

No. 21- _____

IN THE

Supreme Court of the United States

FENDI BROOKS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

APPENDIX Vol. 1

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APPENDIX A —
Judgment of the United States Court of Appeals
For the Third Circuit dated December 29, 2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3562

UNITED STATES OF AMERICA

v.

FENDI BROOKS,
Appellant

On Appeal from the District Court
of the Virgin Islands
(D.C. No. 3-18-cr-00042-002)
District Judge: Honorable Curtis V. Gomez

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
December 8, 2020

Before: SMITH, Chief Judge, CHAGARES and MATEY, Circuit Judges

JUDGMENT

This cause came to be considered on appeal from the District Court of the Virgin Islands and was submitted on December 8, 2020.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the Judgment of the District Court entered on February 14, 2020, is AFFIRMED. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 29, 2020

APPENDIX B —
Opinion of the United States Court of Appeals
For the Third Circuit dated December 29, 2020

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA

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(Opinion filed: December 29, 2020)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

CHAGARES, Circuit Judge.

Fendi Brooks pled guilty to one count of conspiracy to possess with intent to distribute a controlled substance. The District Court sentenced her to seventy-seven months of imprisonment. Brooks now appeals her judgment of conviction. For the following reasons, we will affirm.

I.

We write solely for the parties' benefit, so our summary of the facts is brief. In September 2018, Brooks and her co-defendant, Ngoc Yen Nguyen, travelled together on a Delta Air Lines, Inc. ("Delta") flight from the Virgin Islands to Atlanta, Georgia. Upon arriving in Georgia, Brooks and Nguyen presented themselves to a U.S. Customs and Border Protection ("CBP") officer to pay duties on alcohol they had purchased in the Virgin Islands. The CBP officer took an x-ray scan of their luggage and discovered thirteen bricks of cocaine.

An Assistant Special Agent in Charge from Homeland Security Investigations ("HSI") — which is part of the Department of Homeland Security ("DHS") — subsequently issued several administrative subpoenas to companies including Delta and Sprint Corporation ("Sprint"). The subpoena issued to Delta (the "Delta Subpoena") requested flight manifests, flight and ticketing information, and the transaction history for Brooks and Nguyen. The subpoena issued to Sprint (the "Sprint Subpoena") requested subscriber information and call information for a specific phone number.

Brooks was charged by criminal information with two counts of controlled substance violations on October 23, 2018. A few weeks later, on November 7, 2018,

Attorney General Jefferson B. Sessions resigned from office, and the President named Matthew Whitaker, who had been the Attorney General's Chief of Staff, as the Acting Attorney General.¹ Brooks filed a motion to dismiss the information six days later on the ground that Whitaker's designation violated federal law and the Appointments Clause and thus rendered her prosecution unlawful. Before the District Court decided Brooks's motion to dismiss, the grand jury returned an indictment in December 2018, which added a third controlled substance charge. Brooks filed a motion to suppress evidence obtained under the Delta and Sprint Subpoenas that same day.

The District Court held a hearing on the pending motions on March 7, 2019. Whitaker was no longer the Acting Attorney General by that time. The Government represented that it intended to use only the subscriber information and phone log, not the location data, that it received from Sprint. The District Court concluded that Brooks lacked standing to challenge the subpoenas and denied her motion to suppress. The court also denied Brooks's motion to dismiss without explanation.

Brooks agreed that same day to plead guilty to Count One of the indictment — conspiracy to possess with intent to distribute cocaine. As part of the plea agreement, Brooks reserved the right to appeal the District Court's denials of her motions to suppress and dismiss. The District Court accepted Brooks's guilty plea at the hearing.

¹ We may take judicial notice of the date of the President's announcement designating Whitaker as Acting Attorney General because it "is not subject to reasonable dispute." Fed. R. Evid. 201(b).

The District Court sentenced Brooks to seventy-seven months of imprisonment and five years of supervised release on October 31, 2019. The court, however, did not issue the judgment until February 14, 2020. Brooks filed a notice of appeal on November 1, 2019 — after the District Court’s verdict but before the judgment. Brooks’s appeal is timely. See United States v. Hashagen, 816 F.2d 899, 901 (3d Cir. 1987) (“[A] notice of appeal filed after verdict but before sentence, although premature, ripens into an appealable order when the judgment of sentence is entered.”).

II.²

In this appeal, Brooks contests her conviction based on the District Court’s denials of her motion to dismiss and motion to suppress. We will address each in turn.

A.

Brooks argues that her conviction and sentence must be vacated because Whitaker’s appointment as Acting Attorney General violated federal law and the Appointments Clause. In other words, Brooks contends that Whitaker’s appointment was improper and thus rendered invalid every sentence imposed on someone whose prosecution took place at least partially during Whitaker’s tenure as Acting Attorney General, even if much of the prosecution took place and the actual sentence was imposed

² The District Court had jurisdiction under 48 U.S.C. § 1612 and 18 U.S.C. § 3231. We have appellate jurisdiction under 28 U.S.C. § 1291. We review a district court’s order denying a motion to suppress or motion to dismiss under a mixed standard of review. We review findings of fact for clear error but exercise plenary review over legal conclusions. United States v. Thompson, 772 F.3d 752, 758 (3d Cir. 2014) (motions to suppress); United States v. Stock, 728 F.3d 287, 291 (3d Cir. 2013) (motions to dismiss).

after Whitaker was no longer Acting Attorney General. Brooks also reasons that she does not need to show prejudice or harm because the purported Appointments Clause violation is “structural in nature.” Brooks Opening Br. 5.

Many courts have held that the legality of Whitaker’s appointment as Acting Attorney General does not affect the validity of criminal prosecutions or sentences.³ The United States Court of Appeals for the Fourth Circuit has gone further and concluded that Whitaker’s appointment was constitutional. United States v. Smith, 962 F.3d 755, 763 (4th Cir. 2020). Despite reaching this conclusion, the court also noted that “even if [the defendant’s] constitutional argument were right, he still would not be entitled to the relief he seeks, for [the defendant] has failed to show in any discernible fashion how Whitaker’s designation affected the validity of [his] proceeding or prejudiced him in any way.” Id. We agree with the alternate holding of our sister Court of Appeals.

Even assuming that Whitaker’s appointment was invalid — which is a question we need not reach — Brooks “must show that Whitaker’s tenure somehow affected [her] proceeding and prejudiced [her] in some way. Yet [Brooks] can do no such thing.” See id. at 766. First, the criminal information Brooks sought to dismiss was filed weeks before Whitaker was appointed as Acting Attorney General. Second, Brooks was

³ See, e.g., United States v. Patara, 365 F. Supp. 3d 1085, 1093 (S.D. Cal. 2019) (concluding that the defendants’ prosecution was valid, “notwithstanding whether Mr. Whitaker’s appointment as acting Attorney General comports with the requirements under the Appointments Clause”); United States v. Santos-Caporal, No. 1:18-cr-171, 2019 WL 468795, at *7 (E.D. Mo. Jan. 9, 2019); United States v. Smith, No. 1:18-cr-115, 2018 WL 6834712, at *3 (W.D.N.C. Dec. 28, 2018); United States v. Peters, No. 6:17-cr-55, 2018 WL 6313534, at *7 (E.D. Ky. Dec. 3, 2018); United States v. Valencia, No. 5:17-cr-882, 2018 WL 6182755, at *7 (W.D. Tex. Nov. 27, 2018).

subsequently charged pursuant to an indictment issued by a properly constituted grand jury. See Costello v. United States, 350 U.S. 359, 363 (1956) (“An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits.”). Third, to the extent that Brooks argues that her conviction should be vacated merely because Whitaker’s appointment overlapped with part of her prosecution, Brooks was prosecuted by the United States Attorney for the District of the Virgin Islands who was independently empowered by statute to prosecute cases and duly appointed by a district court. See 28 U.S.C. § 547(1) (providing that each United States attorney shall “prosecute for all offenses against the United States”); see also 28 U.S.C. § 546(d) (“If an appointment expires . . . the district court for such district may appoint a United States attorney to serve until the vacancy is filled.”). Because Brooks has failed to show how Whitaker’s appointment affected her, we hold that the District Court did not err in denying Brooks’s motion to dismiss.

B.

We next consider the District Court’s denial of Brooks’s motion to suppress. Brooks argues that DHS did not have the authority to issue the Delta and Sprint Subpoenas and that the information the Government received from Sprint should be suppressed because the Government failed to obtain a warrant. The Delta Subpoena was issued under 8 U.S.C. § 1225(d),⁴ which specifies that the “Attorney General and any

⁴ The Government explained in its opposition to Brooks’s motion to suppress that it requested that DHS reissue the Delta Subpoena under 21 U.S.C. § 967. United States’

immigration officer shall have the power" to issue subpoenas. 8 U.S.C. § 1225(d)(4)(A). The Sprint Subpoena was issued under 21 U.S.C. § 967, which provides that "the Secretary of the Treasury may . . . require the production of records . . . relevant or material to the investigation." With respect to the information it received pursuant to the Sprint Subpoena, the Government represented at the suppression hearing that it would only use the subscriber information and telephone log at trial, not the location information.

Brooks does not have Fourth Amendment standing to challenge the subpoenas. Defendants "must have standing to invoke the Fourth Amendment's exclusionary rule." United States v. Correa, 653 F.3d 187, 190 (3d Cir. 2011). Whether defendants have standing depends on whether they had a reasonable expectation of privacy in the information the Government sought to use. See United States v. Cortez-Dutrieville, 743 F.3d 881, 885 (3d Cir. 2014). The "Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed." United States v. Miller, 425 U.S. 435, 443 (1976); see also Carpenter v. United States, 138 S. Ct.

Opp'n to Defs.' Mot. to Suppress Evid. Obtained Through Administrative Subpoenas at 2 n.1, United States v. Brooks, No. 3:18-cr-42 (D.V.I. Dec. 20, 2018), ECF No. 70. The parties did not include the reissued subpoena in their Joint or Supplemental Appendices. Whether the Government reissued the subpoena is not material because our analysis applies equally to both statutes.

2206, 2222 (2018) (“We hold only that a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party.”).

We have previously explained that there is no reasonable expectation of privacy in subscriber information voluntarily conveyed to third parties. See United States v. Christie, 624 F.3d 558, 573–74 (3d Cir. 2010) (discussing IP addresses). We similarly agree with our sister Courts of Appeals that there is no reasonable expectation of privacy in telephone subscriber information and records or flight and ticketing information. See Johnson v. Duxbury, 931 F.3d 102, 108 (1st Cir. 2019) (concluding that “a phone subscriber has no reasonable expectation of privacy in the phone service provider’s records of the numbers that the subscriber has dialed and from which the subscriber has received calls”); United States v. Wheelock, 772 F.3d 825, 828–29 (8th Cir. 2014) (discussing internet subscriber information); United States v. Beckett, 369 F. App’x 52, 56 (11th Cir. 2010) (“Beckett could not have had a reasonable expectation of privacy in the information that was obtained from the ISPs and the phone companies.”); United States v. Goree, 47 F. App’x 706, 712 (6th Cir. 2002) (“All of the information that Goree objects to was provided by him to the airline. Therefore, Goree lacks any ‘reasonable expectation of privacy’ in his flight information.”). Brooks, therefore, had no reasonable expectation of privacy in the information on which the Government intended to rely that it obtained from Sprint and Delta.

The Government’s failure to obtain a warrant before obtaining information from Sprint similarly does not justify suppression for the same reasons: Brooks had no reasonable expectation of privacy in the subscriber information or telephone logs

obtained from Sprint, which are the only pieces of information on which the Government intended to rely. See United States v. Goldstein, 914 F.3d 200, 202 (3d Cir. 2019) (“[I]f there is no reasonable expectation of privacy as to [the information obtained], then its acquisition does not require a search warrant.”). Given the Government’s representation that it would not use the location information, any reasonable expectation of privacy that Brooks may have had in that information is not relevant. See United States v. Maddex, No. 98-50005, 1998 WL 789414, at *1 (9th Cir. Nov. 6, 1998) (rejecting the defendant’s argument that “unlawfully elicited statements tainted the validly obtained biographical information”); United States v. Kupper, 179 F. Supp. 264, 268 (E.D. Pa. 1959) (denying the defendant’s motion to suppress because “the Government did not in any way use information obtained as a result of the search”); *cf. United States v. de la Cruz-Paulino*, 61 F.3d 986, 993–94 (1st Cir. 1995) (explaining that Federal Rule of Criminal Procedure 12 allows defendants to avoid the necessity of moving to suppress evidence the government does not intend to use).

Notwithstanding Brooks’s lack of Fourth Amendment standing, she could still challenge DHS’s authority to issue the subpoenas if the relevant statutes allowed for such a challenge. To challenge the statutory authority of a government agency to issue a subpoena, movants must assert their own legal interests and show that their interests are within the zone of interests the statute is intended to protect. See Davis ex rel. Davis v. Phila. Hous. Auth., 121 F.3d 92, 96 (3d Cir. 1997). The U.S. Courts of Appeals for the Ninth and Tenth Circuits, when reviewing a statute similar to the statutes at issue here, concluded that defendants cannot challenge a subpoena if the “statute provides no express

right to challenge the [government's] subpoenas issued under it." United States v. Moffett, 84 F.3d 1291, 1293 (10th Cir. 1996); see also United States v. Plunk, 153 F.3d 1011, 1020 (9th Cir. 1998) (concluding that the defendant could not attack the subpoena because he was not in the zone of interest and the statute did not provide an express right to challenge subpoenas issued under it), overruled on other grounds by United States v. Hankey, 203 F.3d 1160, 1169 n.7 (9th Cir. 2000).

Here, 8 U.S.C. § 1225 and 21 U.S.C. § 967 give the Attorney General, immigration officers, and the Secretary of the Treasury broad powers to investigate violations of immigration laws and federal drug smuggling laws, respectively. Neither statute provides an express right to challenge the subpoenas issued under them. Brooks consequently does not fall within the zones of interest the statutes are meant to protect and thus cannot challenge the Delta and Sprint Subpoenas.⁵ Indeed, "[o]ur supervisory power does not authorize us to order suppression of 'otherwise admissible evidence on the ground that it was seized unlawfully from a third party not before the court.'"

Moffett, 84 F.3d at 1294 (quoting United States v. Payner, 447 U.S. 727, 735 (1980)).

We therefore do not reach whether DHS was authorized to issue the subpoenas.

⁵ Even if Brooks could challenge the subpoenas, suppression is not an available remedy because both statutes are silent as to whether exclusion is appropriate. See United States v. Moalin, 973 F.3d 977, 996 (9th Cir. 2020) ("Because suppression is a disfavored remedy, we impose it to remedy a statutory violation only where it is clearly contemplated by the relevant statute." (quoting United States v. Forrester, 512 F.3d 500, 512 (9th Cir. 2008)) (quotation marks and alterations omitted)).

We consequently hold that the District Court did not err in denying Brooks's motion to suppress and will affirm the court's judgment.⁶

III.

For the foregoing reasons, we will affirm Brooks's judgment of conviction.

⁶ We have considered all other arguments made by Brooks and conclude that they are without merit.

APPENDIX C —

Reporter's Transcript, Omnibus Hearing dated March 7, 2019

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS and ST. JOHN

REPORTER'S TRANSCRIPT

OMNIBUS HEARING

THURSDAY, MARCH 7, 2019

BEFORE: THE HONORABLE CURTIS M. GOMEZ,
District Judge

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY
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COURT REPORTER: PERSHA S. WARNER, RMR
Official Court Reporter
Virgin Islands District Court
St. Thomas, Virgin Islands

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1 PROCEEDINGS:

* * *

3 [Court called to order at 3:53 pm.]

4 THE CLERK: United States of America vs. Fendi
5 Brooks.

6 THE COURT: With respect to Miss Brooks, we're
7 here for a motion hearing, on the suppression motion.
8 Attorney DiRuzzo, is it your motion?

16 THE COURT: You have a motion or motions to
17 suppress; is that right?

18 MR. DIRUZZO: Right, Your Honor.

19 THE COURT: All right. Tell me, what are the
20 things or what is the thing you seek to suppress.

21 MR. DIRUZZO: Your Honor, with respect to the
22 motion to suppress my client's statements found on Page
23 2 --

24 THE COURT: Bring the microphone down so we can
25 hear you. Okay, good.

1 MR. DIRUZZO: With respect to my client's
2 motion to suppress her statements found at Document No.
3 69, on Page 2 I detailed my client's statements that she
4 made or allegedly made to CBP in the Hard Secondary
5 area.

6 THE COURT: Okay, so you wish to have, what,
7 the statements suppressed?

8 MR. DIRUZZO: Correct, Your Honor.

11 MR. DIRUZZO: September 24th at the airport, at
12 the hard sec- --

13 THE COURT: You said November 24th, what year?

14 MR. DIRUZZO: September 4th, Your Honor.

15 THE COURT: Oh, September 24th. What year?

16 MR. DIRUZZO: Last year.

17 THE COURT: 2018?

18 MR. DIRUZZO: Correct.

19 THE COURT: Anything else?

20 MR. DIRUZZO: With respect to Document 69, no.

21 THE COURT: I'm just trying to get a list of
22 the things you want suppressed. So, you wish her
23 statement made on September 24, 2018 at the airport to
24 be suppressed. Anything else?

25 MR. DIRUZZO: Yes, Your Honor. With respect to

1 Document Entry 58, I ask for the information with
2 respect to the administrative subpoenas issued to Delta
3 and issued to Sprint.

4 THE COURT: Tell me, what is the thing that you
5 wish to suppress?

6 MR. DIRUZZO: From Delta the information
7 regarding my client's travel, and from Sprint the cell
8 site location information.

9 THE COURT: You want information obtained by
10 the Government from Delta to be suppressed?

11 MR. DIRUZZO: Correct.

12 THE COURT: And information obtained from
13 Sprint by the Government to be suppressed?

14 MR. DIRUZZO: Correct.

15 THE COURT: All right. What's the
16 constitutional basis for the Delta and Sprint
17 suppressions? As I understand it, suppressions
18 generally deal with addressing some constitutional
19 infirmity that requires suppression. So, tell me, what
20 is the constitutional violation with respect to Delta,
21 then we'll go on to Sprint.

22 MR. DIRUZZO: With respect to Delta, Your
23 Honor, it's a Fourth Amendment and the fact that the use
24 of administrative subpoenas were ultra vires, in
25 violation of the statute.

1 THE COURT: Are you saying that the basis is a
2 statutory violation and also a Fourth Amendment
3 violation?

4 MR. DIRUZZO: Correct.

5 THE COURT: What's the Fourth Amendment
6 violation? Is this with respect to Delta and Sprint?

7 MR. DIRUZZO: Sorry, Your Honor. What was
8 that?

12 MR. DIRUZZO: Correct, Your Honor.

With respect to Sprint, it's my client's cell site location information or information that is substantially similar to cell site location information that addresses my client's whereabouts and locations, specifically in the Virgin Islands, but not limited to the Virgin Islands.

6 MR. DIRUZZO: Your Honor, insofar as Sprint
7 goes, traveling, the Supreme Court's decision in
8 Carpenter holds that cell site location information is
9 unable to be obtained absent a warrant.

14 MS. EDWARDS: Yes, Your Honor.

17 MS. EDWARDS: Yes, Your Honor.

20 MS. EDWARDS: Some of the information,
21 specifically the subscriber information and the
22 telephone log, the calls that were made. However, if
23 you allow me a brief moment to confer and confirm that
24 that information is available through the search warrant
25 results that we obtained, then I can rely on those. But

1 we're not relying on any location information.

2 THE COURT: Okay. Attorney DiRuzzo, your
3 sister just said she's not relying on location
4 information, subscriber information. It sounds like the
5 nub of it. You heard what she said. Does that resolve
6 your concern?

7 MR. DIRUZZO: No, it does not.

8 THE COURT: Okay. All right. Did you need a
9 moment to confer, Attorney Edwards or?

10 MS. EDWARDS: The information, I believe, is
11 available, but I'd like to reserve a right to use the
12 call logs and the subscriber information.

13 THE COURT: Ready to proceed?

14 MS. EDWARDS: For those motions, for that
15 information, I don't have any witnesses to call. It
16 would just be argument. However, I do have a witness
17 for the statements.

18 THE COURT: Your burden. Go ahead, call your
19 witness.

20 MS. EDWARDS: The Government calls James
21 Vanterpool.

22 THE CLERK: Please stand and raise your right
23 hand to take the oath.

24 THEREUPON, JAMES VANTERPOOL, after having been
25 first duly sworn, was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. EDWARDS:

3 Q. Good afternoon. Would you please state and spell
4 your name?

5 A. James Vanterpool. J-a-m-e-s. V-a-n-t-e-r-p-o-o-l.

6 Q. For whom do you work?

7 A. US Customs and Border Protection.

8 Q. What is your title?

9 A. I'm a Customs and Border Protection Officer.

10 Q. And how long have you been a Customs and Border
11 Protection Officer?

12 A. Three years, two and-a-half months.

13 Q. Were you working in that capacity on September 24,
14 2018?

15 A. Yes, I was.

16 Q. Where were you working?

17 A. In the Secondary PAU Unit.

18 Q. What did your duties entail on that unit?

19 A. In the Secondary Unit we do, we collect duty, we do
20 case processing, adverse actions. We do bag exams, any
21 secondary action that needs to be taken on a passenger
22 we would do that.23 Q. And in the course of performing your duties on that
24 day, did you become involved in the seizure of luggage
25 that's involved in the instant case?

1 A. Yes.

2 Q. How did you become involved?

3 A. Well, on that said date and time Ms. Fendi Brooks
4 and Nguyen were brought in to pay duty on some excess
5 amount of alcohol that they were traveling with. During
6 the exam our -- I was working along with my coworker,
7 CBP --

THE DEFENDANT: At the time I was working in secondary with another officer. He was basically calculating the duty and explaining the duty to Brooks and Nguyen. And during that inspection, I went over and I asked Brooks and Nguyen where the alcohol was, and they stated that it was with the porter, the Red Cap Porter Services that brings in luggage at the time. So, I had him bring the luggage on the inside over to our X-ray machine. I went over; I X-rayed the bags and there were several brick-like, I don't know, abnormality. Sorry. There were several brick-like images that came up on the X-ray machine, so I informed the supervisor that we were going to do a complete bag exam of the luggage for Miss Brooks and Nguyen.

25 BY MS. EDWARDS:

1 Q. Is there a specific process that that entailed?

2 A. In terms of the bag exam?

3 Q. Correct?

4 A. Oh, yes. Once we -- initially, once you're
5 referred to secondary you go into what we call "soft
6 secondary." It's basically a glass room where we do our
7 interviews or whatever. But once we do a bag exam, we
8 take you into hard secondary. Hard secondary is
9 situated a little different from soft secondary. We
10 have an exam table; we lay out all the bags, all your
11 belongings on the table, and we do our exams in there.
12 So from there I proceeded to escort Miss Brooks and
13 Nguyen over to Hard Secondary. That's when we laid out
14 all the luggage. But the Red Cap Porter, he brought the
15 luggage in on the same cart that he was transporting the
16 luggage with.

17 THE COURT: Officer Vanterpool, are you saying
18 hard, h-a-r-d, or heart?

19 THE WITNESS: Yes, hard. Hard Secondary and
20 Soft Secondary.

21 THE COURT: With a "d"?

22 THE WITNESS: With a "d".

23 THE COURT: Okay.

24 THE WITNESS: Yes. So once we lay out all the
25 luggage, and all the bags, and its belongings on the

1 exam table, we obtained an oral declaration. They
2 consist of five questions. Basically, we ask you if all
3 the bags that's here in front of you are yours? We give
4 you the opportunity to answer yes or no. We ask you,
5 did you pack the bags yourself? We give you an
6 opportunity to answer. We ask you, are you traveling
7 with anything for anyone else besides yourself? We give
8 you an opportunity to answer. We ask if there are any
9 sharp objects in the bags that might hurt us if we go
10 into the bags? And then we ask you if everything in the
11 bags are yours? And we give you the opportunity to
12 answer.

13 BY MS. EDWARDS:

14 Q. When you presented the bags to Miss Nguyen and Miss
15 Brooks, were they both in the same room?

16 A. Yes, they were.

17 Q. And were their bags all brought in together?

18 A. Yeah, all the bags came in at the same time. Miss
19 Brooks and Nguyen came into the room and they were
20 situated on the exam table. Like I said, it's roughly
21 about five to six feet right in front of you so you can
22 see the bags that we're questioning you about and you
23 can answer about it.

24 Q. And did you ask each of them whether each of the
25 pieces of luggage belonged to them?

1 A. I asked Miss Nguyen in regards to her belongings
2 and my coworker at the time, CBP Charles, he was the one
3 that was asking Miss Brooks, getting her oral
4 declaration, which she answered to him in regards to her
5 bags.

6 Q. And initially, did anyone claim the bag where you
7 noticed it had brick-like anomalies?

8 A. That bag was a black suitcase. That was claimed by
9 Miss Nguyen at the time when I got my oral declaration
10 and then we conducted our bag exam. We completed our
11 bag exam of all the bags excluding the one black
12 suitcase because it was locked. So at that time I asked
13 Miss Nguyen to come and unlock the bag since she was the
14 one who claimed it. Then she got up from where she was
15 sitting and she came and she attempted to unlock -- It
16 was a combination lock. So, she attempted to unlock the
17 bag several times. And after failing to unlock it, she
18 said, "I don't know how it got locked." And that's when
19 Miss Brooks interjected and said, "well, the contents of
20 bag belong to both of us. We both packed our clothing
21 in that bag." And she don't know how it got locked
22 either. The lock that was on the bag is one of those
23 TSA-approved locks.

24 Q. Let me interrupt you briefly. So, when Miss Brooks
25 made that statement was it in response to a question

1 that you had posed to her?

2 A. No. She interjected into the conversation that I
3 was having with Miss Nguyen at the time.

4 Q. Sorry. Continue on with the lock.

5 A. Being that the lock was a TSA-approved lock, TSA
6 usually have the keys to unlock those locks in the event
7 they are required to go into your bag. So, we sent an
8 officer over to TSA, and she retrieved the key that
9 unlocked to bag. And upon opening the bag there were
10 several men's pants, underwear, covering the brick-like
11 packages. They were also vacuumed sealed and wrapped in
12 like foil-like material.

13 Q. And at that point did either Miss Nguyen or Miss
14 Brooks make any statements about the bag?

15 A. Well, at that point they both denied ownership of
16 the bag at that time and --

17 Q. Okay. And then in light of that, did you check to
18 see whether--

19 THE COURT: Attorney Edwards, you are leading
20 this witness for your entire exam. Try not to lead.

21 BY MS. EDWARDS:

22 O. Did you check to see who the bag belonged to?

23 A. Well, after that we -- the bag tags, there was a
24 bag tag on the bag and it matched the receipt that Mis
25 Fendi Brooks had at the time in her possession. Then

1 her name was on bag tag that was attached to the bag.

2 Q. What further steps did you take, if any, regarding
3 the bag and its contents?

4 A. Well, after we saw the items in the bag, we started
5 taking pictures of the bag, how it was packaged. And I
6 contacted the supervisor, and she in turn contacted our
7 K-9 handler and he brought over a K-9 Schober to do a
8 sweep of the room. And the K-9 also alerted. From
9 speaking to him, K-9 is trained to alert any narcotics.

10 Q. Did you do anything further?

11 A. From there we tested the bricks, the product that
12 was in the bricks and it was a white powdery substance
13 that was field tested with our Gemini machine and it
14 came back positive for cocaine hydrochloride.

15 Q. At that point what happened?

16 A. From that point we contacted, oh, HSI agents and
17 informed them of our findings.

18 Q. About how long would you estimate that your
19 interaction with Miss Brooks, well, collectively Miss
20 Brooks and Nguyen were when you were in the soft, what
21 you refer to as Soft Secondary?

22 A. Soft Secondary alone?

23 Q. Correct.

24 A. About ten minutes give or take.

25 Q. Okay. And then when you went to hard secondary?

1 A. Roughly about 15 to 20 minutes. Roughly.

2 Q. And during that time, what had you done

3 specifically, in terms of the exam, if you could explain

4 what you do when you perform the exam of the luggage.

5 A. Well, when we do a bag check we go through each

6 item, each luggage, basically, take everything out, go

7 through it and then we put it back in.

8 Q. And how many bags were there?

9 A. Miss Nguyen, if I recall, she had a liquor box; she

10 had a blue suitcase; she had a black suitcase; and she

11 also had a purse, a woman's purse that she was traveling

12 with.

13 Q. So, you went through multiple items?

14 A. Yes, multiple items, multiple bags.

15 Q. What was your -- how would you describe your

16 demeanor while you were interacting?

17 A. Well, we always try to maintain a professional

18 demeanor. We deal with the traveling public on a daily

19 basis, so it was that type of environment I would say on

20 both parties.

21 Q. At the time that the dog alerted, once the dog

22 alerted, did you pose any further questions to the

23 defendant?

24 A. No, we proceeded to do a field test.

25 MS. EDWARDS: I don't have any further

1 questions, Your Honor.

2 THE COURT: Attorney DiRuzzo.

3 CROSS-EXAMINATION

4 BY MR. DIRUZZO:

5 Q. Officer Vanterpool, my client, Miss Fendi Brooks,
6 was taken into the Soft Secondary area at the airport,
7 she was not free to leave, correct?

8 A. Say that again.

9 Q. She was not free to leave?

10 A. You mean when she was taken to the Soft Secondary?

11 Q. When she was taken to the Soft Secondary, she was
12 not free to leave?

13 A. Well, once she paid the duty, then she would be
14 able to leave.

15 Q. That was not my question, sir. She was taken to
16 the Soft Secondary area for the initial contact with
17 her; she was not free to leave; she didn't have a
18 choice; she couldn't have told you no and walked out,
19 correct?

20 A. Yes.

21 Q. And likewise, when she went to the, was taken into
22 the hard secondary area she was likewise not free to
23 leave, correct?

24 A. Yes.

25 Q. And you would admit that at no point during your

1 interaction with my client was my client given a Miranda
2 warning, correct?

3 A. Not from me, she was not.

4 Q. From anyone else from Custom and Border Patrol?

5 A. Not to my knowledge.

6 Q. Now, when my client was summoned over to the Soft
7 Secondary area, could you describe the language that you
8 used in order to direct her over to the Soft Secondary?
9 In other words, what exactly did you say to her at the
0 time --

11 A. I was not the one that brought her to Soft
12 Secondary. I was working in Soft Secondary. The
13 primary officer that first encountered Miss Brooks was
14 the one that brought her into the Soft Secondary
15 office -- to the Soft Secondary. Sorry.

16 Q. That individual's name is?

17 A. I can't recall who the primary officer was at the
18 time.

19 Q. I believe in your direct testimony you mentioned
20 someone with the first name Charles?

21 A. No, he was also working with me in secondary. It's
22 a separate unit from primary processing.

23 Q. And is there any type of standard language that is
24 used by CBP to direct people to the Soft Secondary?

25 A. Well, every officer's inspection is different. But

1 if you're being referred to pay duty, we explain to you
2 the process, or the reason why you're paying duty and
3 the process you go through when you pay duty and then we
4 escort you over where you will pay the duty.

5 Q. Now, moving from the Soft Secondary to the hard
6 secondary, do you remember the language, what you said
7 to my client when you direct her to the hard secondary?

8 A. Not verbatim.

9 Q. To the best of your recollection, what did you say?

10 A. Basically, that we were going to go over to hard
11 secondary.

12 Q. It was not a -- that was a command? In other
13 words, you commanded, you told my client, Miss Brooks,
14 that she was going to, was going to accompany you to
15 hard secondary, correct?

16 A. Not -- I asked her to come with me to hard
17 secondary.

18 Q. Well, you had asked her but she did not have the
19 opportunity to refuse, correct?

20 A. If she did not have the opportunity to refuse?

21 Q. You'd asked her, but if she said no you would not
22 have taken no for an answer, correct?

23 A. Well, if she had refused to come with me then I
24 would have to contact my supervisor.

25 Q. And then by getting your supervisor that would have

1 been escalating the matter, so to speak?

2 A. Not necessarily. I would even try to de-escalate
3 the matter.

4 Q. When you opened the bag, or when the bag was opened
5 by you and your coworker and the bricks that were in the
6 bag were exposed, how did you confront my client? In
7 other words, what did you say to my client in front of
8 her as to what these bricks were?

9 A. Well, I wasn't the officer that was dealing with
10 Brooks. I was dealing with the bags belonging to
11 Nguyen. Brooks interjected in the dialogue that I was
12 having with Nguyen and stated that both -- before I
13 opened the bag, she stated the bag belongs to both of
14 them, her and Nguyen. And after I opened the bag, she
15 said that that's not their bag. It probably got mixed
16 up when they were checking it in at the ticket counter.

17 Q. This hard secondary area, this is a separate room
18 that the public cannot see into, correct?

19 A. Yes, correct.

20 Q. And how many doors into and out of this hard
21 secondary room are there?

22 A. Four.

23 Q. And when you brought my client into the hard
24 secondary area, were all these doors closed when the
25 inspection of bags was taking place?

1 A. Yes.

2 Q. And are these doors locked or no?

3 A. They are not locked.

4 Q. And in other words, if my client wanted to leave
5 that area she would have been unable to do so without a
6 key?

7 A. Correct.

8 Q. From the time that the K-9 was called to when my
9 client is taken away by Homeland Security, how long was
10 that?

11 A. I'm not sure exactly as to the length of time. It
12 was over a period of several hours.

13 Q. Okay. And from the time that my client was taken
14 to the hard secondary to when the K-9 arrived on the
15 scene, how long was that?

16 A. Roughly about a half hour.

17 Q. And this entire time in hard secondary, including
18 when the K-9 arrived, my client was not free to leave,
19 correct?

20 A. Say that again. I didn't hear you. Repeat.

21 Q. My client was not free to leave the room while she
22 was waiting, while everyone was waiting for the K-9 to
23 arrive on the scene, correct?

24 A. Correct.

25 MR. DIRUZZO: Nothing further, Your Honor.

1 THE COURT: Any redirect?

2 MS. EDWARDS: No, Your Honor.

3 THE COURT: Officer Vanterpool, thank you for
4 your testimony. You may step down. Next witness.

5 MS. EDWARDS: The Government calls Special
6 Agent Ramnes.

7 THE CLERK: Please raise your right hand to
8 take the oath.

9 THEREUPON, CHRISTOPHER RAMNES, after having been
10 first duly sworn, was examined and testified as follows:

11 MS. EDWARDS: Before I begin, Your Honor, may
12 Officer Vanterpool be excused?

13 THE COURT: You're going to need Officer
14 Vanterpool?

15 MR. DIRUZZO: No, Your Honor.

16 THE COURT: He is excused.

17 MS. EDWARDS: Thank you.

18 DIRECT EXAMINATION

19 BY MS. EDWARDS:

20 Q. Would you please state your name for the record?

21 A. Christopher Ramnes.

22 Q. And spell it?

23 A. C-h-r-i-s-t-o-p-h-e-r. R-a-m-n-e-s.

24 Q. Thank you. With whom do you work?

25 A. Home Security Investigations.

1 Q. What is your title?

2 A. I'm a Criminal Investigator, Special Agent.

3 Q. As a Special Agent with Homeland Security, do you

4 -- are you aware of whether you have been cross

5 designated at all?

6 A. Yes, ma'am. We're Title 21 cross designated.

7 Q. So, specifically, what does that mean?

8 A. We are able to enforce drug laws.

9 Q. And you, specifically, have been so designated?

10 A. Yes. Yes, ma'am, I have.

11 MS. EDWARDS: No further questions, Your Honor.

12 THE COURT: Attorney DiRuzzo.

13 CROSS-EXAMINATION

14 BY MR. DIRUZZO:

15 Q. Good afternoon, sir. You would agree with me that

16 the administrative subpoenas issued in this case were

17 signed by an individual by the name of Ariel Ramos?

18 A. That's correct, sir.

19 Q. And you would agree with me that you did not sign

20 the administrative subpoenas issued to either Delta or

21 Sprint, correct?

22 A. I did not sign. No, I did not sign those.

23 Q. And Mr. Ramos is an individual that's employed by

24 the Department of Homeland Security, correct?

25 A. Yes, sir, he is.

1 Q. And you stated that you've been cross designated.
2 When were you cross designated?

3 A. We are given that authority when we graduate from
4 the Academy. Title 1811, which are criminal
5 investigators through Homeland Security are cross
6 designated.

7 THE COURT: Agent Ramnes, pull the microphone
8 down so you speak right into it.

9 THE WITNESS: Yes, sir.

10 BY MR. DIRUZZO:

11 Q. So, this is a blanket cross designation? It's not
12 a cross designation that is unique to you?

13 A. That's correct.

14 Q. And who did this cross designation?

15 A. That's given to us through the Academy. Once we
16 complete the Academy, we're given that through DEA.

17 Q. I'm not understanding. Are you saying that if you
18 work for the Department of Homeland Security you went to
19 a different academy?

20 A. No, sir. Once we complete our academy, four
21 and-a-half months of training, we are -- each agent is
22 given the authority to be cross designated through DEA
23 to enforce Title 21 laws.

24 Q. Okay. The Academy is the Department of Homeland
25 Security Academy, not DEA Academy?

1 A. That's correct.

2 Q. Okay. So, your testimony today is that, as a
3 matter of course, as soon as one graduates from
4 Department of Homeland Security Academy he or she is
5 automatically cross designated by the DEA?

6 A. That's correct.

7 Q. And how do you know this?

8 A. We're given that authority. It's listed on part of
9 our credentials -- not credentials, but our graduation
10 that we are given that authority, Title 21 designated.

11 Q. So, this is a federal documentation that you're
12 given?

13 A. Yes, sir.

14 Q. Okay. And who issued you that documentation?

15 A. It's issued when we graduate. As far as who signed
16 it, I could not testify to that.

17 Q. Okay. But this documentation is produced by the
18 Department of Homeland Security?

19 A. Correct. And it is through Federal Law Enforcement
20 Training Center in Georgia, Glynco, Georgia.

21 Q. And sitting here today, are you able to testify as
22 to the individual who signed this documentation giving
23 you that authority, that cross designation?

24 A. I'm sure that there is, but I cannot testify as to
25 who that person is.

1 Q. And just so I'm clear, sir, you do not work for
2 Immigration and Naturalization Service, also known as
3 INS?

4 A. No, I do not. I work for Customs.

5 Q. And you also, you were not an employee of the
6 United States Treasury Department, correct?

7 A. Correct.

8 MR. DIRUZZO: No further questions.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION

11 BY MS. EDWARDS:

12 Q. You issued several administrative subpoenas in this
13 case; is that correct?

14 A. That is correct, ma'am.

15 Q. The individual that Counsel just mentioned, Ariel
16 Ramos, what is he in relation to -- what's your working
17 relationship?

18 A. He is the Deputy Special Agent in charge over in
19 San Juan, in Puerto Rico. He would be my supervisor's
20 supervisor.

21 Q. Do you know whether he, in fact, is also cross
22 designated?

23 A. Yes, he is.

24 MS. EDWARDS: No further questions.

25 THE COURT: Agent Ramnes, thank you for your

1 testimony. You may step down.

2 THE WITNESS: Yes, sir. Thank you. Next
3 witness.

4 MS. EDWARDS: I have no further witnesses, Your
5 Honor.

6 THE COURT: Okay. Attorney Edwards.

7 MS. EDWARDS: Your Honor, with respect to the
8 Miranda issue, under Third Circuit law the questions
9 that were posed to the defendant were well within the
10 limits that are recognized as falling within the
11 exception to the Miranda rule or Customs-related
12 inspections. They were posed directly to the issue of
13 whose items, who was responsible, and who each of the
14 particular pieces of luggage belonged to. And those are
15 basic questions, you know, who owns which piece of
16 luggage. That's fundamental to any CBP officers's duty
17 at the Customs border. The questions, they began in
18 Customs due to the fact they had purchased so many
19 bottles of alcohol, from there when the inspection
20 revealed the anomalies in the brick, the brick-like
21 structures or shapes in the suitcase. All of the
22 suitcases were brought into hard secondary; they were
23 asked the basic five questions. And, in fact, the
24 incriminating statement that the Government plans to
25 introduce was not even the product of the question, the

1 interrogation. It was voluntarily, as the witness
2 described, interjected to him.

3 THE COURT: When you say, "the incriminating
4 statement," which one are you referring to?

5 MS. EDWARDS: When Miss Brooks stated that the
6 bag was also hers, that she had packed it as well and it
7 belonged to both of them.

8 THE COURT: Go ahead.

9 MS. EDWARDS: I outlined the case law in the
10 papers. The testimony was consistent with the law and
11 what was anticipated. And I don't really have much to
12 elaborate.

13 THE COURT: No Miranda warnings were given at
14 any time, for the period of time about which Mr.
15 Vanterpool, Mr. Ramnes testified, correct?

16 MS. EDWARDS: Correct.

17 THE COURT: Okay. Was there any sense that
18 there was something criminal afoot at that time?

19 MS. EDWARDS: Well, I mean --

20 THE COURT: Well, my question is yes or no,
21 then I'll let you explain.

22 MS. EDWARDS: Yes.

23 THE COURT: Okay. And what was that?

24 MS. EDWARDS: The question wasn't specifically
25 posed. However, once he saw the brick-like shapes in

1 the suitcases, it was clear that that's what prompted
2 him to move the luggage into the hard secondary. So, I
3 think it is fair to assume that raised his suspicions.

4 THE COURT: Okay. So, are you saying that at
5 that time the agent had formed, you can infer that the
6 agent formed or believed that there was some clear
7 criminal undertaking that was going on here? Or are you
8 saying that he was investigating to assess whether there
9 was any?

10 MS. EDWARDS: I'm not even saying that there
11 was a clear indication of much. I'm saying that it is
12 fair to infer that he was curious about what was in
13 those packages. Now, it could have been anything. But
14 certainly not a clear indication. I think it became
15 clear upon the dog alerting. However, no questions were
16 posed to the defendants after that point.

17 THE COURT: Just to be clear, you said that the
18 incriminating statement that the Government intends to
19 use would be the one that was, I think, referred to as
20 the one where Miss Brooks interjected. Is that the
21 limit of the Government's statement? Does the
22 Government seek to introduce any other statement?

23 MS. EDWARDS: Well, in fairness, the Government
24 would reveal the fact that she later recanted any claim
25 that it must have gotten mixed up. I don't think it

1 would --

2 THE COURT: I'm just trying to get a sense to
3 figure out the scope of Attorney DiRuzzo's, whether his
4 motion reaches something that you're not planning to
5 introduce. So, I just want to know if you were planning
6 to introduce something beyond the incriminating
7 statement. And I asked the question because of what you
8 said, the incriminating statement the Government plans
9 to use, and that was the one where the bag is
10 identified. I just want to know if you plan to use
11 other statements, and I'll just ask Attorney DiRuzzo to
12 limit his argument to the thing you plan to use as
13 opposed to something you don't plan to use.

14 MS. EDWARDS: Understood, Your Honor.

15 THE COURT: Do you plan to use something more
16 than what you refer to as the incriminating statement?

17 MS. EDWARDS: I would say I plan to use the
18 denial.

19 THE COURT: Okay. Go ahead. Anything else?

20 MS. EDWARDS: Again, I would just reiterate
21 that there -- even though there might have some, there
22 might be an indication or some question in the officer's
23 mind that the items could potentially contain something
24 that were, that was illegal, that does not -- just
25 having that potential, where there is no clear

1 indication does not cross the line as the Third Circuit
2 has made clear in a number of decisions.

3 THE COURT: Okay. Now, let me hear you about
4 the administrative subpoena and, you know, the testimony
5 that was elicited has indicated there is a cross
6 designation. Do I need anything more than that?

7 MS. EDWARDS: Well, I would submit that you
8 frankly do not even need that. I introduced that as an
9 abundance of caution. However, I would submit that the
10 defendant has no standing, no basis to pretty much
11 challenge a subpoena that was issued to a third party.
12 The information is information that is strictly business
13 records and that do not border on any privacy interests,
14 at least not any reasonable, with the exception of the
15 location information. I confess I am not a tech person.
16 If the defendant can explain further, point out which
17 documents or which part of the return he believes reveal
18 location information, I would certainly -- I don't plan
19 to use any of that information. And I can attest that
20 such precise location information was even provided.
21 But to the extent that it was, the Government is not
22 going to be using it. As already stated, the Government
23 obtained the search warrant for her phone and that
24 information was provided with respect to the search
25 warrant.

5 MS. EDWARDS: Subscriber information and a list
6 of the phone calls that were made, including the
7 telephone numbers dialed and the telephone numbers
8 received, calling the defendant's phone at times of
9 those calls.

10 THE COURT: All right. Anything else?

11 MS. EDWARDS: No, Your Honor.

12 THE COURT: Attorney DiRuzzo.

25 MR. DIRUZZO: Yes. I believe a volunteered

1 response is very different from one that is given as a
2 result of the will being overcome.

3 THE COURT: Okay. Is there any record evidence
4 that the statement -- you know what just occurred to me?
5 Attorney DiRuzzo, do you wish to put on any evidence?

6 MR. DIRUZZO: No, Judge.

7 THE COURT: Okay. Was there any record
8 evidence that your client did anything but blurt out or
9 interject, I think, as the Government witnesses said?
10 Is there anything to contradict that on the record
11 before me?

12 MR. DIRUZZO: Your Honor --

13 THE COURT: Let me start with a baseline
14 question. You agree that the agent testified that, I
15 think it was Officer Vanterpool, that your client
16 volunteered, interjected a statement about the ownership
17 of the luggage?

18 MR. DIRUZZO: He did testify to that, correct.

19 THE COURT: All right. Is there anything that
20 contradicts that on the record before me?

21 MR. DIRUZZO: No, because his recollection -- I
22 stated, at least on one occasion, if not more, that his
23 recollection as to exactly what was said wasn't
24 particularly good, which is why I moved my moving papers
25 to cite to the Government's Bates Numbers 579, 580 on

1 Page 2 of my motion as to statements that my client
2 allegedly made.

3 THE COURT: On at least two occasions on the
4 record before me in this hearing, though, I thought that
5 Officer Vanterpool said, and he reiterated something
6 along the lines, as I said, she interjected. She came
7 over. Is there anything to contradict that on the
8 record before me?

9 MR. DIRUZZO: No, based on the record before
10 you.

11 THE COURT: All right. And then there is a
12 statement that also sounded like it was volunteered, you
13 know, it must be someone else's luggage, you know,
14 distancing, Miss Brooks distancing herself from the
15 ownership of the luggage. Was there any question on the
16 record before me posed to elicit that response? Just a
17 yes or no. Then my next question is going to be who
18 posed if there was one?

19 MR. DIRUZZO: I don't believe so.

20 THE COURT: Okay. Was there any conduct that
21 caused that response on the part of the Government?

22 MR. DIRUZZO: Well, I would say yes. I believe
23 that's the entire circumstances here, if you take the
24 totality of the circumstances bringing my client from
25 soft --

1 THE COURT: Well, looking at the totality of
2 the circumstances, is there any evidence that would be,
3 that would indicate that the questioning at the time was
4 directed to Miss Nguyen? As I seem to recall, Officer
5 Vanterpool, I think, being more in contact with Miss
6 Nguyen and then Miss Brooks volunteered all that she
7 volunteered.

18 MR. DIRUZZO: No. But the Government failed to
19 call that witness, and so, there is no record evidence
20 as to what Mr. Charles said or did not say.

21 THE COURT: Okay. All right. Go ahead.

22 MR. DIRUZZO: So to continue, Your Honor, the
23 Government takes the position in its moving papers
24 that --

25 THE COURT: Let me ask you this other question.

1 Do you dispute that when it comes to a Customs inquiry
2 for a duty that Customs has certain authority to assess
3 whether the dutiable items are, in fact, what they
4 purport to be, what they are purported to be?

5 MR. DIRUZZO: I --

6 THE COURT: Just a yes or no, and then you can
7 explain.

8 MR. DIRUZZO: Yes, but I'm --

9 THE COURT: All right. If they get to do that,
10 Attorney DiRuzzo, what can they do to assess and
11 determine what the thing that's purported to be
12 something is actually that thing? What can they do,
13 legally? Do they get to take a peek? Yes or no.

14 MR. DIRUZZO: I believe a cursory inspection
15 would be permissible.

16 THE COURT: Okay. All right. Go ahead.

17 MR. DIRUZZO: So, in the Government's moving
18 papers makes the argument that because my client, who is
19 undisputed an American citizen, was traveling from the
20 Virgin Islands back to the United States that somehow
21 the Fourth Amendment protections are reduced or
22 minimized. I understand that the case law is out there.
23 I believe the case law is undecided. I believe that --

24 THE COURT: You say, "the case law," tell me
25 which case you're referring to.

1 MR. DIRUZZO: United States versus Kiam and
2 Hyde.

3 THE COURT: Okay. So, you're referring to a
4 case that originated here and went up to the Third
5 Circuit.

15 Now, I understand that for purposes of Customs and
16 Border, except for levies, excise taxes and the like,
17 Congress does have the ability on the necessary proper
18 costs and taxing costs.

19 THE COURT: Assuming for the sake of argument
20 that your position is one that has, you know, some legal
21 weight to it, for the sake of argument, if we were to
22 just pull back on that for the moment, would there not
23 be enough here for the agents to do what they did,
24 notwithstanding the issue about a border? That is, at
25 an airport you agree that luggage can be screened; do

1 you not?

2 MR. DIRUZZO: Yes.

3 THE COURT: All right. And if in screening
4 that luggage, X-ray, for instance, and you see something
5 that looks, I don't know, like controlled substance,
6 contraband, you would agree that you can go a little bit
7 further; can you not, ask a few questions?

8 MR. DIRUZZO: Sure.

9 THE COURT: All right. So, is there anything
10 here, if we pull back for the moment from the border
11 argument I think you are making, is there anything here
12 that would cast what the agents did in some
13 constitutionally improper light? Let's assume for the
14 sake of argument, this happened at JFK, JFK to
15 Washington DC, and someone presents some luggage; it's
16 x-rayed, there are these bricks, these things that look
17 unusual, and the agents asked a few questions. No
18 border there, right? JFK to Washington International,
19 no border there. Could the agents ask a couple
20 questions about that, whose bag is this, what is this?

21 MR. DIRUZZO: Well, Your Honor, in the
22 abstract, I would say the answer to that is yes. But
23 the facts of this case --

24 THE COURT: So that the agents, at least, doing
25 that here is no different than if they were at JFK on

1 the shuttle flight to DC, right?

2 MR. DIRUZZO: As far as that location, no,
3 there is no difference. But given that the images of
4 these bricks packed into a suitcases leads to, I would
5 submit, a reasonable person to conclude that, at
6 minimum, some type of criminal activity may be afoot.
7 Once that happens, it becomes not as simple Customs and
8 border hazard duty or tax be paid, but it is an
9 investigatory search and an investigatory operation in
10 order to ascertain who it belongs to and what it is.

11 THE COURT: What's your understanding of what
12 precipitated the x-ray of luggage here?

13 MR. DIRUZZO: I don't know if that was in the
14 record, but I would assume, from personal experience --
15 and I don't think that anyone can speak to this that all
16 luggage is x-rayed at the airport, as a matter of
17 course.

18 THE COURT: All right. All right. So, you're
19 saying on the record before me all we have here is a
20 statement that there was a, or evidence that there was a
21 duty to be paid and then some undertakings that took
22 place in furtherance of that, whatever it takes to
23 collect the duty?

24 MR. DIRUZZO: Yes. And there was an x-ray,
25 that the x-ray, the image of the x-rays depicted bricks

1 in the suitcases.

2 THE COURT: All right. Okay. Go ahead.

3 MR. DIRUZZO: So, Your Honor, given the
4 totality of the circumstances and given that the
5 depiction of the bricks in the suitcase-- and I think
6 the Court can be advised, I don't think there can be any
7 dispute. These are not small bricks like the size of
8 mini candies for Halloween. These are large bricks that
9 are typically associated with large quantities of
10 illegal substances, and at that point a reasonable, I
11 would submit a border protection agent who's had, I
12 assume, the appropriate training, has worked for over
13 those years, that his senses and his reasonable
14 perception of the situation lead him to believe that
15 criminal activity was afoot.

16 Once that comes into play my client's
17 constitutional right also come to bear. The question
18 that he had, while maybe serving dual purposes, being
19 able to ascertain whether a Customs duty had been paid,
20 whether the items are dutiable, first instance. Also
21 had the additional objective of ascertaining not only
22 the nature of the item themselves, was it contraband?
23 But who actually possessed the item in order to
24 obviously tag or link the illegal item to any of these
25 individuals, the defendants, detectives and through

1 parties? So, I'd submit that once that came to bear,
2 that under the totality of the circumstances my client
3 should have been Mirandized. Her statements were
4 volunteered and any response to questioning should be
5 suppressed.

6 THE COURT: All right, thank you.

7 MR. DIRUZZO: Now, turning to the
8 administrative subpoena portion, Your Honor. Your
9 Honor, there is -- the record evidence is the statement
10 by the agent that somehow based upon his graduation from
11 the Department of Homeland Security Agency you can see
12 that that in and of itself is, somehow there is a
13 blanket delegation. There is no record of evidence as
14 to actual delegation or re-delegation order. There is
15 no record of evidence as to what the person who may have
16 signed this delegation order had the authority to do
17 that, whether that person --

18 THE COURT: So, are you saying whether or not
19 cell site location or information is disclosed, you're
20 saying that there is something improper here?

21 MR. DIRUZZO: Yes.

22 THE COURT: Even if it's not cell site location
23 information?

24 MR. DIRUZZO: Everything that was received in
25 response to the administrative subpoena is ultra virus

1 and cannot be admitted into evidence.

2 THE COURT: All right. So, the -- I thought
3 you were relying on a Supreme Court authority at some
4 level; were you not?

5 MR. DIRUZZO: Your Honor, I believe I cited to
6 the traveling both under the Fourth Amendment in
7 Carpenter and the statutory argument regarding the
8 ability to issue the administrative subpoena personally.
9 And that, Your Honor, I believe that the absence of the
10 statutory scheme and the regulations, along with the
11 record evidence, there is nothing that would give Mr.
12 Ramnes the ability to issue the administrative subpoenas
13 that were attached to my moving papers.

14 And as a result, in addition to that, that the
15 administrative subpoenas were issued under the reported
16 Title 8 as compared to Title 21, and there is nothing in
17 the -- I would submit that the Department of Homeland
18 Security has not been delegated or re-delegated the
19 authority to investigate Title 21 violation in the first
20 instance, including taking any one of these individually
21 and in conjunction. The Court would be well within its
22 ability to suppress all information and evidence
23 obtained in response to the administrative subpoenas.
24 And that is in -- that's separate and apart from the
25 Carpenter issue, which I understand Counsel for the

1 Government has conceded that that's not coming in, and I
2 would obviously accept that concession; although, Your
3 Honor, I believe that we need to have at least a hearing
4 to determine if there is a possibility that that
5 information, which now the Government admits is not
6 coming into evidence, has led to additional information
7 that should not be introduced at a trial as well. And I
8 would submit, Your Honor, that the Court needs to at
9 least consider that, that possibility, because I don't
10 believe it to be a capsule of one, but one that is, not
11 only one of the possibilities that the cell site
12 location could have led to additional information.

13 THE COURT: All right. Attorney Edwards.

14 MS. EDWARDS: Briefly, Your Honor. To address
15 the Miranda issue, Counsel just stated that concededly
16 there would be some, there might be some overlap between
17 CBP's purposes and criminal investigative purposes and
18 that is expressly -- the Third Circuit has expressly
19 stated that any beeline in terms of Miranda warning in
20 the context of such interviews is not crossed when there
21 is mere overlap between questions geared toward an
22 assessment of the admissibility of an individual or
23 effect and questions bearing on a potential criminal
24 prosecution. And so, to the extent that there were any,
25 there was any overlap when any questions were elicited

1 or volunteered, that under the Third Circuit those
2 questions were well within the line. They did not cross
3 them.

4 With respect to the administrative subpoenas,
5 again, the right to challenge under Fourth Amendment
6 principles stems from and requires that there be a
7 protected privacy interest, and the Delta records. The
8 defendant simply doesn't have any privacy interests that
9 are recognized anyway.

10 THE COURT: So, is it the Government's position
11 that even if there is a delegation problem he doesn't
12 have standing, he is not in the shoes of the person who
13 ought to be complaining about this?

14 MS. EDWARDS: That's correct, as a nonparty to
15 the subpoena. Now, Delta, if they believed that there
16 was an issue with the statute, that it had crossed the
17 bounds then Delta is the party who, having its records
18 subpoenaed, could step in and intervene, request the
19 court, request to quash the subpoena. But that simply
20 isn't what happened in this case. They chose to comply
21 with it.

22 THE COURT: All right. So, is there some
23 circumstance under which his client could complain?

24 MS. EDWARDS: Not that I've been able to find
25 in terms of Fourth Amendment in terms of suppression.

1 The only instance in which I found a court to even
2 entertain --

3 THE COURT: I think your brother used the term
4 "ultra virus." And as I tried to ask him what's the
5 constitutional violation, I think, with respect to at
6 least one of these entities, but actually ultra virus.

7 MS. EDWARDS: Correct. And the case law that I
8 have found, specifically from the Tenth and the Sixth
9 Circuits, squarely address and reject that notion as a
10 nonparty, where an individual lacks any privacy interest
11 at stake, that they can intercede or seek to suppress
12 evidence coming in at trial. So, even though it's under
13 the guise, in this instance, of moving just for the sake
14 of a statute, but the remedy sought is suppression in a
15 criminal case.

16 I found another instance where, the only instance
17 where a nonparty was even entertained was at a stage
18 when the subpoena had not yet been complied with, and it
19 was a question of whether the defendants could stand up
20 and actually prevent the party from complying with it.
21 Ultimately, the court decided it could not. However, it
22 entertained it up to that point. The rest of the
23 circuits that have addressed the issue have squarely
24 refused to even entertain any notion and said that there
25 is no right. And particularly, in this regard where the

1 statute itself does not provide suppression as a remedy
2 or even the court's intervention, that the courts have
3 said that intervening would be outside the scope of its
4 jurisdiction.

5 THE COURT: All right. So, the Court should
6 take no pause even if there is a delegation issue?

7 MS. EDWARDS: I'm sorry?

8 THE COURT: The Court should take no pause even
9 if there is a delegation issue?

10 MS. EDWARDS: Yes. And I would further note
11 that, as pointed out in the Government's paper, the
12 authority under which the subpoenas were issued was
13 under the authority of Title 18, United States Code,
14 Section 967, I believe. But I have a problem with
15 transposing numbers, so I just want to make sure I
16 didn't in this instance. But it wasn't sought under the
17 auspices of any power under the DEA; although, the agent
18 could have. It was sought under a different statute
19 regardless, that the agent does have the power to
20 investigate drug trafficking. And, in particular, the
21 evidence sought was related to an investigation that
22 overlaps with Title 18, United States Code, Section 545,
23 which is smuggling.

24 THE COURT: All right, thank you.

25 Before the Court is the defense's motion to

1 suppress certain evidence, specifically the defense
2 seeks to suppress a statement made by defendant Brooks
3 on or about September 24, 2018 at the airport. He also
4 seeks to suppress certain items that were obtained from
5 third parties, including Delta and Sprint.

6 I'll deal with Delta and Sprint first. It seems to
7 me that the defense's argument, while there may be some
8 interesting notions about whether the Government
9 complied with the delegation authority or delegation
10 protocol, it seems to me that's not the significant
11 point that will determine the outcome here. The
12 question is, are the things that the Government seeks to
13 admit, are they things which the defendant could say I
14 own, I control, I have an interest in privacy, or I
15 would otherwise like to be in a position to contest
16 their disclosure? In other words, does the defendant
17 have any claim to say I have standing to object to what
18 is being disclosed here? And the Court doesn't find
19 there is any standing the defendant has to object to the
20 disclosure of the records that are owned by Delta or
21 owned by Sprint.

22 With respect to the statement on September 24, 2018
23 at the airport, the circumstance that led to that
24 statement certainly don't fall within the paradigm that
25 you typically see when a defendant makes an utterance

1 under pressure or under some circumstance that would be
2 regarded as improper or constitutionally impermissible.
3 What we have here are two individuals who were traveling
4 through the airport obligated to pay duty. During the
5 course of paying that duty, the bags were x-rayed and an
6 anomaly was detected, that anomaly led to some
7 questioning. There is nothing untoward or
8 constitutionally impermissible with that happening under
9 these circumstances or certainly at the airport where
10 these circumstances developed.

11 The objectionable, as the Government referred to
12 the incriminating statement that was uttered, it was an
13 utterance that was volunteered. It wasn't something
14 that the Government sought, and from the record before
15 the Court it's not even clear that anyone posed a
16 question to the defendant Brooks here. So, the Court
17 doesn't find anything constitutionally impermissible in
18 the utterance. It seems that it's a statement that was
19 volunteered. And to the extent that it's incriminating
20 that may be unfortunate for the defendant, but it's not
21 constitutionally problematic.

22 So, for that reason, the motion to suppress the
23 September 24, 2018 statement made at the airport by Miss
24 Brooks is denied, and the same result with respect to
25 the Delta and Sprint documents.

1 All right, I think that takes care of the major
2 issues before trial. There were some other motions, I
3 think, the defense had, some of which I suspect defense
4 is going to enter a position on, given the Third
5 Circuit's recent decision. So, I suspect with respect
6 to the Court presiding in this matter or the matter
7 being in this Court, I suspect defense's position is
8 that you no longer proceed on that, given the
9 precedential opinion issued by the Circuit. Is that
10 right, Attorney DiRuzzo?

11 MR. DIRUZZO: Yes, Your Honor. With the caveat
12 that I am still considering that case, my options,
13 including but not limited to the Second Circuit. So, I
14 understand that this Court is bound by the precedential
15 opinion and, as a result, I understand the Court had to
16 deny Document Entries 27 and 28 accordingly, and I
17 understand that.

18 THE COURT: All right. Is there anything else
19 we need to tend to before trial? Trial is set for when?

20 MR. DIRUZZO: Monday, Your Honor. Yes, there
21 is one outstanding motion for the Court's consideration,
22 and that's Docket Entry 34, that deals with the
23 appointment of Acting Attorney General Whitaker.

24 THE COURT: Yes, that's denied.

25 MR. DIRUZZO: Then with that, Your Honor, we

1 have worked out an 11(a)(2) Plea that we would be
2 proceeding with, if the Court will so let us.

3 THE COURT: All right. This is reserved in the
4 matter, a certain matter?

5 MR. DIRUZZO: Yes, the denials.

6 THE COURT: All right. So, you have the
7 application and the documents, Attorney DiRuzzo? You
8 wish to hand those up to Ms. Brann.

9 MR. DIRUZZO: Your Honor, there is one thing.
10 Since it was executed right before the beginning of this
11 hearing, neither of the parties have copies for their
12 record, so I'm going to hand it up to Ms. Brann, but we
13 hope to get a copy back.

14 THE COURT: All right, yes.

15 [Documents tendered to the Court.]

16 Attorney DiRuzzo, did you do an application?

17 MR. DIRUZZO: For this, yes, Your Honor. I
18 handed it up as well.

19 THE COURT: No, the plea application.

20 MR. DIRUZZO: I forgot that, Your Honor. You
21 have to excuse me. In negotiating the plea agreement
22 today, I didn't do that.

23 THE COURT: All right. What we'll do is we'll
24 give you a few -- do you have the documents?

25 MR. DIRUZZO: I don't believe I printed that

1 one out, Your Honor.

2 THE COURT: All right. Ms. Brann will give you
3 a copy of the form, the plea application. You can fill
4 that out and then we'll resume when you're done with
5 that.

6 MR. DIRUZZO: Okay.

7 THE COURT: All right. So, we'll take a
8 seven-minute break.

9 THE CLERK: All rise. Court stands in recess
10 for seven minutes. Remain standing until His Honor
11 leaves the courtroom.

12 [Recess at 5:04.]

13 [After recess, in open court at 5:15 pm.]

14 THE COURT: Attorney DiRuzzo, why are we here?

15 MR. DIRUZZO: We're here for a change of plea
16 on 11(a)(2), Your Honor.

17 THE COURT: Okay. Have your client come
18 forward, please.

19 THE CLERK: Please raise your right hand to
20 take the oath.

21 THEREUPON, Defense Witness, FENDI BROOKS, after
22 having been first duly sworn, was examined and testified
23 as follows:

24 THE COURT: Good afternoon.

25 THE DEFENDANT: Good afternoon.

1 THE COURT: Tell us your name, please?

2 THE DEFENDANT: Fendi Brooks.

3 THE COURT: Miss Brooks, how old are you?

4 THE DEFENDANT: I'm 26.

5 THE COURT: How far have you gone in school?

6 THE DEFENDANT: College, associate's degree.

7 THE COURT: Do you read and write in English?

8 THE DEFENDANT: Yes.

12 THE DEFENDANT: Yes.

16 THE DEFENDANT: Yes.

17 THE COURT: Has anyone made any promises to
18 have you enter into a plea?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone made any threats to have
21 you enter into a plea?

22 THE DEFENDANT: No.

23 THE COURT: So, you're entering this plea of
24 your own free will?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you taken any controlled
2 substances in the past 48 hours?

3 THE DEFENDANT: No.

4 THE COURT: Is the plea agreement that you have
5 between you and the United States the entire agreement
6 that you have between you and the United States?

7 THE DEFENDANT: Yes.

8 THE COURT: According to your plea agreement,
9 you have agreed to plead guilty to Count One of an
10 Indictment. Count One charges you with the violation of
11 Title 21, US Code, Section 846 and 841. It carries a
12 minimum mandatory term of imprisonment of ten years, a
13 maximum term of imprisonment of life, a term of
14 supervised release of at least five years, a maximum
15 fine of \$10 million and a special assessment of \$100.

16 You understand that if I accept your plea today I
17 can sentence you up to the maximum I just outlined. Do
18 you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: Ordinarily, when a defendant is
21 charged in federal courts, such as this, with a crime
22 such as this, you have certain rights. For instance,
23 you the right to trial. At that trial, the Government
24 would have to prove your guilt beyond a reasonable
25 doubt; you would have the right to compel the attendance

1 of any witnesses; you would have the right to
2 cross-examine any witnesses. If you chose not to
3 present any evidence; if you chose not to testify that
4 could not be held against you. As I said, the
5 Government would have to prove your guilt beyond a
6 reasonable doubt and a jury unanimously would have to
7 find you guilty beyond a reasonable doubt.

8 Throughout the entire proceeding, you have the
9 right to the assistance of counsel. You understand that
10 if I accept your plea today you would have waived, that
11 is, given up your right to trial as I just outlined. Do
12 you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: According to your plea, you have
15 agreed to reserve the right to appeal the denial of your
16 motions to suppress. It says "suppress and dismiss."
17 Is that the understanding of the parties?

18 MR. DIRUZZO: Yes, Your Honor.

19 MS. EDWARDS: Yes, Your Honor.

20 THE COURT: All right. The plea agreement also
21 indicates that the defendant waives the right to appeal
22 any sentence imposed within the maximum provided by the
23 statute of conviction, and the defendant also agrees to
24 waive the right to petition under Title 28, Section 2255
25 with exception of a claim of ineffective assistance of

1 counsel. And with respect to the general appeal, it is
2 expressly -- the waiver expressly retains the right to
3 appeal the Court's decision with respect to the
4 defendant's motion to suppress or dismiss. Do you
5 understand that you have waived your right to appeal and
6 petition, as I have just outlined, with the exceptions
7 that I have just outlined, which are more fully detailed
8 in the plea agreement? Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: I want you to listen carefully now
11 because I'm going to ask the Government to outline the
12 facts if this matter were to proceed to trial. You need
13 to listen carefully because at the end of the
14 Government's recitation I'm going to ask you if what she
15 said is true and accurate and if you agree that the
16 Government could prove those facts beyond a reasonable
17 doubt. Attorney Edwards.

18 MS. EDWARDS: Your Honor, the Government would
19 establish that on or about September 24, 2018, Defendant
20 Fendi Brooks and codefendant Ngoc Nguyen were traveling
21 on Delta Flight Number 307 from St. Thomas to New York
22 with a layover in Atlanta. After checking in for their
23 flights, Defendant Brooks and Codefendant Nguyen
24 presented themselves at US Customs and Border Protection
25 or CBP. CBP officers encountered Defendant Brooks and

1 Co-Defendant Nguyen because they had to pay a duty on
2 the amount of alcohol that they were taking back with
3 them. During that inspection, a bag checked by Brooks
4 and bearing Brooks' name but claimed by both Brooks and
5 Nguyen was x-rayed by CBP. X-ray revealed 12 brick-like
6 packages were contained within the suitcase. Eleven of
7 the packages were of a white powdery substance that
8 field tested positive for cocaine.

9 Defendant Brooks and Nguyen had \$1,300 in \$100
10 bills on their person. Brooks made all of the travel
11 arrangements purchasing one-way tickets on September 20,
12 2018 for travel to St. Thomas to September 21, 2018.
13 After arriving in St. Thomas on September 21, 2018,
14 Defendant Brooks purchased tickets to depart St. Thomas
15 for New York on September 24, 2018.

16 The 11 brick-like packages that tested positive for
17 cocaine were sent to a forensic lab which confirmed the
18 substance to be cocaine with a weight, a total weight of
19 10.9 kilograms. The 12 brick-like substance was
20 likewise sent to the forensic lab which identified the
21 substance as cocaine base with a weight of 1,010 grams.

22 THE COURT: And that's what the Government
23 would prove if this matter were to proceed to trial
24 beyond a reasonable doubt?

25 MS. EDWARDS: That's correct, Your Honor.

1 THE COURT: Fendi Brooks, is what the
2 Government said true and accurate?

3 THE DEFENDANT: Yes.

4 THE COURT: You agree that the Government could
5 prove those facts beyond a reasonable doubt?

6 THE DEFENDANT: Yes.

7 THE COURT: So, you're pleading guilty in fact
8 because you are guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. I'm going to read Count
11 One of the Indictment, and then I'll ask you for your
12 plea. Count One charges on or about September 24, 2018,
13 in St. Thomas, in the District of the Virgin Islands,
14 the Defendant, Fendi Brooks, did knowingly and
15 intentionally combine, conspire, confederate and agree
16 together, and with other persons, known and unknown, to
17 possess with the intent to distribute controlled
18 substances, to wit, 5 kilograms or more of a mixture or
19 substance containing a detectable amount of cocaine, a
20 Schedule II narcotic controlled substance, and 280 grams
21 or more of a mixture or substance containing a
22 detectable amount of cocaine base, a Schedule II
23 narcotics controlled substance, all in violation of
24 Title 21, US Code, Section 846 and 841.

25 Fendi Brooks, how do you plead to Count One of the

1 Indictment, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: There will be a finding that the
4 defendant has entered a knowing and voluntary plea,
5 fully aware of the consequences of that plea. The Court
6 finds there is a sufficient basis and fact to accept the
7 defendant's plea of guilty before the defendant's plea
8 is accepted and the defendant is adjudged guilty of the
9 crime alleged in Count One of the Indictment.

10 Miss Brooks, a presentence investigation needs to
11 be conducted before you are sentenced. The presentence
12 investigation will be disclosed to all parties on
13 April 26, 2019; presentence conference, May 10, 2019;
14 position of the parties with respect to sentencing, May
15 17, 2019; conference regarding sentencing proceedings,
16 June 3, 2019; final presentence report will be disclosed
17 to all parties and the Court June 10, 2019; and the
18 sentencing hearing is set for July 11, 2019.

19 Between now and then, the defendant is remanded to
20 the custody of the United States Marshal Service pending
21 her sentencing.

22 That concludes the matter here and there will be no
23 trial on Monday.

24 Thank you, Counsel.

25 MR. DIRUZZO: Thank you, Your Honor.

1 THE CLERK: All rise. Court stands adjourned.
2 Remain standing until His Honor leaves the courtroom.
3 [Court adjourned at 5:27 p.m.]

4 - - -

5

6 CERTIFICATE

7

8 This document is hereby certified
9 to be a true and accurate transcript
10 of the foregoing proceedings.

11

12

13 */s/ Persha Stoutt-Warner*
14 PERSHA STOUTT-WARNER, RMR 12/6/19
15 Official Court Reporter

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