE JUROR 3: Yeah.

11:51:03 4 MR. MacBRIDE: Okay. There's been a lot of  
5 stuff in the news about legalizing certain drugs, in  
6 particular marihuana.  
7

7 Let's go back with Frank. What are some of  
8  
9 reasons that you've heard why there's a big push to  
0 legalize marihuana?

11:51:17 10 PROSPECTIVE JUROR 1: I believe for medical  
11  
12 reasons.

12 MR. MacBRIDE: Okay. Certain disabilities, it  
13 helps with those medical issues?  
14

PROSPECTIVE JUROR 1: CONNELL

15 MR. MacBRIDE: Sam, have you ever heard -- can  
16 you add anything else as to why some folks may want to  
17  
18 legalize marihuana?

18  
19 PROSPECTIVE JUROR 3: Just for medical  
20 reasons.  
11:51:35

21 MR. MacBRIDE: Medical reasons? Okay.  
22 Let's go up to Dr. Jonathan. During your line  
23 of work, have there ever been any medical benefits for  
24 using crack cocaine, that you know of?

25 PROSPECTIVE JUROR 8: NO.

1 MR. MacBRIDE: Okay. How about heroin?

2 PROSPECTIVE JUROR 8: No.

3 MR. MacBRIDE: Okay. Everyone agree that  
4 they're different drugs? What I'm driving at here is,  
5 you know, marihuana's one thing, but crack cocaine,  
6 heroin, hardcore stuff.

7 By a show of hands, anyone here think what the  
8 heck are we doing here? Just -- you know, just drugs.  
9 No big deal. Show of hands, anyone think that way? No  
10 hands are raised. All right.

11 One of the things that we'll talk -- that'll  
12 come up during this trial, maybe from defense counsel  
13 and myself, is before coming in to see you today I  
14 actually sat down with all of my witnesses, police  
15 officers, Ms. Robinson, and sat down and prepared for  
16 today.

17 Sam, when you have a big exam at school, you  
18 just show up to the exam, without studying?

19 PROSPECTIVE JUROR 3: No.

20 MR. MacBRIDE: What? What do you mean? You  
21 don't just, ah, you know what, I'd rather go outside,  
22 maybe hang out with my buddies, no studying? Do you  
23 ever do that?

24 PROSPECTIVE JUROR 3: No.

25 MR. MacBRIDE: If you did, how do you think

1 MR. MacBRIDE: Peremptory.

2 THE COURT: You want number 8 for peremptory,

3 right?

4 MR. MacBRIDE: Correct.

5 THE COURT: Sorry. I misspoke.

6 MR. MacBRIDE: Juror No. 10, Mr. Brown.

7 THE COURT: Thank you.

8 MR. MacBRIDE: Juror No. 12, Mr. Perrin. And

9 that would be it.

10 THE COURT: Thank you. So that's three for

11 the People this round, right?

12 MR. MacBRIDE: Correct.

13 THE COURT: One for defense.

14 THE CLERK: Right.

15 THE COURT: And then, Frank, let's see, 9, 11,

16 13 and 14 remain. Any peremptories for defense?

17 MR. BOGULSKI: No.

18 THE COURT: All right. So one, two, three,  
19 four, five, six, seven, eight, nine, good. Nine sworn.  
20 And obviously we'll take lunch right now, guys.

21 MR. BOGULSKI: Oh, so peremptories. I thought  
22 you meant for cause, Judge. I apologize. I was just  
23 having a conversation with my client. If I could have a  
24 moment, Judge.

25 THE COURT: Yes, absolutely.

1 (Defendant and counsel conferred.)

2  
3 MR. BOGULSKI: So, Judge, we'll use number 9,  
4 which I believe is --

5 THE COURT: Gerald Jones?

6 12:27:58 MR. BOGULSKI: -- Gerald Jones. Number 11,  
7 Sean Martineck, the ATF agent. And number 14, Pamela  
8 Sampson.

9 THE COURT: Okay. So, if I do the math right,  
10 so Louis -- I should say Clifton Luckey is acceptable to  
11 you, Frank?

12 MR. BOGULSKI: Yeah --

13 THE COURT: He's --

14 MR. BOGULSKI: -- that's --

15 THE COURT: -- num --

16 MR. BOGULSKI: -- fine.

17 12:28:26 THE COURT: -- ber 13. Okay. And also to  
18 Jason, just to reiterate, right?

19 MR. MacBRIDE: Correct, your Honor.

20 12:28:33 THE COURT: So that makes six sworn. And then  
21 if I do the math right, three I've got three  
22 peremptories for People, four for defendant.

23 MR. MacBRIDE: Correct.

24 THE COURT: Everybody agrees?

25 MR. MacBRIDE: Yes.

12:28:39 MR. BOGULSKI: Yes.

1 PROSPECTIVE JUROR 12: Me.

2 MR. BOGULSKI: Oh, you maybe? Because --

3 PROSPECTIVE JUROR 12: Well, I was one of the  
4 people who said I would like to speak privately with  
5 someone.

03:40:37 6 MR. BOGULSKI: Every court does it different.  
7 Sometimes I'm trying a case and the Judge calls us all  
8 back there right away and others wait until the end  
9 so -- that's great.

03:40:51 10 THE COURT: We'll wait until the end, Frank.

11 MR. BOGULSKI: Sure. Thank you, your Honor.

12 PROSPECTIVE JUROR 5: Also I -- he's not --  
13 never -- I didn't really work in Geneva, but I know a  
14 gentleman who was high up in the state troopers. He's  
15 now retired.

16 MR. BOGULSKI: Okay.

17 PROSPECTIVE JUROR 5: You know, so he dealt  
18 all across the state.

19 MR. BOGULSKI: And how would you feel about  
20 that serving on a jury?

03:41:10 21 PROSPECTIVE JUROR 5: I don't think it would  
22 affect me. I just wanted to let you know that I did  
23 know him.

24 MR. BOGULSKI: Sure. And, you know, my  
25 brother's a policeman and I think we all know, you know,

1 law enforcement. I think what we're looking for here,  
2 you know, is fair and impartial jurors that aren't going  
3 to feel loyalties one way or the other, just to be fair  
4 to both sides.

03:41:32

5 PROSPECTIVE JUROR 7: Uhm-hmm.

03:41:43

6 MR. BOGULSKI: You know, if I were on a jury  
7 and my brother were testifying, it probably wouldn't be,  
8 you know, the best jury for me to sit on because it's my  
9 brother. You know what I'm saying? So we ask these  
10 questions not to be trick questions, but just to get it  
11 out there.

03:41:58

12 And the Judge will tell you, too, that law  
13 enforcement aren't supposed to be given, you know, any  
14 more credibility or any less credibility. I've talked  
15 to jurors and they say, you know, I had bad experience  
16 with the police and I don't trust anything they say, you  
17 know, and I've had other people that have very positive  
18 viewpoints on it, so there's a wide gap of different  
19 people's perspectives and where they come from.

03:42:19

20 As far as reasonable doubt, I talked about  
21 that before. The Judge will explain it to you. You all  
22 recognize that it is a high burden that the -- that our  
23 system holds on the prosecution? Everyone agree with  
24 that concept? And the reason for that is we're dealing  
25 with someone's freedom here.

03:42:34

1 3.

2 MR. BOGULSKI: We'll do --

3 THE COURT: For now.

4 MR. BOGULSKI: -- number 3, Bruce.

5 THE COURT: Okay. Is Tracey acceptable?

6 MR. BOGULSKI: Yes, Judge.

7 THE COURT: Okay. So we're up to ten sworn  
8 jurors. And I think nine and nine challenges, right?

9 THE CLERK: Yep.

10 THE COURT: Okay. So moving on then to --

11 03:55:10 this would be 4 and 5 to make twelve.

12 Jason, would you like to exercise a peremptory  
13 on either 4 or 5?

14 MR. MacBRIDE: Juror No. 4.

15 03:55:25 THE COURT: Thank you. Is 5 acceptable,

16 Jason?

17 MR. MacBRIDE: Yes.

18 THE COURT: Frank, is 5 acceptable?

19 MR. BOGULSKI: Let me talk to my client, your  
20 Honor.

21 03:55:31 THE COURT: Yes.

22 (Defendant and counsel conferred.)

23 MR. BOGULSKI: Number -- Anne Bergstrom is  
24 fine with us, Judge.

25 03:55:44 THE COURT: Okay. And then, Jason, just to

1 documents that, again, the People haven't seen. So  
2 we're asking that the Court deny any request on those  
3 grounds.

09:48:48

4  
5 THE COURT: Thank you. Jason, alibi defense  
6 is not an affirmative defense, but it's a defense the  
7 People still have to overcome, correct?

8 MR. MacBRIDE: Correct.

09:48:58

9  
10 THE COURT: All right. So you -- Frank,  
11 you're putting him in a position where he's gotta  
12 disprove a negative, so to speak, without the ability to  
13 cross-examine the document or whoever produced it or  
14 investigate it. So I -- I would -- I would rule it out,  
15 but --

09:49:09

16 Angnem, you may not like it, but you liked --  
17 you didn't like it so much that you fired your --

18 THE DEFENDANT: He didn't --

19 THE COURT: -- lawyer.

20 THE DEFENDANT: -- have this.

09:49:14

21 THE COURT: I'm not trying to provoke you, but  
22 I'm just saying that the last time you fired your  
23 lawyer. Now you're giving this lawyer the documents  
24 that -- apparently the day -- day of trial, so denied.

09:49:25

25 THE DEFENDANT: My lawyer only had my credit  
card receipts. He did not have any information that  
this lawyer has today. That's the only thing he had.

1 sold that substance. And sold in this particular case  
2 is pretty straight forward because we're alleging that  
3 the crack cocaine was given to someone in exchange for  
4 money. The definition can be different, but in this  
10:30:20 5 case I'd just ask you to focus your attention on the  
6 traditional meaning of sell, exchange drugs for money.  
7 So those are the three drug charges that we have.

8 The last charge is something that's called  
9 endangering the welfare of a child. And in that  
10:30:35 10 particular count I need to prove the defendant knowingly  
11 acted in a manner that was likely to be injurious to the  
12 physical, mental or moral welfare of a child or children  
13 who are less than 17 years old. Okay? It doesn't take  
14 a rocket scientist to figure out that it's probably not  
10:30:53 15 in a child's best interest to be in an environment where  
16 drugs are being sold in their presence. We can -- I  
17 think we can all agree on that. The other item you need  
18 to figure out is whether or not these children were less  
19 than 17. That'll become pretty clear when Ms. Robinson  
20 comes in here and describes the physical nature of the  
21 children, one being in diapers, the other children --  
22 the oldest being approximately the same age as her  
23 daughter, who was 13 at the time.

24 So those are the different elements that I  
10:31:21 25 need to prove, nothing more, nothing less. And at the

1 Q. Now, prior to the summer of 2014, on approximately  
2 how many different occasions did you have personal  
3 interactions with our defendant?

4 A. Approximately four or five.

10:48:43 5 Q. And during those four to five occasions did you  
6 actually physically observe the defendant?

7 A. Yes.

8 Q. And how about did you ever have the chance to speak  
9 personally with the defendant?

10:48:53 10 A. Yes.

11 Q. So you know what his voice sounded like?

12 A. Yes.

13 MR. BOGULSKI: Objection, your Honor.

14 THE COURT: I'll give a little latitude.

15 Overruled.

16 Q. Based on your knowledge of Mr. Green, where did he  
17 reside during the summer of 2014?

18 A. 99 Middle Street, which is located in the City of  
19 Geneva, County of Ontario, State of New York.

20 Q. And you indicated earlier you had approximately  
21 four or five dealings with our defendant. Where was he  
22 living during those interactions, Detective?

23 A. That same location, 99 Middle Street in Geneva.

24 Q. Do you know if he lived with anyone over at 99  
25 Middle Street?

1 12:44 p.m.?

2 A. Correct.

3 Q. Was Ms. Robinson provided with any buy money?

4 A. Yes, she was.

10:54:37 5 Q. Can you describe what that means, buy money,  
6 Detective?

7 A. So the Geneva Police Department has a narcotics  
8 fund, and so what happens when we're going to do a buy like  
9 this, we'll withdraw money from that fund, I'll photocopy the  
10:54:52 10 money for evidentiary purposes, and then I issue that money  
11 to the informant before they go and make the buy.

12 Q. Now, the date and time in question, how much US  
13 currency did you provide April?

14 A. \$100.

10:55:03 15 Q. And what was the denomination of those bills,  
16 Detective?

17 A. Five \$20 bills.

18 Q. You indicated that those bills were photographed  
19 prior to giving them to April?

10:55:12 20 A. Yes.

21 Q. Okay. And while you were with April, tell us what  
22 happened, please.

23 A. We meet with April and we search her -- or I search  
24 her and we place a phone call to Angnem Green. The phone is  
10:55:27 25 on speakerphone. He picked up and we're going to change the

1 interaction between them. I have April's back blocking me.  
2 They turn around, she walks back to us, and Nicky and the  
3 female walk back to the rear of 99 Middle Street.

4 Q. Okay. How long were the three individuals, meaning  
11:01:52 5 April, the female, who you couldn't identify, and  
6 Mr. Phillips, how long were they interacting with one another  
7 on the bridge?

8 A. 30 seconds to a minute.

9 Q. And the timing of that, what is -- is that - is  
11:02:04 10 there any significance to drug transactions as far as taking  
11 a certain period of time to conduct?

12 A. Yes and no. Obviously, for a situation like this,  
13 I mean, the deal was set up and it was pretty clear that they  
14 only met for one reason on the bridge right there, to buy the  
15 crack cocaine, then they went their separate ways.

16 Q. Now, are you able to maintain visual of April as  
17 she's walking back to your location?

18 A. Yes. She walked right past me.

19 Q. And do you meet up with her?

20 A. Yes. She goes back to our car, and then she gets  
21 in the car and I actually get in the car as well and  
22 Detective Choffin's already in the car.

23 Q. Okay. Now, while in the car does she turn -- does  
24 April turn anything over to you?

25 A. Yes, she does.

1 Q. Okay. You indicated that you observed what you  
2 thought to be a transaction on the bridge in Gulvin Park.  
3 Approximately how far away were you from the bridge over at  
4 Gulvin Park?

11:08:34 5 A. 40 to 50 yards.

6 Q. Okay. And in your line of work is it important to  
7 maintain constant observation of an alleged drug transaction?

8 A. Yes.

9 Q. Why, sir?

11:08:46 10 A. Just to make sure we can verify that whatever the  
11 informant is telling us is true.

12 Q. During your dealings with April back on or about  
13 July 1st, 2014, other than Mr. Phillips and the female, did  
14 she interact with any other folks during the time you were  
15 with her?

16 A. No.

17 Q. Were there any obstructions between you and the  
18 area in which the transaction took place, Detective?

19 A. No.

11:09:19 20 Q. Were there any distractions that took your  
21 attention away from what was occurring on the bridge over in  
22 Gulvin Park?

23 A. No.

24 MR. MacBRIDE: Now, I'm going to show defense  
25 counsel what's been marked as Exhibit No. 1.

11:09:34 25

1 A. Yes.

2 Q. Now, I just want to make sure that I heard you  
3 correctly. Ms. Robinson consummated the deal with regards to  
4 Mr. Green on the phone in your presence, correct?

11:34:33 5 A. Correct.

6 Q. And that was on speakerphone?

7 A. Correct.

8 Q. Okay. And then later on the defendant called April  
9 back and indicated there was a change of plans?

11:34:43 10 A. Correct.

11 Q. And you heard both of these conversations?

12 A. Yes.

13 Q. Okay. Now, I want to fast-forward to on or about  
14 July 22nd, 2014. Do you recall that date, sir?

11:34:57 15 A. Yes, I do.

16 Q. And can you please tell us, did you have a chance  
17 to meet with April back on that particular date?

18 A. Yes.

19 Q. That would have been around approximately 1:23  
20 p.m.?

21 A. Yes.

22 Q. Where did that meeting take place, sir?

23 A. The same exact place, behind the storage part of  
24 the Pepsi plant.

11:35:15 25 Q. Other than yourself and April, was anyone else

1 present during this time?

2 A. Yes, Detective Choffin.

3 Q. Okay. And what was the purpose for meeting April  
4 back on July 22nd, 2014?

11:35:26 5 A. We were again going to purchase \$100 worth of crack  
6 cocaine.

7 Q. Now, in this particular case, was the deal set up  
8 before April had met with you and Detective Choffin?

9 A. Yes.

11:35:41 10 Q. And what was the -- what did April tell you with  
11 regards to that?

12 A. When we contacted her that day, she said that the  
13 deal was good to go right at his house, 99 Middle Street, and  
14 that once we meet up, we'll walk to --

11:35:52 15 MR. BOGULSKI: I'm going to object. It's  
16 hearsay, out of court. What she said out of court to  
17 him is hearsay, Judge.

18 MR. MacBRIDE: Judge, I'm just asking -- I  
19 understand it's hearsay, but I'm offering it for the  
20 limited purpose of the officer -- the detective's state  
21 of mind as to how the investigation transpired that day.

22 MR. BOGULSKI: It's going --

23 MR. MacBRIDE: There can --

24 MR. BOGULSKI: -- to the truth of the matter  
25 as to whether or not something was allegedly set up. So

1 A. Yes.

2 Q. Okay. And you signed off on it?

3 A. Yes.

4 Q. And Ms. Robinson signed it as well?

11:40:05 5 A. Yes.

6 Q. Okay. Tell us what you observed back on July 22nd,

7 please.

8 A. The 22nd buy was very similar to the July 1st buy.

9 I again hide in the wood line, and then she walks across the

10 bridge and walks right to the rear of 99 Middle Street.

11 There I can see several people sitting down at a table and

12 she approaches the table.

13 Q. And you indicated you were in the same area as you

14 described that you were on July 1st?

11:40:35 15 A. Yes.

16 Q. Okay. Any vision problems with yourself back on

17 the 22nd of July?

18 A. No.

19 Q. About how far are we talking from the area in which

20 you were located to the back yard of 99 Middle Street,

11:40:43 21 Detective?

22 A. I'd say approximately 125 to 150 yards.

23 Q. Okay. So about a football field, a little more

24 than a football field?

11:40:55 25 A. Yes.

1 Q. Okay. Any obstructions between you and the back  
2 yard of 99 Middle Street?

3 A. No.

4 Q. And weather, any rain, clouds, anything along those  
5 lines?

6 A. No.

7 Q. Okay. About how long did the interactions between  
8 April and the folks in the back yard of 99 Middle Street, how  
9 long did that take?

10 A. Less --

11 Q. Approximately.

12 A. Less than a minute.

13 Q. Okay. And did you have constant observations of  
14 April from the time she left your location to the time she  
15 went to the back yard of 99 Middle Street?

16 A. Yes.

17 Q. And how about on the return trip, from the back  
18 yard of 99 Middle Street back to your location?

19 A. Yes.

20 Q. Did you see April interact with any other folks  
21 other than those at the picnic table in the back yard of 99  
22 Middle Street?

23 A. No.

24 Q. What if anything did she turn over to you and  
25 Detective Choffin on July 22nd?

1 A. When we got back to the car, she handed  
2 Detective Choffin a ball of aluminum foil again, which, when  
3 we opened it up, appeared to be crack cocaine to us so we  
4 secured it into evidence. I did the search of April again to  
11:41:59 5 make sure that she didn't have any other drugs or money on  
6 her, and when we got back to the police department I again  
7 field tested the suspected crack cocaine and it was a  
8 positive test for cocaine.

9 Q. Now, the search of April, did it yield any  
11:42:12 10 contraband or any additional currency?

11 A. No.

12 Q. And the packaging of the crack cocaine that April  
13 turned over to you, was that similar with regards to the  
14 packaging on or about July 1st?

11:42:23 15 A. Yes.

16 Q. I want to show you what's been marked as Exhibit  
17 No. 3. It's actually been received. Exhibit 3, do you  
18 recognize that, Detective?

19 A. Yes, I do.

11:42:34 20 Q. And what is it, sir?

21 A. Inside the small baggie you can see that there's  
22 evidence tape on it, but inside the evidence tape would be  
23 the aluminum foil that I took the crack out to test it. I  
24 filled out the front of this evidence tag and the top  
11:42:50 25 evidence tape and then, of course, the blue one would be the

1 MR. MacBRIDE: That's the entire video.

2 Q. Now, Detective, you were operating the recording  
3 equipment?

4 A. Yes, I was.

12:07:52 5 Q. And after it was turned off did you continue to  
6 maintain a visual of April?

7 A. Yes.

8 Q. Up until the time that you met with her?

9 A. Yes.

12:08:00 10 Q. Okay. Now, in connection with this particular  
11 case, could you describe the circumstances in which the  
12 defendant was arrested for the transactions that we're  
13 currently discussing?

14 A. Yes. He was stopped in a town in Texas and we had  
15 an indictment warrant filed for these charges, so his name  
16 came back that he had an active warrant through us, so they  
17 detained him until we could fly down there and bring him back  
18 to New York.

19 Q. And with regards to your investigation, why wasn't  
20 Mr. Green arrested immediately after any of the three  
21 transactions what we've -- what we've discussed here this  
22 morning?

23 A. I wasn't done with the investigation all the way  
24 yet. We had -- we had wanted to get another buy into the  
25 house to validate a search warrant for the premises. We had

1 had another target that we were looking at for this  
2 investigation as well. So up until he was no longer in town,  
3 the investigation was still active.

4 Q. Who was the other target at 99 Middle Street?

12:09:05 5 A. Nicky Phillips.

6 Q. Okay. And ultimately did you do any more buys out  
7 of 99 Middle Street?

8 A. With Nicky Phillips, yes.

9 Q. And he was ultimately arrested on those charges?

12:09:15 10 A. Yes.

11 Q. And what timeframe are we discussing here,  
12 Detective Vine?

13 A. The arrest -- that buy was on August 15th, and then  
14 we did another buy and we arrested him in October.

12:09:26 15 Q. Okay. And during those intervening months between  
16 July 31st and the buys with Mr. Phillips, did you receive any  
17 information as to Mr. Green's whereabouts?

18 A. Yes.

19 Q. What did you receive?

20 A. We had received information that he was out of town  
21 and he was re-upping his supply.

22 MR. BOGULSKI: Objection, your Honor. It's  
23 hearsay. There's no one here to testify to that fact.

24 It's hearsay, it's inflammatory, prejudicial. Move to  
25 strike the answer.

12:09:56

1 THE COURT: Jason, where'd that information  
2

3 come from?

4 Q. Where did you receive that information from,  
5

6 Detective?

7 12:10:01 A. April Robinson had told me as well as another  
8 informant.

9 Q. Okay.

10 MR. BOGULSKI: Again --

11 THE COURT: I got ya. Anything else, Frank?

12 12:10:08 Sorry.

13 MR. BOGULSKI: I don't know who the other  
14 individual is. I -- you know, constitutional right to  
15 cross-examine your accusers. It's hearsay. There's no  
16 point and no relevance to the issues before this jury,  
17 your Honor.

18 12:10:22 THE COURT: What day was this also, by the  
19 way?

20 Q. Detective?

21 A. I don't recall.

22 12:10:27 THE COURT: Okay.

23 Q. We're talking about -- so after -- how many total  
24 buys were placed to our defendant, Mr. Green?

25 A. Three.

26 Q. Okay. And April was also working on a case with  
27 12:10:37 you concerning Mr. Phillips, correct?

1 A. Yes.

2 Q. Okay. And what were the dates of those  
3 transactions, excluding the date we've already discussed for  
4 July 1st?

12:10:50 5 A. It'd be August 15th, and then I can't remember the  
6 exact date in October, but that's when we arrested Nicky  
7 Phillips right after we bought from him, what they call a  
8 buy-bust.

9 Q. And around the time period between August and  
12:11:03 10 October, based upon your investigation was our defendant  
11 still in Geneva?

12 A. I can't answer that as far as the entire time, but  
13 the investigation had gone cold a little bit, so it's my  
14 normal practice to put a little time in between our buys and  
12:11:21 15 the arrest to kind of protect the identity of the informant.

16 Q. What do you mean by that?

17 A. So if we're going to be purchasing narcotics from  
18 somebody, I personally don't like to buy from them and then  
19 arrest them because then you burn who the informant is. And  
12:11:37 20 in April's situation, she had charges that she had to work  
21 off so if we burned who -- what her identity was, then she  
22 wouldn't have been able to work off the charges that she was  
23 supposed to work off, so therefore I had to protect her  
24 identity to further the investigation so she could work the  
12:11:56 25 charges down.

1 First of all, there was -- what you had discussed was,  
2 you said there was a sale that occurred on July 1st, 2014.

3 A. Correct.

3  
4 Q. And if I recall your testimony correctly, you said  
5 that you had observed that sale, correct?

A. Correct.

6  
7 Q. And that sale -- you didn't see my client sell  
8 drugs, did you?

2 A No.

Q. Who was the person that you saw sell drugs?

10  
11 A. On the meet location at the bridge, I could  
12 identify Nicky Phillips because I know who he was. I did not  
13 know who the other female is that met with April as well, but  
14 I could identify Nicky Phillips.

5 Q. Did you -- so you could identify him?

6 | A. Yes.

Q. You didn't know who the female was?

11. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 11)

8           A.    Correct.

9           Q.    Did you arrest Mr. Phillips after this transaction?

A. Eventually, yes.

Q. But not that day?

11. **Q.** —

2 A. NO. Is Mr. Phillips?

3 Q. When did you arrest Mr. Phillips.  
A. I don't know the exact date, but it's in October I

4

1 A. No.

2 Q. Now, that would be important, wouldn't you think?

3 A. Yeah.

4 Q. So as we sit here today, there's no phone evidence

5 or phone records proving who that phone belonged to; is that

6 accurate?

7 A. That is correct.

8 Q. So it would be accurate to say you're speculating

9 as to who that phone belonged to?

10 A. Who the phone physically belongs to, yes.

11 Q. Now, there was also another sale. Right?

12 A. Two more, yes.

13 Q. Two more sales. No phone records for those either?

14 A. No.

15 Q. Now, I think the first phone number was

16 585-455-5612.

17 A. Correct.

18 Q. Did you ever see if that belonged to Nicky

19 Phillips?

20 A. No.

21 Q. No tape-recording, as we said?

22 A. Nope.

23 Q. Now, you're aware that -- and you might not be

24 aware. We talked about how you heard a voice, that there's

25 inherent unreliability in voice recognition.

1 A. Yes.

2 Q. She wasn't doing it for any higher power or  
3 anything like that as far as you know?

4 A. As far as I know.

01:54:17 5 Q. Now, you said that you thought April Robinson was  
6 sober during this process, not using drugs; is that accurate?

7 A. Correct. The days that she was with me, she  
8 appeared sober, yes.

9 Q. But you don't know for sure if she was on drugs or  
01:54:32 10 not, right?

11 A. Correct.

12 Q. You didn't -- sometimes like if you got a  
13 commercial driver's license, they'd give you a test, like a  
14 drug test. She didn't have any drug tests, you didn't drug  
15 test her, did you?

16 A. No.

17 Q. So from your observation, that's what you say, but  
18 you don't know if she got money from you and went out and  
19 bought drugs?

01:54:55 20 A. Correct.

21 Q. Now, as far as April goes, do you know how many  
22 arrests she's had?

23 MR. MacBRIDE: Objection, your Honor. May we  
24 approach?

01:55:14 25 THE COURT: Yes.

1 Q. Angnem Green's case.

2 A. Yeah.

3 Q. Okay. You testified before the grand jury?

4 A. Yes.

02:13:52 5 Q. November 6, 2014?

6 A. Uhm-hmm.

7 Q. That was closer in time to the alleged incident

8 than today, right?

9 A. Yes.

02:14:01 10 Q. And your testimony today is exactly what? Because  
11 I want to make sure we pinpoint it.

12 MR. MACBRIDE: Objection, your Honor.

13 MR. BOGULSKI: No, I --

14 THE COURT: I'll give a little latitude.

02:14:12 15 Overruled.

16 Q. You don't know who it was that sold those drugs  
17 that day; is that accurate?

18 A. No.

19 Q. That's not accurate?

20 A. I didn't see, I couldn't identify who was there.  
21 It was based upon what April told me.

22 Q. So that's hearsay. So you couldn't see yourself  
23 who sold those drugs; is that true?

24 A. Correct.

25 Q. And do you recall testifying before a grand jury?

1 A. On that day I could not, no.

2 Q. Okay. So you couldn't see who was there?

3 A. Correct.

4 Q. There's no way you could look us in the eye, look  
02:15:39 5 the jury in the eye and say you saw Angнем Green there that  
6 day; is that --

7 MR. MacBRIDE: Objection --

8 Q. -- correct?

9 MR. MacBRIDE: -- your Honor.

10 THE COURT: Overruled.

11 A. Correct.

12 Q. And we don't have this on videotape, correct?

13 MR. MacBRIDE: Objection.

14 MR. BOGULSKI: What --

15 MR. MacBRIDE: It's already been asked about  
02:15:51 16 12 times.

17 MR. BOGULSKI: No, this is a separate sale.

18 THE COURT: I'll give a little latitude.

19 Overruled.

20 Q. You don't have that transaction on videotape,  
02:15:58 21 correct?

22 A. No.

23 Q. And you don't have any other witnesses here?

24 A. Correct.

25 Q. And you don't have that on a tape-recorder through  
02:16:04

1 Q. But you personally think that information's  
2 important?

3 A. What information is that? I'm lost here.

4 Q. Okay. It's not a trick question. And we could  
5 have that read back if you like.

02:17:49

6 A. No --

7 MR. BOGULSKI: Can we have --

8 THE COURT: That's okay. Put it back --

9 A. Just ask the question again.

02:17:56

10 Q. Your testimony is that you're not aware that April  
11 Robinson, if convicted, could have been sentenced as a  
12 persistent felon?

13 A. I was not aware, correct.

02:18:06

15 Q. And that's important information?

16 A. It could be.

17 Q. It could be?

18 A. Yes.

19 Q. You agree with me then?

02:18:11

20 A. Yes.

21 Q. Okay. Now, this is one that you had on tape,  
22 right?

23 A. Yes.

24 Q. Backing up, you said it was a phone call or  
25 something like that was made; is that what happened?

02:18:23

1 THE COURT: I'd urge you to get to your  
2 bottom-line question. If he can't commit to that, then  
3 you can go backwards, Frank.

4 Q. Three sales, you never saw Mr. Green do anything?

02:24:03 5 A. Correct.

6 MR. BOGULSKI: No further questions, Judge.

7 Thank you.

8 THE COURT: Thank you. Redirect?

9 MR. MacBRIDE: Yes, your Honor. Thank you

02:24:09 10 very much.

11 THE COURT: Welcome.

12 REDIRECT EXAMINATION BY MR. MacBRIDE:

13 Q. Detective Vine, do you recall defense counsel  
14 asking you questions concerning April's criminal history?

02:24:16 15 A. Yes.

16 Q. During the course of your time working in the  
17 narcotics unit over at the Geneva Police Department, have you  
18 utilized other informants other than April Robinson?

19 A. Yes.

02:24:25 20 Q. Approximately how many?

21 A. More than I can count --

22 Q. And of --

23 A. -- honestly.

24 Q. -- the percentage of those individuals that you've  
25 used, have they had criminal histories?

1 Q. Any children?

2 A. Yes.

3 Q. Do you know of any other folks that just so happen  
4 to live at 99 Middle Street during the time that we're  
02:31:22 5 discussing?

6 A. Not in the last 15 months.

7 Q. How about during the summer of 2014?

8 A. No.

9 Q. At some point in time our defendant leaves 99  
02:31:33 10 Middle Street, correct?

11 A. Yes.

12 Q. And new people move in?

13 A. Correct.

14 Q. Any drug activity at 99 Middle Street since then?

15 A. No.

16 Q. Just so happens that after the defendant --

17 MR. BOGULSKI: Judge --

18 Q. -- leaves 99 --

19 MR. BOGULSKI: -- relevance.

20 Q. -- Middle Street, no more drug --

21 MR. BOGULSKI: Relevance.

22 Q. -- transactions?

23 A. No.

24 MR. BOGULSKI: Relevance. This is not  
02:31:50 25 relevant to this case.

1 THE COURT: Sustained. Sustained.

2 MR. BOGULSKI: Move to strike.

3 THE COURT: Thank you. Disregard that  
4 question, folks, and any answer that may have been  
5 given. Go ahead.

02:31:56 6 Q. Do you recall defense counsel asking you questions  
7 concerning a person by the name of Nicky Phillips?

8 A. Yes.

9 Q. Are you familiar -- a lot of questions were asked  
02:32:06 10 about your familiarity with different persons and different  
11 aspects of the law. Do you recall those questions?

12 A. Yes.

13 Q. Are you familiar with something that's called  
14 accomplice liability?

02:32:14 15 A. Yes.

16 Q. Can you please describe that for our jury, please?

17 A. Basically, in layman's terms, that doesn't -- we  
18 can order up from somebody, and if that person sends somebody  
19 else to make the deal and come back, they both can get  
20 charged with the sale because they're working as an  
21 accomplice with each other.

22 Q. So on the date of July 1st, 2014, who consummated  
23 the deal with April over the phone where you personally heard  
24 that person's voice?

02:32:40 25 A. Angnem Green.

1 Q. Andrew. The defendant?

2 A. Yes, sir.

3 Q. Okay. And did you provide -- give any money to  
4 someone?

02:57:10 5 A. Yeah, I put the money down on the table, like I was  
6 told.

7 Q. Okay.

8 A. I got the stuff and I said bye to all of them.

9 Q. Who gave you the stuff?

02:57:20 10 A. Nicky slid the stuff on the table.

11 Q. Okay. And the defendant was there?

12 A. Uhm-hmm.

13 Q. Okay. What were they doing, do you remember?

14 A. Smoking a blunt in the back yard.

02:57:30 15 Q. Okay. And what's that? What's a blunt?

16 A. When you take -- you roll marihuana in a cigar.

17 That's it.

18 Q. And so you got -- how was the cocaine packaged?

19 A. In aluminum foil.

02:57:43 20 Q. Same as the first transaction?

21 A. Yes, sir.

22 Q. And what did you do with the cocaine after you  
23 finished with that?

24 A. I gave it to Detective Vine.

02:57:49 25 Q. And were you searched?

1 A. Yes, sir, I was searched.

2 Q. Find any other drugs or any money on you?

3 A. No, sir.

4 Q. Okay. I want to fast-forward to July 31st of 2014.

02:57:59 5 Again, during the afternoon, did you meet with Detectives  
6 Vine and Choffin?

7 A. Yes, sir, I did.

8 Q. Did they search you?

9 A. Uhm-hmm.

02:58:05 10 Q. Did they find anything?

11 A. Yeah -- no, they didn't find nothing on me.

12 Q. No drugs?

13 A. No, sir.

14 Q. No money?

15 A. No, sir.

16 Q. And where was this transaction to take place?

17 A. I was supposed to go to the house.

18 Q. Okay. Who did you set the deal up through?

19 A. The same person.

20 Q. The defendant?

21 A. Yes, sir.

22 Q. All three transactions?

23 A. Uhm-hmm.

24 Q. Over the telephone?

25 A. Yes.

1 Q. How much did you give him?  
2 A. The hundred dollars that was given me.

3 Q. And did you get anything in return?  
4 A. The crack cocaine.

5 Q. Okay. Who gave it to you?

6 A. The same person.

7 Q. The defendant?

8 A. Yes, sir.

9 Q. How was it packaged?

10 A. In aluminum foil.

11 Q. Okay. Other than the defendant and the female,  
12 were there any children in the home?

13 MR. BOGULSKI: Objection again, Judge. The  
14 witness is supposed to testify, not the prosecutor.  
15 It's leading questions over and over again.

16 THE COURT: Can you rephrase that, Jason, to  
17 overcome that? Sustained.

18 Q. Anyone else in the home?

19 A. Yes, there was.

20 Q. Please describe that for me.

21 A. Just him and the children.

22 Q. Okay. One child or more than one child?

23 A. More than one.

24 Q. Okay. And did these children appear to be less  
25 than seventeen years old?

1 MR. BOGULSKI: I think the appropriate  
2 question might be how old were the children rather than  
3 leading questions, your Honor.

Q Did the children --

02:58:56 5 A. They were --

THE COURT: Sustained.

A -- little children.

MR. BOGUSKI: Objection.

Q One was in diapers?

12 A Yes.

Q. What were the other kids doing?

## Playing video games:

14  
03:00:08 15 Q. And after the defendant handed you crack cocaine,  
16 what did you do?

I walked out of the house with it.

2. Where'd you go?

18 Q. Where were you?  
19 A. I walked back to the car where was I supposed to  
20 go, met them and gave it to them.

## Q The detectives?

yes Detective Vine.

Did they search you?

was searched

Q. Nothing found on you?

1 A. No, sir.

2 Q. Okay. During the time that you were working with  
3 Detective Vine and Choffin, were you under the influence of  
4 any alcohol or drugs when you were making these purchases for  
5 the Geneva Police Department?

03:00:31

6 A. No.

7 Q. Okay. With regards to -- let's talk about your  
8 kids real quick. Do you have custody of your kids, April?

9 A. No, sir, I don't.

03:00:44

10 Q. Who has custody of your kids?

11 A. Their father.

12 Q. Okay. And is that something that you're okay with  
13 or not okay with?

14 A. I gave them to their father because of my drug use.

03:00:55

15 Q. You ever been convicted of any crimes, April?

16 A. Yes, sir, I have.

17 Q. Can you tell us what crimes you been convicted of,  
18 please?

19 A. Sale of controlled substance in 2000 and -- in

03:01:07

20 2000. And in 2000 -- 2003 or something I got caught with a  
21 stem so I got possession -- I got caught with a stem and a  
22 rock so I got possession of controlled substance. I had  
23 successfully completed all the programs and stuff for that.  
24 This time I got a grand larceny -- no, I did grand larceny  
25 before. I got two to four for that. And this is my second

03:01:34

1 parole. I did everything I was supposed to do. I completed  
2 the parole and everything.

3 Q. I just want to make sure I understand you  
4 correctly. So the credit card deals with the grand larceny  
5 and the stolen property?

03:04:31 6 A. Yes, sir.

7 Q. Okay. And then what about this unauthorized use of  
8 a motor vehicle, what's going on with that?

9 A. I was again using with another person and the van  
10 was rented out from a person that I was with and the lady  
11 finished what she had for letting us use the van and wanted  
12 more and I ignored her phone calls and turned off my phone  
13 and she called the police and said that I didn't bring the  
14 van back.

15 Q. Okay. Got ya. Now, in connection with working  
16 with the police, what if any benefit did you receive in  
17 helping the Geneva Police Department in connection with this  
18 case?

19 A. None.

20 Q. No benefit?

21 A. No benefits.

22 MR. MacBRIDE: I have no further questions,  
23 your Honor.

24 THE COURT: Thank you. Redirect? I should  
25 say, cross?

1 Q. When did you start using heroin?  
2 A. Maybe about a year ago.  
3 Q. When?  
4 A. I don't exactly remember what date.  
03:23:10 5 Q. And prior to that you were using cocaine?  
6 A. I been using cocaine for a long time.  
7 Q. And your testimony today is that someone can get  
8 stuck?  
9 A. Yes, sir.  
03:23:23 10 Q. And what do you mean by stuck?  
11 A. Um, it -- actually it just means that a person that  
12 is using at the time can get really paranoid and things  
13 happen when they're paranoid. That's basically all it is.  
14 Q. Okay. So --  
03:23:43 15 A. A person that's stuck can't do anything, to be  
16 honest with you. Maybe -- I don't know.  
17 Q. So a person that's on crack cocaine is not a  
18 reliable person; would you agree with that statement?  
19 A. If they are smoking it at the time, no, sir, I do  
20 not.  
03:23:59 21 Q. Okay. And you were smoking crack consistently for  
22 a long period of time?  
23 A. Yes, sir, I have.  
24 Q. Were you smoking crack in the summer of 2014?  
03:24:13 25 A. I was getting high, yeah, but had I smoked when I

1 was doing what I was doing, no, sir.

2 Q. But you were smoking crack cocaine during that  
3 period of time?

4 A. I've been an addict for years, yes, sir.

5 03:24:28 Q. And would it be accurate if a detective came in and  
6 said you were working off -- you're working off your sentence  
7 or working off your crime?

8 A. I -- would it be accurate? I don't understand what  
9 you mean by that.

10 03:24:46 Q. Well, if a detective came in here and said --

11 MR. MacBRIDE: Objection, your Honor.

12 Improper cross.

13 Q. -- you were working off --

14 THE COURT: Sustained.

15 03:24:54 Q. Were you trying to work with the police to get a  
16 better deal?

17 A. No.

18 Q. You were not?

19 A. No, sir, I wasn't.

20 03:25:02 Q. So if a police officer said that, that would be  
21 inaccurate?

22 MR. MacBRIDE: Objection, your Honor.

23 THE COURT: Sustained.

24 Q. Were you doing it to help society?

25 A. No, sir.

03:25:11

1 Q. No? Then what were you doing it for?

2 A. I was just -- I don't know.

3 Q. I mean, what was your purpose in assisting the  
4 police if you weren't doing it to get a better result for  
03:25:24 5 yourself?

6 A. To get help for my drug addiction, sir.

7 Q. Were you in counseling at that time?

8 A. Was I in counseling?

9 Q. Yes.

03:25:33 10 A. I don't understand what you mean.

11 Q. Drug counseling.

12 A. I had tried it, but it didn't -- I didn't -- it  
13 didn't last.

14 Q. But you weren't active in counseling at that time?

03:25:43 15 A. I tried. I --

16 Q. You could have checked into an inpatient rehab  
17 facility, correct?

18 MR. MacBRIDE: Objection, your Honor.

19 Q. Did you?

03:25:50 20 A. Sir, I did --

21 THE COURT: Overruled.

22 A. -- go to rehab. I didn't stay. I left.

23 Q. Okay. Now, your testimony on direct examination  
24 was that all three of these were set up on a speakerphone I  
03:26:06 25 believe is what you were saying?

1 A. That happened in November.

2 Q. So this happened after? So what your testimony  
3 today is, November 2014 is the unauthorized use of a motor  
4 vehicle; is that accurate?

5 A. Uhm-hmm.

6 Q. And that was after you were trying to set my client  
7 up?

8 MR. MacBRIDE: Objection, your Honor.

9 Argumentative.

10 A. I don't --

11 THE COURT: Sustained.

12 A. -- understand.

13 THE COURT: Sustained.

14 Q. My question is you were working with the police in  
15 July of 2014, correct?

16 A. Yes, sir.

17 Q. Three separate days, right?

18 A. Uhm-hmm.

19 Q. But you weren't under arrest for anything at that  
20 time, were you? Or were you?

21 A. No, sir, I wasn't.

22 Q. You were not under arrest, you weren't working off  
23 any charges, right?

24 A. No, sir, I wasn't.

25 Q. Did the police not have you charged or did your

1 be a nice, neat bundle to be done with the testimony  
2 tonight. I don't know if we can do that. I don't want  
3 the attorneys to be rushed. I don't want you to be  
4 rushed or worn out, but at least it's, you know, just  
5 like playing sandlot football, just scratch a play in  
6 the dirt and then go to the next play. So let me see  
7 how we progress with the witnesses today so --  
8 attorneys, I'd want you of course to, you know, keep a  
9 normal pace. Mike, his wrists, I don't want him to blow  
03:57:02 10 'em.

03:57:18 11 MR. MacBRIDE: Thank you, Judge.

12 MR. BOGULSKI: Thank you.

13 Q. So, Ms. Robinson, just so we're clear, so you  
14 weren't facing any charges other than the snatching of the  
15 money you were talking about, correct?  
03:57:29 16 A. Yes, sir.

17 Q. So during the -- prior to you working with the  
18 police, you were not facing any charges for unauthorized use  
19 of a motor vehicle, correct?

20 A. Sir -- yes, sir.

21 Q. So you were not facing any charges, right? Your  
22 testimony to the jury was that your charges for unauthorized  
23 use of a motor vehicle and grand larceny were in November and  
24 December of 2014. That's what you said earlier, right?

25 A. Yes, sir.

1 what -- that you had a case? Do you see what that says?  
2

3 A. Uhm-hmm.

4 Q. What does it say?

5 A. April 23rd, 2014.

6 Q. April 23rd, 2014. Now, what was the charge that  
7 you were facing?

8 A. Criminal possession of stolen property.

9 Q. In the fourth degree, motor vehicle, right?

10 A. Yes, sir. Yeah, that's for the same van.

11 Q. Okay. So your test -- and this was in Geneva City  
12 Court, right?

13 A. Yes, sir.

14 Q. Now, we were just talking to the jury and you were  
15 saying that at the time of Ap -- during July, you weren't  
16 facing any charges, right?

17 A. I forgot that. I apologize.

18 Q. You for -- I'm sorry. So you just forgot?

19 A. Because it was dropped to a -- that shouldn't even  
20 be there.

21 Q. Oh, it shouldn't?

22 A. No.

23 Q. Well, what happened to it?

24 A. Because it's for the --

25 MR. MacBRIDE: Judge --

A. -- same van.

1 Q. Okay.

2 MR. MacBRIDE: -- I'm going to object.

3 Q. So you don't --

4 THE COURT: Hold on.

04:00:55 5 Q. So it got dropped is what you're saying?

6 MR. MacBRIDE: Judge --

7 THE COURT: Hold on.

8 MR. MacBRIDE: -- argumentative.

9 THE COURT: Overruled. I'll -- I'll give you  
04:01:01 10 a little latitude. Overruled.

11 Q. So is this -- this charge is not supposed to be  
12 there?

13 A. I didn't get -- yeah, as far as I know, it -- I  
14 ended up with -- well, you know --

04:01:12 15 Q. Well, no, I don't actually, so why don't you tell  
16 us.

17 A. I didn't get charged with possession of stolen  
18 property for the -- the van.

19 Q. Why not?

20 A. Because it got dropped to unauthorized use of a  
21 motor vehicle.

22 Q. Okay. Was that part of your deal with the police?  
23 Were they helping you with that?

24 A. Yes.

04:01:36 25 Q. Okay. So they were helping you. So we're clear --

THE COURT: Overruled.

1  
2 Q. -- was it the truth or not the truth? It's not a  
3 trick question.

A      About the car situation?

04:02:38 5 | Q. Yes.

6 A. The van?

— C yes

— 10 —

7  
8 A. I had forgotten about that so I guess that would  
9 make it so it wasn't accurate because I had forgotten about  
0 that charge. But that's not supposed to be there.

11 Q. Okay. Well, why is it there then?

MR. MacBRIDE: Objection, your Honor.

So you're not --

THE COURT: Sustained.

04:02:57 14 Q. -- going to say that it wasn't truthful, what you  
15 said before, but you're going to say it's inaccurate; that's  
16 the parlance that you prefer to --  
17

18 A. Yeah.

MR. MacBRIDE: Objection, your Honor.

24-03-06 20 Q. Okay.

THE COURT: Overruled.

21 Q So what you said before was not accurate, right?  
22

— sir it was not accurate.

23 A. Bill, Sir  
24 Q. It was not accurate. Do you think that we would

24 -  
25 have liked to have known about that?

1 A. 2009? It's the credit cards.

2 Q. Credit cards from whom?

3 A. The same person, the boy that I was with. I didn't

4 steal it.

5 Q. You didn't steal it?

6 A. No, sir.

7 Q. So you pled guilty to something you didn't do?

8 A. I used it. I tried to use it. But I didn't steal

9 it. He gave it to me.

10 Q. Now, he gave -- that's your testimony, that he gave

11 it to you?

12 A. Uhm-hmm.

13 Q. But you knew it didn't belong to him?

14 MR. MacBRIDE: Judge, we've already gone --

15 MR. BOGULSKI: No.

16 MR. MacBRIDE: -- over this.

17 MR. BOGULSKI: There's something significant.

18 Q. You were charged originally with robbery on that

19 case; is that true?

20 A. No, sir, I wasn't.

21 Q. Okay. I show you what's been marked as C. I'm

22 going to direct you to page 8. Geneva City Court, you were

23 arraigned on July 27, 2009, for what?

24 A. For robbery.

25 Q. Okay. And you just looked at this jury --

1 MR. MACBRIDE: Objection, your Honor.

2 Q. -- and you said that you were not --

3 THE COURT: Overruled.

4 Q. -- charged with robbery. Is that true?

5 A. Not for that credit card I wasn't charged with  
04:10:40 6 rob -- for robbery. That's not what I got in trouble for  
7 robbery for.

8 Q. Something else you were in trouble for robbery for?

9 A. Yes, sir.

10 Q. And what was that?

11 A. That was something -- what is -- what is -- I don't  
12 understand.

13 Q. I can show you again. Maybe it'll refresh your  
14 recollection.

15 A. I don't understand why -- why do I have to answer  
04:11:01 16 all this about my -- that stuff that I don't even remember?

17 Q. You don't remember? It's a significant event in  
18 your life, charged with robbery, and you don't remember that?

19 A. There's a lot of stuff.

20 Q. Tell us.

21 A. From that long ago?

22 Q. 2009?

23 A. I re -- I remember what happened that led me up to  
24 be charged with that, yeah, but it wasn't -- it was -- it  
25 wasn't -- it wasn't -- I didn't even get charged with it. It

1 correct?

2 A. I didn't remember it, sir. That's -- I didn't  
3 remember.

4 Q. Is it your testimony for this jury that you got no  
04:13:48 5 help from the police with this, that you weren't working  
6 anything off; is that your testimony?

7 A. Sir, that's what I said, yes, sir.

8 Q. Okay. Now, these crimes, and I haven't gotten into  
9 all of them, I've noticed a pattern of dishonesty. Would you  
04:14:06 10 agree with me?

11 A. Yes, sir.

12 Q. You agree?

13 A. Yes, sir.

14 Q. You agree that when you steal from people, that's  
04:14:18 15 dishonest, right?

16 A. Yes, sir.

17 Q. That's basically lying; would you agree?

18 A. Sir, it was all to benefit my drug use.

19 Q. It's a simple question. I mean, maybe it's for  
04:14:29 20 your drug use, but it's lying, is it not?

21 A. Yes, sir.

22 Q. You have a tendency -- and I can go through this --

23 we can continue to go through these -- through this -- that  
24 you, throughout your many years, have not been truthful; is  
04:14:48 25 that true?

1 on Thomas Rodwell, for instance.

2 MR. MacBRIDE: Yes, your Honor, that's  
3 correct. Thank you.

4 THE COURT: Okay. Very good. And your intent  
5 would be not to call any further witnesses, of course?

6 04:47:41 MR. MacBRIDE: Correct, your Honor.

7 THE COURT: All right. So if he makes that  
8 provisional rest, Frank, would you make your provisional  
9 motion?

10 04:47:53 MR. BOGULSKI: Sure, Judge. I'm going to make  
11 a trial order of dismissal in anticipation of what our  
12 stipulation being.

13 THE COURT: Thank you.

14 MR. BOGULSKI: I think it's appropriate to  
15 04:47:58 make it, Judge.

16 The first count of the indictment alleges that  
17 my client sold drugs on July 1st. Recall at the  
18 beginning of the case I had asked for a dismissal at  
19 that point. I felt I had a good basis for it because my  
20 client was not charged as an accomplice and there's  
21 nothing saying subsection 20 of the Penal Law. I know  
22 that Jason was not the one that charged it to the grand  
23 jury so it's no fault of this prosecutor, Judge, but I  
24 think it should have been charged as accomplice  
25 liability. So I'll renew that motion.

04:48:31 25

1                   But I'm also making a trial order of dismissal  
2                   motion on that count because it was Nicky Phillips, who  
3                   all the witnesses said sold the drugs, okay? So even if  
4                   in the light most favorable to the prosecution, they  
5                   have not sustained a *prima facie* case because it's not  
6                   charged as an accomplice, meaning, maybe, if it was  
7                   charged as an accomplice, then perhaps, your Honor, my  
8                   motion would fail, but since it's not charged that way,  
9                   I believe it's an appropriate motion in that they have  
04:48:50 10           not established each and every element of the offense  
11                   charged for the sale of the drugs. The testimony was  
12                   that Nicky Phillips sold the drugs, from the police,  
13                   from April Robinson.

14                   The next one was on the second date, which was  
04:49:25 15           July 22nd. On that day police officer, detective came  
16                   in from the Geneva Police Department, said that he did  
17                   not see who sold the drugs. April Robinson came in and  
18                   said that money was put down on a picnic table in the  
19                   back yard of a house in Geneva. She said my client was  
04:49:49 20           present, but merely being present somewhere does not  
21                   make him guilty, Judge. The fact is, is that the money  
22                   was I believe taken by Mr. Phillips so there's no *prima*  
23                   *facie* case right then and there, Judge. So that's  
24                   our -- and that they have not established each and every  
04:50:11 25           element, namely the sale, because the sale was made by

1 WEDNESDAY, MAY 25, 2016 - SOUTH COURTROOM

2 THE COURT: Okay, good morning, folks. This  
3 is a continuation of Angnem's Green's matter and, let's  
4 see, attorneys, my secretary will bring up written  
5 copies of the jury instructions. I tried to e-mail  
6 those last night. I got a spinning circle and after  
7 about five minutes I went home and figured it wasn't  
8 going to work so -- she's going to give you written  
9 copies of those today so...

09:15:19 10 Let's see, Jason, you have a written  
11 stipulation also?

12 MR. MacBRIDE: I do, Judge. I'll give that to  
13 Mr. Bogulski so that he can review it with Mr. Green.

14 MR. BOGULSKI: Thanks a lot.

15 09:17:26 THE COURT: All right, fellas, let's see,  
16 these are rough -- rough drafts?

17 MR. BOGULSKI: Judge, a couple things.  
18 I -- not in a specific order, but I was just  
19 perusing these. I was thinking about this as far as the  
20 accomplice. I had made my motion to dismiss because  
21 it -- because the indictment does not conform to the  
22 statutory requirements in that it does not charge my  
23 client as an accomplice. And I think that it's even  
24 more important that we don't have any jury instructions  
25 relative to this if you don't dismiss it because it

09:21:23 25

1 could be very confusing and prejudicial to my client.  
2 It just misleads the jury not only on that first count,  
3 but also on the second and third counts. It says  
4 accomplice is a question of fact. In this case you must  
09:21:43 5 decide whether Nicky Phillips was an accomplice. Well,  
6 that's not what's in the indictment. It's just false,  
7 it's not true, and it's prejudicial.

8 Now, if -- the way I've seen indictments  
9 charged, Judge, as accomplices, is it will say that, on  
09:22:01 10 or about July 1st, 2014, in Ontario County, in the State  
11 of New York, the defendant, Angnem Green, sold drugs in  
12 connection with Mr. Phillips. And it doesn't say that.  
13 So the jury's looking at this, it's very confusing, it's  
14 very prejudicial. It's now how it's charged. If it  
15 were charged that way, properly in the indictment, then  
16 I wouldn't have any argument for that to be there. It's  
17 also is why it should be dismissed.

18 The other thing is when we look at accomplice  
19 as a matter of law, on page 15, it says, under our law,  
09:22:47 20 Nicky Phillips is an accomplice because there's evidence  
21 that he participated, and it goes on. And then it says,  
22 on line 10, our law's especially concerned about the  
23 testimony of an accomplice who implicates another to the  
24 commission of a crime. Well --

09:23:00 25 THE COURT: He didn't testify, right, right.

What also do you know about our defendant,

Mr. Green? Well, what did Detective Vine tell you?

what did he tell you? He's known the defendant for

years, knows that he's associated with Mr. Phillips,

been over to his house before. And that's going to be

something that's really big, because I don't believe

that defense counsel ever mentioned that. Who lives at

99 Middle Street? Who's lived at 99 Middle Street for

all those years? And you heard Detective Vine,

magically, as soon as the defendant left that address,

drugs stop being sold out of that house.

MR. BOGUSKI: Objection, your Honor.

MR. MCGOWAN: Is that a coincidence?

... it'll be the testimony that

governs, folks.

MR. MacBRIDE: 99 Middle Street. Detective  
Vine told you, unequivocally, he's seen the defendant,  
Mr. Green, inside the house, at the house. And this is  
before this investigation even goes down.

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So let's connect the dots. We have -- we know

the defendant lives at 99 Middle Street. We know that

It's undisputed. We know, undisputed, that 99 Middle

It's undisputed that the street's right across from this park, Gulvin Park. It

undisputed that April has purchased crack cocaine from

this defendant, undisputed.

THIS DECLARATION.

1                   If you're going to ask yourselves, "Hmm,  
2                   should I really believe April Robinson? Why should I  
3                   put some stock in what she's telling me?" You should  
4                   look no other place and go back to July 1st, 2014. You  
11:11:24 5           heard Detective Vine talk about, "Look, I'm in the  
6                   narcotics division. We want to get drug dealers off the  
7                   street. April Robinson came highly recommended to me  
8                   from another detective." I asked him, "Well, what do  
9                   you mean highly recommended?" "She's provided truthful  
11:11:24 10           and accurate testimony on other investigations that have  
11                   led to convictions and getting drug dealers off the  
12                   street."

13                   And we know the defendant's a drug dealer. We  
14                   know that for sure. What was the -- I like to call it  
11:11:33 15           the ring of truth? April -- let's just assume that you  
16                   don't -- you have issues with her. Let's just assume  
17                   that. You have, what, a 10-year veteran of the Geneva  
18                   Police Department sitting in that chair who tells you,  
19                   "Yeah, on the 1st of July, I was with April, right next  
11:11:57 20           to her, and someone called her and set up a deal where  
21                   she would give that other person on the other line a  
22                   hundred bucks in exchange for crack cocaine. I heard  
23                   this conversation with my very own ears." "Detective  
24                   Vine, did you recognize the voice of the other person?"  
11:12:22 25           "Yeah." "Well, who was it?" "The defendant, Angnem

1                   Green." "Any possibility that you're mistaken?" No,  
2                   none."

3                   Then on cross, defense counsel tried his very  
4                   best, "Well, you know, it's on a phone, you might not  
11:12:45 5           hear the greatest," and he didn't get anywhere with  
6                   that. Now, you know what, he wants you to believe that  
7                   phone call never even happened, didn't even happen,  
8                   because they didn't record it, or they didn't get the  
9                   phone number. We don't know whose phone that was. Who  
11:13:10 10           cares? Do we really care what phone number or what  
11                   phone the defendant was using to set up a drug deal? Is  
12                   that really important? What's really important is who  
13                   set the deal up. And it's undisputed, undisputed that  
14                   it was the defendant who set that deal up in the  
15                   presence of Detective Vine.

16                   So even if you have some trepidations about  
17                   believing April Robinson, look no further than Detective  
18                   Vine. Are there any credibility issues with Detective  
19                   Vine? Does he have any motive to lie? Is he getting  
11:13:45 20           any benefit? He's just doing his job. And he knows the  
21                   defendant, knows his voice, beyond question.

22                   There is no dispute the defendant, back on  
23                   July 1st of 2014, set up that crack deal. And even  
24                   more, the defendant -- and you got to give him credit.  
11:14:09 25           He's pretty savvy. He's pretty savvy. "Why would I

1 stick my own neck out on the line? Whoa, whoa, whoa,  
2 whoa, whoa. Let's switch it up. I'm going to send my  
3 boy to do the deal. He's going outside in the middle of  
4 the park. I'm not getting out there. I'm going to send  
5 my boy, Nicky Phelps, out to do that deal." On  
6 speakerphone, undisputed, defendant's voice changing the  
7 plans up.

8 And what did the defendant tell April? What  
9 did he tell her? Undisputed, "Look, the cops are  
10 outside, down near this graveyard, harassing me. Send  
11 my boy. He's going to meet you on the bridge in the  
12 park." And how do we know Detective Vine is telling you  
13 the truth about that? Well, April got up here and told  
14 you the exact same thing, so their testimony is  
15 consistent. "Yeah, I remember. He says the cops were  
16 out harassing him near the graveyard and so he switched  
17 up the plans and told Nicky to come over and do the  
18 deal." We know the defendant was involved in setting  
19 that deal up.

20 One of the most important instructions that  
21 this Judge is going to provide you is something called  
22 accessory liability. I'm going to give you an example.  
23 Mike and I, we want to rob a bank. We agree, Mike's got  
24 the gun, he's going to go in and do the deal. I'm going  
25 to drive him there. I know what he's doing. I'm just

1 pictures. And they went up to the lab. Was there -- I  
2 don't see any blood, pulled hairs. Why would there be  
3 saliva on a piece of cooked-up crack cocaine? Would you  
4 expect for there to be blood, semen, saliva on crack  
11:33:57 5 cocaine? Not in the pictures. Again, just because  
6 someone says something doesn't mean that it makes sense.

7 Another item that I thought was very  
8 interesting, again, if you're going to put any faith in  
9 April Robinson and believe her, what did she tell you  
11:34:13 10 about the defendant, what did she call him? And I'm  
11 going to stretch it a little bit more. And Detective  
12 Vine talked about this. Drug dealers don't use their  
13 real name. Why would they? Seriously? I'm going to  
14 sell drugs to someone and use my real name? And not  
11:34:35 15 only that, I'm going to use my own phone and I'm going  
16 to -- it's going to be a real phone, with Verizon.  
17 That's not now drug dealers work. And you heard that.  
18 How many times -- Detective Vine and April Robinson,  
19 every time they reached out to this dude he had a new  
11:34:49 20 phone number. Why do you think that is? It's to stay  
21 elusive, to avoid detection. And one of the things,  
22 well, am I going to believe April Robinson? "Yeah, I  
23 call him Andrew. I call him Drew." Well, Detective  
24 Vine did some Facebook stalking, and here's a lovely  
11:35:09 25 photo, picture, that -- you guys can look at it. You

1                   reap the rewards any of benefit? On the contrary, what  
2                   does she risk? What does she risk? She sits in this  
3                   room here, and she's talking about the drug world in  
4                   Geneva, a small town like Geneva, where word travels  
5                   fast, word travels fast, and the drug dealer who sold  
6                   her drugs is sitting right across from her. And not  
7                   only that, it gets better. All the drug dealers'  
8                   homeboys and homegirls are staring at her in the  
9                   courtroom.

10                   11:38:34           MR. BOGULSKI: Objection, your Honor.

12                   11:38:34           THE COURT: Sustained.

13                   12                   MR. BOGULSKI: Racial inflammatory comments,  
14                   13                   and it's been going on --

15                   14                   THE COURT: Sustained.

16                   15                   MR. MacBRIDE: All of his friends --

17                   16                   MR. BOGULSKI: -- and currently --

18                   17                   MR. MacBRIDE: -- and family --

19                   18                   MR. BOGULSKI: -- going on.

20                   19                   MR. MacBRIDE: -- are here --

21                   20                   MR. BOGULSKI: I'll move to strike that.

22                   21                   MR. MacBRIDE: -- staring at her.

23                   22                   THE COURT: Overruled.

24                   23                   MR. MacBRIDE: Staring at her. Consider that.

25                   24                   It sounds like a fun ride for April, something that she  
                          was really willing to stick her neck out on the line for

11:38:59           25

1 THE COURT: Okay. As soon as Jim clicks the  
2 door. Thank you.

3 MR. BOGULSKI: I -- Judge, I take exception.  
4 I know that I've done some demographics in Ontario  
5 County and it's predominantly white, but during the  
6 summation the prosecutor was -- kept saying homeboys and  
7 like moving his arms like, you know, his -- pointing to  
8 the African-American people here, sitting here. He  
9 doesn't know who they are. I don't think. I don't  
10 think he knows what their -- you know, if their  
11 homeboys. Okay? And then when he was talking about the  
12 phone calls, he was trying to emulate an  
13 African-American voice or whatever.

14 I need to talk to my client about whether  
15 there's a mistrial on this because I've never -- I mean,  
16 there's one thing to make your case. All right? But to  
17 say -- you know, to try to thug him up -- and that's  
18 what that Facebook evidence is as well, is to try to  
19 make him appear out to be some sort of thug or to  
20 racially profile him. I take exception to it, Judge,  
21 and I -- I don't know how that's appropriate, certainly  
22 not in front of a jury, and I have to talk to my client  
23 as to whether we're going to request a mistrial, but it  
24 is highly inappropriate, your Honor, for a prosecutor to  
25 use that terminology, homeboys, like -- my client

1 doesn't refer to his friends that way and he certainly  
2 doesn't refer to his family that way. His wife is here.  
3 He's got relatives. There's actually females here and  
4 he points to them in the context of -- of a witness. So  
5 I'm going to talk to Mr. Green, but I just want to put  
6 that on the record, Judge.

7 THE COURT: Thanks, Frank. Any other  
8 comments?

9 MR. MacBRIDE: Judge, at the end of the day  
10 the, defendant's on trial here for allegations of  
11 selling drugs. Certainly the People are allowed to  
12 comment on the defendant -- the allegations concerning  
13 the defendant and his nefarious activities. The People  
14 didn't actively point at anyone. Under no such  
15 circumstances did I point at anyone in the courtroom.  
16 Certainly when defense counsel was attacking --

17 THE DEFENDANT: You pointed at me.

18 MR. MacBRIDE: -- was attacking Ms. Robinson's  
19 credibility as -- with regards to motive to lie,  
20 certainly it's equally as important for the jury to  
21 understand the circumstances in which Ms. Robinson's  
22 testifying. She's testifying in a room where the person  
23 that she's accusing of being a drug dealer and all of  
24 his friends and family are here. Certainly that is  
25 important for the jury to consider as far as any motive

1 that she has to lie or any benefit or any detriment that  
2 she has in connection with testifying in this matter.  
3 It's fair comment. Certainly the Court may have heard  
4 things during the course of the trial from the gallery,  
11:52:23 5 from the defendant, so certainly it's a two-way street,  
6 everyone needs to conduct themselves appropriately, and  
7 I think that the People's comments were fair comment on  
8 the evidence, especially in light of the charges in  
9 which Mr. Green is currently facing.

11:52:38 10 THE COURT: Thank you. Let's see, Frank,  
11 you're not making a formal motion at this point for a  
12 mistrial, are you?

13 MR. BOGULSKI: Judge, I'm not, but I do want  
14 to put on the record that Melissa Green is here and  
11:52:47 15 several other witnesses and they're all indicating to  
16 me -- now, I could put them on and we could have a  
17 hearing on it -- that the prosecutor turned around as  
18 he's standing in front of the jury, looked directly at  
19 the African-American people behind me and moved his arms  
11:53:02 20 and said his "homeboys" here. Maybe he got caught up in  
21 it, maybe he didn't think about it, but it's not  
22 appropriate comment. Even if he -- it's not appropriate  
23 in any -- for any defendant. Okay? Especially  
24 African-American defendants. But to say that to a white  
11:53:18 25 person, a black person, it's an inflammatory comment.

1           But I think especially in light of the racial disparity  
2           here -- he's a black guy, there's 12 white jurors here,  
3           and for the white prosecutor to come in and say -- and  
4           point to his wife, okay, who's female, and there are  
5           three other females here and one male, and to point out  
6           the homeboys, I don't know what other negative -- what  
7           other connotation it could have other than to inflame  
8           the jury and insult my client and try to make it seem  
9           like he's some kind of thug when his family members,  
10           Judge -- these aren't -- these aren't associates of his,  
11           they're not co-defendants, they're not people that are  
12           charged, they're not part of his crew, they're not part  
13           of anybody other than his family. The only people here,  
14           Judge, are his family. And so that's -- number one,  
15           it's not true, what he said.

16           The other thing that was said during the  
17           summation was about how the cop said he was known to  
18           my -- or the DA said he was known -- Angнем Green was  
19           known to the police. We had a Molineux hearing and it  
20           was only for the purpose of identity, your Honor, and he  
21           breached that. We sat in chambers. It's on the record.  
22           It was for the purpose of identifying him. And the  
23           narrow purpose of the Molineux was that he was familiar  
24           with his voice. So what does the prosecutor do? He  
25           goes a step further and says, well, he's known --

1 without any corroboration, without any evidence, without  
2 any bad acts, which were supposed to be put on for a  
3 Molineux, says that my client is known to the police as  
4 a drug dealer. That is a violation, your Honor, of  
5 your -- of this Court's ruling.

11:54:57 6 THE COURT: Thank you. Other than a potential  
7 mistrial motion, are you asking for any other relief,  
8 specific instructions, for instance? I can point you,  
9 Frank, to -- this jury will be instructed about  
10 prejudice and bias. One of the last sentences asks  
11 that -- "You promised on your oaths you would decide the  
12 case only on the evidence in the courtroom and the laws  
13 as I tell them to you, and that you would do so without  
14 prejudice and without sympathy." So they've got that to  
15 work with. Are you asking for any other supplemental  
16 instructions?

17 (Defendant and counsel conferred.)

18 MR. BOGULSKI: Judge, I'm not -- I would ask  
19 you to instruct the jury to disregard the comments of  
20 the prosecutor regarding the implication that my  
21 client's homeboys are here. It's not true, number one.

22 THE COURT: Yeah, I'm not -- I'm not sure what  
23 the -- you know, my mom was a -- from -- from Georgia,  
24 you know, and we may have referred to my relatives as  
25 crackers. That has a different connotation today.

11:55:56 25

1 Homeboy -- I'm not going to go into semantics. I just  
2 don't -- most of any semantics I know would have been  
3 old in 1968 so --

4 MR. BOGULSKI: Well, this is an old semantic  
1:56:11 5 anyway, but --

6 THE COURT: I got ya. But, listen, I'm just  
7 going to leave the record as it is. I'm not sure if  
8 objections were filed and made at the time of the  
9 comment, but --

10 MR. BOGULSKI: I did object to it at the --  
1:56:17

11 THE COURT: I understand.

12 MR. BOGULSKI: -- time of the comment, Judge.

13 THE COURT: But whatever the record is, I'm  
14 going to leave it that way. I -- the jury in total is  
15 going to be told that they have to remove all of that  
16 stuff, bias and sympathy, prejudice, that the attorneys'  
17 comments are not evidence, so my impression of this  
18 entire panel -- pool of jurors and this panel in  
19 particular is that they seem to be outstanding, they  
20 seem to be fair, it's a good cross-section of the people  
21 willing to submit themselves to jury selection, so --  
22 let's see, so let me make sure Mike gets his break.  
23 Folks, I think each of us has had a turn on this and I  
24 want to make sure Mike gets a chance to rest for at  
1:56:52 25 least five minutes before I start my instructions.

1           ultimately result in the likes of folks like  
2           Ms. Robinson whose life has been devastated and  
3           destroyed by drug dealers like Mr. Green. The Court has  
4           the ability to send a very powerful message to the folks  
42:22 5           in Geneva, not only to the police department and those  
6           individuals who go about their day abiding the laws that  
7           are upon us, but also the Court has the ability to send  
8           a very powerful message to those that choose to sell  
9           drugs in that community.

42:39 10           One of the most telling aspects of this case  
11           is the location in which these drugs were being sold.  
12           Court Exhibit No. -- People's Exhibit No. 1 is a park,  
13           Gulvin Park, gazebo, baseball field, where kids are  
14           supposed to be playing and enjoying themselves, and yet  
42:58 15           this defendant saw fit to use that as an area to sell  
16           crack cocaine. Even more telling is the fact, despite  
17           the People dismissing the endangering charge, there was  
18           a fair amount of proof set forth during the trial that  
19           this defendant chose to sell crack cocaine in the  
3:18 20           presence of his own children, his own children.

21           Mr. Green's record is despicable. He's a  
22           career drug dealer. If the Court takes a look at his  
23           NYSIIS, he was given multiple breaks during those  
24           prosecutions. In Kings County Mr. Green was initially  
35 25           charged with a class A-2 felony that was reduced to a

1 class D felony, essentially given a time-served  
2 sentence. A couple years before that, here in Ontario  
3 County in 2006, the defendant was convicted of similar  
4 charges to which he was convicted of today and again was  
5 given a relatively minimal sentence. Despite those  
6 multiple breaks, the defendant still saw fit to sell  
7 drugs in his community. The NYSIIS indicates also a  
8 prior assault second, YO adjudication, where the  
9 gentleman went to prison. Now, in this community that  
10 is very rare for someone of that age to go to prison  
11 with regards to a youthful offender adjudication.

12 So certainly Mr. Green has earned the sentence  
13 that I'm going to be asking for momentarily, and that  
14 sentence is in the aggregate term of 24 years with the  
15 Department of Corrections, followed by the maximum  
16 period of post- release supervision, essentially eight  
17 times three, eight years per count. He certainly has  
18 earned that sentence and it will send a strong message  
19 to the folks in Geneva that this type of illegal  
20 behavior will no longer be tolerated. Thank you.

21 THE COURT: Thank you, Jason. Give me the  
22 bottom line number again. Is it 24 years?

23 MR. MacBRIDE: 24.

24 THE COURT: Okay. What's the post-release, is  
25 it three years?

1 MR. MacBRIDE: I believe it is three years.

2 THE COURT: All right. Thank you.

3 MR. MacBRIDE: Judge, lastly, I don't know if  
4 Mr. Bogulski raised this and it's certainly appropriate,  
5 but -- it is appropriate. The People were willing to  
6 resolve this case short of trial primarily for one  
7 reason, and that was to avoid April Robinson having to  
8 come into this Court, under these circumstances, in the  
9 community in which she lives, and she is ultimately now  
10 a marked individual, someone whose life will never be  
11 the same, and in order to protect her the People sought  
12 to resolve this matter short of trial. Obviously it's  
13 the defendant's right to proceed to trial. Certainly  
14 the Court has a lot more information before it now than  
15 it did during prior negotiations, but certainly  
16 Ms. Robinson also deserves some peace of mind knowing  
17 the person that sold her drugs is going to be  
18 incarcerated for a long period of time. Thank you.

19 THE COURT: Thanks -- thank you, Jason. Does  
20 this -- does this cap out at 24 years also, even if you  
21 stack it, because the sentences could be as high as 12  
22 times three?

23 MR. MacBRIDE: I believe it would cap out at  
24 40 years, but obviously it would be -- 36 would be the  
25 maximum.