

APPENDIX A

BLD-113

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3209

ZACHARY CHAMBERS,
Appellant

v.

WARDEN ALLENWOOD FCI

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1-21-cv-01654)
District Judge: Honorable Christopher C. Conner

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 31, 2022

Before: MCKEE, GREENAWAY, JR. and PORTER, Circuit Judges

(Opinion filed: May 5, 2022)

OPINION*

PER CURIAM

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

Zachary Chambers, a federal prisoner incarcerated in Pennsylvania, appeals pro se from the order of the United States District Court for the Middle District of Pennsylvania dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2241. For the following reasons, we will summarily affirm the District Court's order. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

Following a jury trial in the United States District Court for the Eastern District of Pennsylvania in 2013, Chambers was convicted of conspiracy to distribute 5 kilograms or more of cocaine, 280 grams or more of crack cocaine base, and marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846; and attempted possession with the intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and 18 U.S.C. § 2. The District Court sentenced him to 330 months' imprisonment followed by five years' supervised release. We affirmed his conviction and sentence on direct appeal. See United States v. Chambers, 587 F. App'x 22, 26 (3d Cir. 2014).

In 2015, Chambers filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, claiming ineffective assistance of counsel and withholding of evidence by the prosecution. The District Court denied his motion, but we granted him a certificate of appealability and remanded the matter for an evidentiary hearing on one of his claims. Following that hearing, the District Court again denied Chambers's motion, and we declined to issue him a certificate of appealability. See United States v.

corpus petition brought by a federal prisoner under § 2241 accordingly “shall not be entertained” unless a § 2255 motion would be “inadequate or ineffective to test the legality of [the petitioner’s] detention.” 28 U.S.C. § 2255(e). This exception, known as the “safety-valve clause,” is narrow and applies “where the petitioner demonstrates that some limitation of scope or procedure would prevent a § 2255 proceeding from affording [the petitioner] a full hearing and adjudication of [the] wrongful detention claim.” Cradle, 290 F.3d at 538. We have found such circumstances exist only in rare situations, such as where a petitioner has “had no earlier opportunity to challenge his conviction for a crime that an intervening change in substantive law may negate.” In re Dorsainvil, 119 F.3d 245, 252 (3d Cir. 1997); see also Cordaro v. United States, 933 F.3d 232, 239 (3d Cir. 2019).

While Chambers invokes the Dorsainvil rule, he has not demonstrated such a limitation. As the District Court noted, he has not alleged any change in statutory interpretation that would render the conduct for which he was convicted non-criminal. See Bruce v. Warden Lewisburg USP, 868 F.3d 170, 180 (3d Cir. 2017). Chambers does not challenge his conviction. He alleges only that the sentencing enhancement for possession of a firearm during the commission of his offenses now cannot apply to him based on Rehaif, where the Supreme Court held that “in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), the Government must prove both that the defendant knew he

possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” 139 S. Ct. at 2200.

This argument is unavailing. Chambers was not charged with or convicted of an offense under 18 U.S.C. § 922(g) and § 924(a)(2), so Rehaif is inapplicable to him by its terms. Nor can his argument be construed to advocate for a logical extension of Rehaif, because the sentencing guideline enhancement in question does not require the defendant to have been convicted of any prior offense, occupy any particular status, or have knowledge of either.¹ See § 2D1.1(b)(1) (instructing courts to increase the offense level by two levels “[i]f a dangerous weapon (including a firearm) was possessed” by the defendant during the commission of an offense of conviction for unlawful manufacturing, importing, exporting, or trafficking of drugs); see generally United States v. Denmark, 13 F.4th 315, 318–321 (3d Cir. 2021) (discussing the required proof and procedure for imposing the enhancement under § 2D1.1(b)(1)); U.S. Sent’g Guidelines Manual § 2D1.1 cmt. n.11 (U.S. Sent’g Comm’n 2012).² We are unconvinced by Chambers’s petition that Rehaif has any impact on the applicability of this enhancement to him.³

¹ We acknowledge Chambers’s evidence that there was some discussion of his prior convictions at his sentencing hearing. See Mem. L. Supp. § 2241 Pet., ECF No. 2 at 12–13, 18–19. However, the transcript also indicates that his history was “not being introduced [by the Government at sentencing] in support of that enhancement It’s being introduced as part of the defendant’s conduct, his nature and characteristics that the court can take into consideration” under the sentencing factors in 18 U.S.C. § 3553. Id. at 14–15.

² However, we find it unnecessary to decide whether a change in statutory interpretation

For the foregoing reasons, this appeal fails to present a substantial question, and we will summarily affirm the District Court's judgment.

that does affect the Sentencing Guidelines might ever implicate the safety-valve clause of § 2255. See United States v. Doe, 810 F.3d 132, 160–61 (3d Cir. 2015).

³ To the extent that Chambers argues for unrelated reasons that the enhancement should not apply to him—such as that there was either insufficient nexus between the gun possession and the drug trafficking, or insufficient evidence to support the enhancement—such arguments were available to him on direct appeal and his remedies under § 2255 are not inadequate or ineffective within the meaning of the safety valve.

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District Judge: Honorable Christopher C. Conner

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Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

March 31, 2022

Before: MCKEE, GREENAWAY, JR. and PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on March 31, 2022. On consideration whereof, it is now hereby

ORDERED and **ADJUDGED** by this Court that judgment of the District Court entered October 29, 2021, be and the same hereby is **AFFIRMED**. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: May 5, 2022

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ZACHARY CHAMBERS, : **CIVIL ACTION NO. 1:21-CV-1654**
: **Petitioner** : **(Judge Conner)**
: **v.** :
R. THOMPSON, :
: **Respondent** :

MEMORANDUM

This is a habeas corpus case filed under 28 U.S.C. § 2241 in which petitioner Zachary Chambers challenges a sentencing enhancement imposed by the United States District Court for the Eastern District of Pennsylvania. We will dismiss the petition without prejudice for lack of jurisdiction.

I. Factual Background & Procedural History

Following a jury trial in the Eastern District of Pennsylvania, Chambers was convicted of one count of conspiracy to distribute cocaine and one count of attempted possession with intent to distribute cocaine on August 12, 2013. United States v. Chambers, No. 2:10-CR-770 (E.D. Pa. Aug. 14, 2013). The district court subsequently concluded that Chambers was subject to a two-level sentencing enhancement under United States Sentencing Guideline § 2D1.1(b)(1) based on his possession of a firearm during the commission of the offenses. (See Doc. 1 at 7-8). Chambers appealed to the United States Court of Appeals for the Third Circuit, which affirmed the judgment of sentence on October 8, 2021. United States v. Chambers, 587 F. App'x 22, 26 (3d Cir. 2014).

Chambers brings the instant habeas corpus petition under 28 U.S.C. § 2241 to challenge the Eastern District's imposition of a sentencing enhancement under § 2D1.1(b)(1). He argues that the sentencing enhancement was rendered unlawful by the Supreme Court's decision in Rehaif v. United States, 588 U.S. __, 139 S. Ct. 2191 (2019).

II. Legal Standard

Under Rule 4 of the rules governing habeas corpus petitions under 28 U.S.C. § 2254, a district court must promptly review a petition and dismiss it if it is plain from the face of the petition that the petitioner is not entitled to relief. 28 U.S.C. § 2254 Rule 4. District courts have the discretion to apply this rule in habeas corpus cases brought under 28 U.S.C. § 2241. 28 U.S.C. § 2254 Rule 1.

III. Discussion

Dismissal of this case under Rule 4 is appropriate because the court does not have jurisdiction to consider Chambers's petition. Federal prisoners seeking post-conviction relief from their judgment of conviction or the sentence imposed are generally required to bring their collateral challenges pursuant to 28 U.S.C. § 2255.

See 28 U.S.C. § 2255(e). The Third Circuit Court of Appeals has observed that “[m]otions pursuant to 28 U.S.C. § 2255 are the presumptive means by which federal prisoners can challenge their convictions or sentences that are allegedly in violation of the Constitution.” Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002) (citing Davis v. United States, 417 U.S. 333, 343 (1974)). Section 2255(e), often referred to as the savings clause, specifically prohibits federal courts from entertaining a federal prisoner's collateral challenge by an application for habeas

corpus unless the court finds that a § 2255 motion is “inadequate or ineffective.” Id. at 120 (citing In re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997)); 28 U.S.C. § 2255(e)).

To demonstrate that a § 2255 motion is “inadequate or ineffective,” the petitioner must show “that some limitation of scope or procedure would prevent a § 2255 proceeding from affording him a full hearing and adjudication of his wrongful detention claim.” Cradle v. U.S. ex rel. Miner, 290 F.3d 536, 538 (3d Cir. 2002) (*per curiam*). Significantly, § 2255 “is not inadequate or ineffective merely because the sentencing court does not grant relief, the one-year statute of limitations has expired, or the petitioner is unable to meet the stringent gatekeeping requirements of . . . § 2255.” Id. at 539. “It is the inefficacy of the [§ 2255] remedy, not the personal inability to utilize it, that is determinative.” Id. at 538.

Chambers’s claims, which challenge the imposition of a sentencing enhancement based on the Supreme Court’s holding in Rehaif, do not satisfy the savings clause. Claims challenging only the duration of a sentence rather than the legality of the underlying conviction or sentence are not cognizable in § 2241 habeas corpus petitions and must be brought through § 2255 motions. See Okereke, 307 F.3d at 120-21; see also, e.g., Garcia v. Warden Ft. Dix FCI, 596 F. App’x 79, 82 (3d Cir. 2014); Adderly v. Zickefoose, 459 F. App’x 73, 74 (3d Cir. 2012). The court therefore does not have jurisdiction to consider Chambers’s claims.

IV. Conclusion

We will dismiss the petition (Doc. 1) for writ of habeas corpus without prejudice for lack of jurisdiction. An appropriate order shall issue.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner
United States District Judge
Middle District of Pennsylvania

Dated: October 29, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ZACHARY CHAMBERS : **CIVIL ACTION NO. 1:21-CV-1654**
:
Petitioner : (Judge Conner)
:
v. :
:
R. THOMPSON, :
:
Respondent :
:

ORDER

AND NOW, this 29th day of October, 2021, upon consideration of the petition (Doc. 1) for writ of habeas corpus, and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

1. The petition (Doc. 1) for writ of habeas corpus is DISMISSED without prejudice.
2. The Clerk of Court is DIRECTED to close this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner
United States District Judge
Middle District of Pennsylvania

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,) 10-CR-770-2
)
)
vs.)
)
ZACHARY CHAMBERS,) Philadelphia, PA
)
Defendant.) August 12, 2013
) 1:33 p.m.

TRANSCRIPT OF SENTENCING HEARING AND SENTENCING
BEFORE THE HONORABLE MICHAEL M. BAYLSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 3:33 p.m. (The following was heard in open court at 1:33 p.m.)

2 COURT: THE COURT: Good afternoon, everyone.

3 ALL: Good afternoon, Your Honor.

4 COURT: THE COURT: Okay. Good morning. Please be seated.

5 Okay. We're here for a sentencing proceeding in United States
6 vs. Zachary Chambers, Criminal No. 2010-770-2. Present is Ms.
7 Stevens for the United States.

8 MS. STEVENS: Good afternoon, Your Honor.

9 THE COURT: Ms. Cinquanto is here for the defendant.

10 MS. CINQUANTO: Yes, Your Honor.

11 THE COURT: Ms. Maxwell is here for the probation
12 department.

13 MS. MAXWELL: Good afternoon, Your Honor.

14 THE COURT: Okay. Let's swear Mr. Chambers, please.

15 THE CLERK: Please raise your right hand.

16 ZACHARY CHAMBERS, DEFENDANT, SWEORN

17 THE CLERK: Please state your full name and spell
18 your last name for the record.

19 THE DEFENDANT: Zachary Chambers, C-H-A-M-B-E-R-S.

20 THE COURT: All right. Mr. Chambers, good
21 afternoon.

22 THE DEFENDANT: Good afternoon.

23 THE COURT: Do you understand this is the date and
24 time set for your sentencing?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And did you receive a copy of the
2 presentence report through your attorney, Ms. Cinquanto?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And have you had time to read it and
5 review it?

6 THE DEFENDANT: Yes.

7 THE COURT: And did you have -- and have you
8 discussed it with Ms. Cinquanto?

9 THE DEFENDANT: Yes.

10 THE COURT: And are you prepared to proceed at this
11 time?

12 THE DEFENDANT: Yes.

13 THE COURT: And are you satisfied with Ms.
14 Cinquanto's services as your attorney?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. All right. You may be seated.

17 All right. We have an objection to the presentence report.

18 Ms. Cinquanto, do you want to present that?

19 MS. CINQUANTO: Yes, Your Honor. Your Honor, I've
20 got -- I've got two objections to the presentence report. One
21 is the drug quantity calculation, and the second is the
22 two-level enhancement for possession of a weapon.

23 THE COURT: Okay.

24 MS. CINQUANTO: Your Honor, regarding the drug
25 quantity amount, there -- I can go right into my argument. I

11 I thought we were going to -- I think what's going to happen is
12 that the Government is going to be presenting testimony on
13 this issue, so would you like me to --

14 THE COURT: The Government's going to agree?

5 MS. CINQUANTO: Well, no, no, they're presenting
6 testimony on this issue, so would Your Honor prefer that I
7 hold off on my argument until after the testimony?

8 THE COURT: Yes. You want to present testimony?

9 MS. STEVENS: Yes, Your Honor. Just to speed things
10 up, we have four witnesses to present for testimony today. It
11 may be best to try to get all of the testimony in, Your Honor,
12 and then we can come back to the sentencing hearing, just to
13 get that testimony in, and then we can move forward.

14 THE COURT: All right. Well, this is news to
15 me. I mean, I'm not being critical.

16 MS. STEVENS: The Government had indicated in its
17 sentencing memo that we would be presenting testimony today.

18 THE COURT: All right. Well, I missed that. I got
19 to tell you. How long do you think these will be? I've got a
20 bunch of conferences all afternoon.

21 MS. STEVENS: Your Honor, I'm -- I think it's going
22 to be pretty short.

23 THE COURT: All right. Well,

24 MS. STEVENS: I just -- if we can just --

25 THE COURT: -- call your first witness. Go ahead.

1 MS. STEVENS: Yeah, if we can just move them in
2 order, we can do it quickly.

3 THE COURT: All right. Call your first witness.

4 MS. STEVENS: First witness will be Mark Monaghan,
5 Special Agent with ATF.

6 MARK MONAGHAN, GOVERNMENT'S WITNESS, SWORN

7 THE CLERK: Please state your full name for the
8 record.

9 THE WITNESS: Mark G. Monaghan.

10 THE COURT: Go ahead.

11 DIRECT EXAMINATION

12 BY MS. STEVENS:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Agent Monaghan, you're employed with ATF, correct?

16 A Yes.

17 Q During the course of your investigation, you were part of
18 the team that investigated the case involving Zachary
19 Chambers, correct?

20 A I was, yes.

21 Q During the course of the investigation, did you conduct
22 surveillance of Mr. Chambers and others in Las Vegas on June
23 19th of 2010?

24 A Yes, I was.

25 Q Okay. And who else was there along with you doing that

1 surveillance?

2 A Myself, Special Agent Eric Poole from ATF, Trooper
3 Jenkinson (phonetic), and Trooper Wisniseski from Pennsylvania
4 State Police.

5 Q And as it relates to Mr. Chambers and his sentencing
6 today, was there any place significant did you go that day?

7 A Yes. Himself, as well as Mr. Smith, Ronnisha Butler, and
8 Tyreek Styles all went to America Shooters, which is an indoor
9 shooting range.

10 MS. CINQUANTO: Your Honor, I object.

11 THE COURT: Why?

12 MS. CINQUANTO: Your Honor, I don't believe this is
13 relevant to the sentencing today. We're here to sentence Mr.
14 Chambers on a drug conviction, and going to a shooting range,
15 which is I believe outside the time of the conspiracy in this
16 case, is not relevant and shouldn't be considered by Your
17 Honor.

18 THE COURT: Well, --

19 MS. STEVENS: Your Honor, it was, in fact, during
20 the course of the charged conspiracy and it goes to his
21 relevant conduct.

22 THE COURT: Well, let's get the date. What's the
23 date?

24 BY MS. STEVENS: On June 19th, 2010.

25 Q On June 19th, 2010?

1 A That's correct.

2 Q Now, can you tell this Court who did you
3 see at the shooting range?

4 THE WITNESS: I saw Mr. Chambers, Bellvin Smith,
5 Tyreek Styles, and Ronnisha Butler.

6 THE COURT: All right. And what was Mr. Chambers
7 doing?

8 THE WITNESS: They rented guns and shot targets
9 inside the range.

10 MS. STEVENS: And, Your Honor, if I can approach?

11 THE COURT: Yes.

12 BY MS. STEVENS:

13 Q I'm handing you what has been previously marked as
14 Government Exhibits 1 and 2.

15 A Yes.

16 Q And do you recognize these documents?

17 A I do.

18 Q And what are they?

19 A They're the sales receipt that we obtained from the
20 manager of American Shooters, as well as the signed copies
21 where -- with a certificate -- certification and release when
22 they sign up to rent the firearms.

23 Q And Exhibit 1 is the sales receipt which indicates that
24 the pistol range fee for four people, the two Glocks were

1 used, ammunition as well as targets, correct?

2 A Correct.

3 Q Now, if we can go to Exhibit No. 2, which is the
4 certification and release form.

5 A Yes.

6 Q -- that form, this particular one was signed by who?

7 A This one, this is Edwin Pagan, but it was Bellvin Smith
8 using Edwin Pagan's name, as well as Zachary Chambers.

9 Q And Mr. Chamber's certification and release is on the
10 right, correct?

11 A That's correct.

12 Q His name is printed and there's a signature at the bottom
13 that says Zachary Chambers on the date June 19th, 2010,
14 correct?

15 A Yes.

16 Q Now, on this certification there is a provision under
17 paragraph 2, it says number two that says, "I am not suffering
18 from depression or mental illness, nor am I a convicted felon
19 of any state," correct?

20 A That's correct.

21 Q And this was signed by Zachary Chambers and certified
22 that that was, in fact, the case, correct?

23 A It was.

24 Q Now, during the course of your investigation, did you
25 determine whether Chambers was a convicted felon?

1 A Yes, we did.

2 Q So his signature on this certification and release
3 indicating that he was not a convicted felon of any state
4 would be false, correct?

5 A That's correct.

6 Q And as a convicted felon, you saw him in possession of a
7 firearm in Las Vegas during the course of the charged
8 conspiracy?

9 A I did.

10 MS. STEVENS: Your Honor, those -- those are the
11 only questions I have for Agent Monaghan.

12 MS. CINQUANTO: Your Honor,

13 THE COURT: All right. Cross-examine.

14 MS. CINQUANTO: Your Honor, for the record, I
15 object. In order -- Your Honor still has to conduct a 403
16 balancing test to see if the prejudicial value of this
17 information outweighs the probative value of or the probative
18 value outweighs the prejudicial impact on Your Honor. And,
19 Your Honor, this is just -- we have -- we have Mr. Chambers
20 going to a licensed facility, renting a weapon, and going to
21 target practice. This is not anything that Your Honor should
22 consider when imposing sentence in this matter.

23 THE COURT: Well, the guideline computation shows
24 that the probation officer, Ms. Maxwell, you know, entered a
25 two-level enhancement for possession of a firearm. Now, in

15 another justification for this, she didn't mention anything about
16 at the shooting range, she just said that, you know, as someone
17 who is involved in a conspiracy, he would have had an interest
18 in possessing a firearm. And I think that may be true, but
19 I'm not sure that that would satisfy the law, as far as the
two-level enhancement. But that's why I think -- but is this
evidence introduced in support of that enhancement?

8 MS. STEVENS: It's not being introduced in support
9 of that enhancement, Your Honor. It's being introduced as
10 part of the defendant's conduct, his nature and
11 characteristics that the Court can take into consideration.
12 And this is an individual whose criminal history has shown and
13 his actions have shown has disregarded the law. And here he
14 knew he was a convicted felon, but yet still went to a firing
15 range when he was prohibited from going in and possessing a
16 firearm, chose to disobey what he has been prohibited from
17 doing. And this is just more evidence of this particular
18 defendant's conduct during the course of this charged
19 conspiracy.

20 THE COURT: Well, I understand.

21 MS. STEVENS: Ms. Cinquanto's argument under the
22 404B, the Government absolutely took that in consideration,
23 Your Honor, because we did not ask any questions related to
24 this or bring in any evidence of this at trial, --

25 THE COURT: Well, this was not --

1 MS. STEVENS: -- but it is certainly relevant.

2 THE COURT: Well, again in the trial. This evidence was not
3 in the trial, right?

4 MS. STEVENS: No, Your Honor. We didn't because --

5 THE COURT: Well, why isn't this relevant on the
6 two-level enhancement for possession of a firearm?

7 MS. STEVENS: Your Honor, it -- it certainly can be
8 relevant in the sense that it shows that Mr. Chambers did get
9 access to a firearm and knows how to use a firearm. So in
10 that sense, it is relevant. But we also can rely on other
11 testimony at trial to help bolster the application of that
12 two-level enhancement as well. So this is relevant, Your
13 Honor, to show the characteristics of this defendant in terms
14 of his disdain for the law, and it's part of the overall 3553
15 characteristics that this Court can consider. But as Your
16 Honor indicates, it is also marginally relevant to that
17 two-level enhancement.

18 THE COURT: All right. I'll overrule the objection.

19 All right. Next witness.

20 MS. CINQUANTO: Your Honor, 225

21 THE COURT: Do you have any questions?

22 MS. CINQUANTO: Yes, Your Honor. But can I respond
23 to what Ms. Stevens just said?

24 THE COURT: Yes.

25 MS. CINQUANTO: Okay. Two things, Your Honor.

1 First of all, this -- this possession of this firearm cannot
2 be considered when you're considering the two-level
3 enhancement. Case law -- the case law is very clear. United
4 States v. McCutchen, which is a Third Circuit case in 1993 --
5 no, excuse me, I'm sorry. I'm looking for -- hang on. Oh,
6 Drozdowski, excuse me, Your Honor. There has to be an actual
7 connection between drug distribution and the possession of the
8 weapon. There is no drug distribution --

THE COURT: What's the citation of that case?

10 MS. CINQUANTO: This case, Your Honor, is -- I have
11 it in my sentencing memorandum.

12 THE COURT: Well, here, I have, that here.

13 MS. CINQUANTO: And actually in Ms. Stevens' 14 sentencing memorandum as well, Your Honor. She also 15 is not a Third Circuit case that I'm -- I'm citing, but she 16 cites a Third Circuit case. Both cases clearly state that 17 there has to be some connection between the drug distribution 18 and activity and the actual possession of a firearm.

19 THE COURT: Well, he was in Las Vegas as part of the
20 drug conspiracy.

21 MS. CINQUANTO: Your Honor, he was in -- when he was
22 in Las Vegas at the target -- at the shooting range, there has
23 to be some connection with drugs. For example, if you're in a
24 house and there's drugs in the other room, or if there's a
25 drug sale going on and you're carrying a weapon to protect the

1 person who's selling the drugs, there's got to be a
2 connection. You just can't have -- you know, go into a
3 licensed facility in order to, you know, shoot a target with a
4 gun that is owned by the facility, kept at the facility, and
5 returned to the facility, is not anything that is connected
6 with the drug dealing. So therefore you cannot connect this
7 drug -- this gun possession at the firing range and in support
8 of the two-level enhancement. The case law just simply does
9 not support that.

10 THE COURT: All right. Well, I'd still like --

11 MS. CINQUANTO: Moreover, Your Honor, I object to --
12 to this -- to this --

13 THE COURT: Well, it may be -- it may be that you're
14 right, but you can only call one witness at a time. So -- but
15 I'm going to admit this testimony. Now, what significance it
16 may have, we can argue about later.

17 MS. CINQUANTO: Yes, Your Honor.

18 THE COURT: But do you have any other -- do you have
19 any questions for this witness?

20 MS. CINQUANTO: No, Your Honor. However, I do
21 object to his assertion that Mr. Chambers had been convicted
22 of a felony prior to going to the shooting range. All of his
23 convictions are for misdemeanors up until that point.

24 THE COURT: Well, that is another issue. I can't
25 tell -- well, it appears that all his prior convictions were

2 Plaintiff is he was adjudicated a delinquent. Is that right, Ms.

3 MS. MAXWELL? His actual father Benjamin Maxwell, I think?

4 MS. MAXWELL: It is, Your Honor.

5 THE COURT: All right. So I don't know if that
6 would count as a prior conviction for --

7 MS. CINQUANTO: It counts as prior convictions, and
8 he has prior convictions both -- one conviction as an adult
9 and numerous as a juvenile. However, none of them are for
10 felonies. They're all for either possession of a controlled
11 substance or gun violations, which are misdemeanors in the
12 County of Philadelphia.

13 THE COURT: All right. Ms. Stevens?

14 MS. STEVENS: Your Honor, under paragraph 141 of the
15 presentence investigation report, Mr. Chambers pled guilty to
16 carrying a firearm on a public street, and possession of a
17 firearm with an altered serial number. Because of that
18 conviction, he is a prohibited felon and therefore cannot
19 possess a firearm.

20 THE COURT: Well, I don't -- do you know for a fact
21 under Pennsylvania law if that adjudication as a delinquent
22 counts as a felony? I'm not sure that's right, Ms. Maxwell,
23 do you know?

24 MS. STEVENS: Ms. Maxwell does know.

25 MS. MAXWELL: Your Honor, it's -- paragraph 141,
Your Honor, refers to his adult conduct, and that is the

1 carrying a firearm on the public street, and possession of a
2 firearm with an altered serial number. So that would, in
3 fact, deem him a prohibited person in Philadelphia.

4 MS. CINQUANTO: Well, Your Honor, --

5 THE COURT: Well, --

6 MS. CINQUANTO: Your Honor, I guess I was a
7 public

8 THE COURT: But wait a minute. Does that count as a
9 felony? Because as I understand the federal law, the -- in
10 order to be prohibited from possessing a firearm under federal
11 law, you have to have been convicted of a crime punishable by
12 more than a year in prison, which is commonly the definition
13 of a felony. Now, I'm not -- my understanding of Pennsylvania
14 criminal law, which is somewhat antiquated, is that an
15 adjudication as a delinquent is not the same as being a felon.

16 MS. STEVENS: May I respond, Your Honor?

17 THE COURT: Yes.

18 MS. STEVENS: This was an actual adult conviction,
19 so it wasn't an adjudication of the delinquent.

20 THE COURT: But wait, he didn't have any adult
21 convictions.

22 MS. STEVENS: He did, Your Honor.

23 THE COURT: Where?

24 MS. STEVENS: He was convicted on -- in paragraph
25 141, he was convicted on November 20th, 2006 with carrying a

1 firearm on a public street and possession of a firearm with an
2 altered serial number, and he was sentenced to six to 23
3 months --

4 THE COURT: All right. Okay.

5 MS. STEVENS: -- in Philadelphia County Prison.

6 THE COURT: All right. Well, what about that, Ms.
7 Cinquanto?

8 MS. CINQUANTO: Your Honor, my understanding of
9 Pennsylvania state law is that both of those convictions are
10 misdemeanors and they are not convictions that are felonies.

11 THE COURT: Carrying a firearm on a public street,
12 do you know, Ms. Maxwell, if that's a felony or not?

13 MS. MAXWELL: Your Honor, I can't say completely,
14 but a sentence of 6 to 23 months --

15 THE COURT: 23 months would have to be -- would
16 satisfy federal law because it's more than a year.

17 MS. CINQUANTO: Yes, Your Honor.

18 THE COURT: All right. Okay. Do you have any -- do
19 you have any questions of the witness?

20 MS. CINQUANTO: No, Your Honor.

21 THE COURT: All right. Next witness.

22 MS. STEVENS: Thank you, Your Honor. The Government
23 calls Philadelphia Police Officer Britton Brown.

24 THE COURT: You can have your witnesses -- have the
25 witnesses come in; they don't have to stay outside.

1 MS. STEVENS: Mr. Officer Brown is the only one
2 that was outside, Your Honor.

3 THE COURT: All right.

4 MS. STEVENS: The next witness will be Bellvin
5 Smith, who has testified previously at trial, and Special
6 Agent Gary Malone.

7 THE COURT: Okay.

8 MS. STEVENS: But again, Your Honor, it still should
9 go fairly quickly.

10 THE COURT: Okay. Is Mr. Smith there; is he
11 waiting?

12 MS. STEVENS: Yes, he is, Your Honor.

13 BRITTON BROWN, GOVERNMENT'S WITNESS, SWORN

14 THE CLERK: Thank you. Please state your full name
15 and spell your last name for the record.

16 THE WITNESS: Police Officer Britton Brown,
17 B-R-I-T-T-O-N, B-R-O-W-N, Badge 3772. I'm currently assigned
18 to the 35th District.

19 MS. CINQUANTO: Your Honor,

20 THE COURT: Have a seat.

21 THE WITNESS: Thank you, sir.

22 MS. CINQUANTO: I'm sorry to interrupt. I'm
23 happy to stipulate to this testimony that the witness is going
24 to bring forth.

25 THE COURT: Well, that's up to Ms. Stevens. Do you

1 want to stipulate or --

2 MS. STEVENS: Your Honor, I'd have to put a

3 significant amount of facts on the record. It may be easier
4 just to have --

5 THE COURT: All right.

6 MS. STEVENS: Officer Brown just testify in a few
7 minutes.

8 THE COURT: Go ahead. Go ahead.

9 DIRECT EXAMINATION

10 BY MS. STEVENS:

11 Q Officer Brown, you're employed by the Philadelphia Police
12 Department, correct?

13 A Yes.

14 Q And were you working on February 11th, 2011?

15 A Yes.

16 Q And who were you partnered with?

17 A I was partnered with Officer Arthur Lee, L-E-E. His
18 badge number is 1961. He's also in the 35th District.

19 Q And were --

20 THE COURT: All right. Listen, just one second.

21 (Pause)

22 THE COURT: Go ahead.

23 MS. STEVENS: Thank you, Your Honor.

24 BY MS. STEVENS:

25 Q Were you involved with the arrest of defendant Zachary

1 Chambers that day?

2 A Yes, I was.

3 Q Now, can you just please tell the Court how it is that
4 you and your partner got involved with the arrest of Zachary
5 Chambers.

6 A Your Honor, at that time, my partner and I were in a
7 marked patrol vehicle in full uniform. We were leaving the
8 Homicide Bureau, which is located at 8th and Race. We
9 responded to the area, I believe, of 8th and Callowhill,
10 receiving information from police radio that a stolen vehicle
11 was being tracked by GPS in that area.

12 We followed direction of police radio to the area of
13 -- I'm sorry, Your Honor, -- 800 North Marshall Place. Your
14 Honor, that's an apartment complex and it's sort of like a
15 cul-de-sac inside the parking lot. When we entered the
16 parking lot, Your Honor, we observed Mr. Chambers walking away
17 from a parked Chevrolet Impala. Mr. Chambers looked in the
18 direction of our police vehicle and proceeded to run through
19 the apartment complex.

20 We exited our vehicle. We chased him on foot, sort
21 of in a circuit through the housing complex, Your Honor, over
22 about a minute. Tried to pull Mr. Chambers to the ground.
23 Unsuccessful. I deployed an electronic control weapon, also
24 known as a taser. I did not have any success in that. I went
25 to the ground with Mr. Chambers and we struggled for a moment

1 before additional officers responded. In that struggle, I
2 applied a control hold to Mrs. Chambers' arm, Your Honor, which
3 did cause injury to his right arm. He was secured and
4 transported to the hospital for treatment.

5 Q Now, as part of that arrest, did you go back to look at
6 the vehicle that you saw Mr. Chambers walking from?

7 A Yes, I did, Your Honor.

8 Q And when you went to that vehicle, what was inside of the
9 vehicle?

10 A Inside of the vehicle, Your Honor, was a blue revolving
11 almost like a police light, except instead of red and blue,
12 it's just blue and it's small and cylindrical. It was
13 revolving and mounted to the dashboard. Inside the center
14 console, Your Honor, if you will, where the ashtray normally
15 is, there was a -- I guess you'd call it a mock police
16 officer's badge, similar in shape and color to the kind that I
17 wear. It was mounted to a piece of plastic and with like a
18 neck chain, like almost the way you wear a lanyard.

19 Q And I'm going to show you what has been previously marked
20 as Government Exhibits 3 and 4.

21 MS. STEVENS: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MS. STEVENS:

24 Q Are these, in fact, the badge and the light that
25 you seized from the car?

1 A Yes! Yes, Your Honor.

2 Q In addition, Mr. Chambers actually had the key to that
3 vehicle on him, correct? And as you mentioned,

4 A Yes, he did. He was in possession of a key that started
5 the Chevy Impala, Your Honor.

6 Q And the tag for that Chevy Impala was determined to have
7 come back stolen, correct?

8 A Yes. As well as the vehicle being in stolen status, Your
9 Honor, the actual Pennsylvania license plate affixed to the
10 rear of the vehicle was also additionally reported stolen in a
11 separate incident.

12 Q And do you recall how many cell phones was found inside
13 of that car?

14 A At least 10. There were -- there were -- there was quite
15 a collection of cell phones, all of which were, as we say,
16 booked into evidence. They were placed on a Philadelphia
17 property receipt and turned over to the evidence custodian at
18 City Hall.

19 MS. STEVENS: No further questions at this time,
20 Your Honor.

21 THE COURT: Cross-examine.

CROSS-EXAMINATION

23 BY MS. CINQUANTO:

24 Q Good afternoon, Officer.

25 A Good afternoon.

1 Q Officer --

2 A Well, Your Honor, first I want to
3 object to this entire line of questioning. It's not relevant,
4 and the prejudicial impact outweighs any probative value. --

5 THE COURT: Overruled.

6 MS. CINQUANTO: -- under 403 analysis.

7 BY MS. CINQUANTO:

8 Q All right. Officer, the -- you didn't see Mr. Chambers,
9 you know, using that blue light, is that correct?

10 A Using?

11 Q Using it, you know, driving around the streets of
12 Philadelphia --

13 A Oh, no.

14 Q -- and actually using the lights? Q

15 A No, Your Honor. Q

16 Q Okay. You didn't see -- you didn't hear about Mr.
17 Chambers actually using that badge, is that correct?

18 A That's correct. No, sir, not once off. Q

19 Q Okay. No one has accused him of doing either one of
20 those things, is that right? Q

21 A To my knowledge, counselor, no. Q

22 Q Okay. Now, you stated that the vehicle was stolen, is
23 that correct? Q

24 A Yes, just like the blue light, I mean, the car and

25 Q Okay. As well as the license plate? Q

1 A Yes.

2 Q Okay. Now, prior to seeing Mr. Chambers come out of this
3 vehicle, you had not seen Mr. Chambers before, is that right?

4 A No, I had not seen him prior to this vehicle coming by.

5 Q You don't have any information about him having
6 personally stolen that vehicle, is that right?

7 A No, no.

8 Q Okay. And -- as well as with the license plate, is that
9 correct?

10 A That's correct. No.

11 Q Okay. So -- and did you actually see Mr. Chambers get
12 out of the vehicle?

13 A No.

14 Q You did not. So you just saw him walking away from this
15 vehicle, is that right?

16 A Yeah. He was within like five to ten feet of it, you
17 know, walking away from the driver's side door.

18 Q So the first time you saw him, you saw him between 5 to
19 10 feet away from the vehicle?

20 A Um-hmm, yes.

21 Q Walking away from it, is that right?

22 A Yes. Now, do you know how far, walk away?

23 Q And when I say five to ten feet, is it fair to say that
24 between this podium here and say the jury box is about five
25 feet, is that -- is that fair to say?

1 A Sure.

2 Q Okay... So it could be anywhere from between myself --

3 MS. CINQUANTO: Let the record reflect that he's
4 indicated a distance of about five feet.

5 Q So it would be between -- he was standing anywhere
6 between here, which is the podium, where that young lady is
7 sitting in the blue sweater, is that right?

8 A A little closer, but, yes, that's fair to say.

9 Q Okay. Or -- but you actually said five to ten feet; it
10 could have been a little further than that, is that right?

11 A Yes.

12 Q Okay. So -- and you didn't see Mr. Chambers actually
13 come out of that vehicle, is that correct?

14 A That's correct.

15 Q Okay. Thank you very much.

16 A Thank you. Thank you, Your Honor. May I step down?

17 THE COURT: Is there redirect?

18 MS. STEVENS: No, Your Honor.

19 THE COURT: All right. Thank you.

20 THE WITNESS: Thank you, Your Honor. Have a good
21 day.

22 THE COURT: All right. Next witness.

23 MS. STEVENS: Next witness will be Bellvin Smith.

24 BELLVIN SMITH, GOVERNMENT'S WITNESS, SWORN.

25 THE CLERK: Please state your full name and spell

1 your last name for the record.

2 THE WITNESS: Belivin Smith, S-M-I-T-H.

3 THE COURT: All right. Have a seat.

4 THE WITNESS: Good morning.

5 THE COURT: All right. Now, this witness testified
6 at the trial.

7 MS. STEVENS: Yes.

8 THE COURT: -- so I would ask you just not to repeat
9 what he already testified.

10 MS. STEVENS: And we're not going to repeat that
11 testimony, Your Honor.

12 THE COURT: All right. Go ahead.

13 MS. STEVENS: If I can just orient him,

14 THE COURT: Yes.

15 MS. STEVENS: -- so that we can jump to the -- to
16 the additional testimony.

17 DIRECT EXAMINATION

18 BY MS. STEVENS:

19 Q Now, Mr. Smith, you testified at trial about the amount
20 of cocaine that was purchased during the course of this
21 conspiracy up through April of 2010, including four kilos of
22 cocaine that was received in one package, and another four
23 kilos of cocaine that was received in a second package on
24 April 23rd, 2010. So I want to focus on the cocaine, to begin
25 with, that was purchased from May to June of 2010. Okay?

1 A Yes, I am. Now, I do have a receipt dated for June 10th, 2010.
2 Q Now, on May 10th, 2010, there were two packages that
3 arrived; one at a residence for Ahyne Murphy and one at a
4 residence associated with Ishanell Dean.

5 MS. CINQUANTO: What was that date again, counsel?

6 MS. STEVENS: May 10th, 2010.

7 BY MS. STEVENS:

8 Q How many kilograms of cocaine do you recall were in each
9 of those packages? So past April 23rd that had the four and

10 four.

11 THE COURT: Pull the microphone closer to you.

12 A It was -- I believe it was three in one box, and three in
13 another, plus some smaller amounts of cocaine.

14 Q Now, the next packages arrived on May 21st, 2010; again,
15 one at the residence for Ahyne Murphy and one at a residence
16 for Ishanell Dean. Do you recall how many kilograms of
17 cocaine were in each of those packages?

18 A It was -- it was three and three, or four and four, I
19 believe -- it was four and four, I think it was. Yeah, it
20 was -- I did three, three, and then four and four.

21 Q So it was four kilograms in each of those packages?

22 A Yes, I am. I do have a receipt for that.

23 Q Okay. Now, was there any additional amount of cocaine
24 that was received in this package related to anything that was
25 missing from previous packages?

1 A One of them, it was -- it was only like four 4- it was
2 125 grams, I believe it was, that was owed to me.

3 Q And do you recall whether that was included in this May
4 21st, 2010 package?

5 A Yes.

6 Q Now, how about June 9th, 2010, there was only one package
7 that arrived at a residence associated with Ahyne Murphy. Do
8 you recall how many kilograms of cocaine was in that package?

9 A Four.

10 Q And then finally on June 28, 2010, you had arranged to
11 have cocaine shipped out to your residence, that was
12 ultimately seized by ATF, and do you recall how many kilograms
13 you had purchased and arranged to have shipped out?

14 A Four.

15 Q In addition to the cocaine, there was also marijuana that
16 was purchased during the course of this conspiracy, correct?

17 A Yes, ma'am.

18 Q And let me ask: Was there marijuana purchased after the
19 time period that Mr. Chambers got involved with the
20 conspiracy?

21 A Yes.

22 Q And can you tell the Court at least how much marijuana
23 was purchased during that time period?

24 A I got a box, I purchased one time I believe it was 20 --
25 I believe it was 24 or 22 pounds of marijuana, then I

1 purchased -- no, I didn't purchase this, it was sent to me, 10
2 pounds.

3 Q And the 10 pounds that was sent to you, and the 22 to 24
4 pounds of marijuana that was sent to you, was that marijuana
5 that was ultimately distributed to the other members of the --
6 your drug organization that then sold it to customers?

7 A Yes, ma'am. I didn't purchase it, it was sent to me.
8 Q And was Mr. Chambers amongst one of those individuals who
9 got marijuana and sold it?

10 A Yes, ma'am.

11 THE COURT: Well, what's the total amount of
12 marijuana in pounds?

13 THE WITNESS: About 32. 32 to 34.

14 MS. STEVENS: And just so it's clear, Your Honor.

15 BY MS. STEVENS: Is that correct?

16 Q It was 10 pounds that was sent to you by the -- by the
17 supplier, correct?

18 A Yes.

19 Q And then there was another package with 22 to 24 pounds,

20 correct?

21 A Also Yes, -- did I -- repeat, did I say --

22 Q So there was at least 10 pounds of marijuana that was
23 received during the course of the -- of your -- the
24 conspiracy --

25 A Yes, ma'am. -- did I say -- repeat, did I say --

1 Q -- -- "that was distributed?"

2 A Yes.

3 Q Okay. And again, this was after Mr. Chambers started
4 going and traveling with you to meet with the supplier and
5 being involved with your drug sales, correct?

6 A Yes, ma'am.

7 Q Now, Mr. Smith, during the time that you were involved
8 with purchasing cocaine from California involving Mr.
9 Chambers, did -- did you or anyone else associated with you,
10 did you ever carry guns?

11 A Yeah. I carried a gun. I carried a firearm, yes, ma'am.

12 Q And what -- what type of firearm was that?

13 A A .45 Glock.

14 Q And where would you keep the Glock?

15 A In my house or on my -- on my side, my hip.

16 Q And other than yourself, did anyone else possess
17 that firearm?

18 A That same firearm?

19 Q Um-hmm. ~~scribbled~~ ~~scribbled~~ ~~scribbled~~ ~~scribbled~~ ~~scribbled~~

20 A I mean, yes, as far as if it was in the house, it was in
21 my -- if it was in the house, if I told -- if I told one of
22 the -- one of the guys around me to go grab it, they would go
23 get it and carry it.

24 Q Was Mr. -- was Mr. Chambers amongst one of those
25 individuals -- one of these guys you said that you would tell

11 and to go grab it?" he asked the witness, and the witness said

12 A: Yes, he would be required at that point.

13 Q What was the purpose of you having this firearm?

14 A For protection in the streets.

15 Q And protection from what?

16 A Somebody robbing and shooting me.

17 Q And why would individuals come and rob or shoot you?

18 A I was a known drug dealer.

19 Q And so your concern being a known drug dealer was what?

20 A That somebody would attack -- would attack me and try
21 and rob me and ultimately kill me.

22 Q And I just want to repeat this, I think you've -- you
23 testified about this at trial, but when you -- you sold drugs
24 out of your residence at 2051 South 60th Street, correct?

25 A Yes, ma'am.

Q And that's the same residence that you're testifying
today that you also had the gun at, correct?

A Yes, ma'am.

Q And Mr. Chambers, he's been present at times when you
have engaged in drug deals, correct?

A Yes, ma'am.

Q And on -- at the times that he was present when you
engaged in drug deals, your gun was present during those
times, correct?

A Yes, ma'am.

1 Q Do you recall one of these specific drug deals inside
2 your house back in November of 2009 involving Adrian

3 Hairston

4 A Yes, ma'am.

5 Q -- and Derrick Jackson?

6 A Yes.

7 Q Do you remember that?

8 A Yeah.

9 Q Other than yourself, Adrian Hairston and Derrick Jackson,
10 who else was present?

11 A Chambers. Zachary.

12 Q And where -- and did you, in fact, do a drug deal in the
13 house that day?

14 A I did two of them.

15 Q And the two drug deals, where did they take place?

16 A In the house, in '51.

17 Q And where in the house?

18 A The kitchen, inside the kitchen.

19 Q And where was Mr. Chambers at the time?

20 A He was with me.

21 Q And how far away was he from you when that drug deal went
22 down?

23 A He was right there, right beside me.

24 Q And was your firearm in the house that day?

25 A He had my firearm that day.

1 Q And where exactly did he have the firearm?

2 A He had it on his possession because I didn't want the
3 firearm -- I didn't -- I didn't just want my -- I just didn't
4 want the firearm to be out. I didn't want the firearm to just
5 be out whenever I was doing a drug -- drug transaction because
6 you never know, you can't really trust too many people out
7 there, so -- and I never wanted it to just be out in the open.
8 And if somebody seen cocaine around, and then you never know.
9 A guy might just feel as though this might be their chance and
10 opportunity to take some -- some -- a nice big piece of money.
11 So I didn't want nobody to just grab my firearm and shoot me
12 with my own firearm or shoot -- or shoot Zach at the same time
13 with -- with my firearm.

14 Q Now, following -- during from -- let me correct. From
15 December of 2010 until March of 2011, were you a fugitive?

16 A Yes.

17 Q And you were aware during that time period that an
18 indictment had been issued charging you and Mr. Chambers and
19 others with drug trafficking offenses and other charges,
20 correct?

21 A Yes, ma'am.

22 Q Now, was Mr. Chambers also a fugitive and on the run with
23 you at the time?

24 A Yes, ma'am.

25 Q At trial, you testified about committing other crimes,

1 including some while you were a fugitive, correct?

2 A Yes, ma'am. necessary to do that. A R

3 Q I now want to reask you some of those questions as it
4 relates to Mr. Chambers. The crimes you committed while you
5 were a fugitive, was Mr. Chambers involved with some of those
6 crimes?

7 MS. CINQUANTO: Your Honor, I object to this
8 testimony. This is

9 THE COURT: Well, when -- when was -- was this
10 during or after the conspiracy?

11 MS. CINQUANTO: It's after the conspiracy, Your
12 Honor.

13 MS. STEVENS: It's while he was a fugitive, which goes
14 towards his nature and characteristics for the Court to
15 consider.

16 MS. CINQUANTO: Your Honor, that's -- that's
17 improper. In order to bring in relevant conduct regarding a
18 drug conviction, under 2DPI, it has to have some kind of
19 connection to the actual drug distribution conviction. This
20 is outside the time of the conspiracy. This is not relevant
21 to sentencing him on the drug charge.

22 THE COURT: Okay. Is this after he was arrested by
23 the prior witness?

24 MS. STEVENS: No, Your Honor. The indictments were
25 issued in December of 2010.

1 THE COURT: Right.
2 MS. STEVENS: Then Mr. Smith and Mr. Chambers, as
3 well as some other associates, were on the run; they were
4 fugitives. And during the time that they were fugitives, they
5 engaged in conduct which I am attempting to elicit.

6 THE COURT: All right. Well, the indictment was in
7 December, 2010.

8 MS. STEVENS: That is correct, Your Honor.

9 THE COURT: Now, the prior witness, the Officer
10 Brown, what -- what date was that when he arrested the --

11 MS. STEVENS: It was February 11th, 2010. That was
12 the actual date of Mr. Chambers' arrest.

13 THE COURT: All right. So he was released on bail?

14 MS. STEVENS: No, Your Honor. Mr. Chambers was on
15 the run. He was a fugitive until he was arrested locally on
16 February 11th of 2010. And Mr. Smith's testimony that I'm
17 seeking to get in is relevant to Mr. Chambers' conduct during
18 the time period that he was a fugitive.

19 THE COURT: So he's been in custody since February
20 11th, 2010?

21 MS. STEVENS: That is correct, Your Honor.

22 THE COURT: And the indictment was in December,
23 2010?

24 MS. STEVENS: Oh, I'm sorry, it's February -- I'm
25 sorry, February 11th, 2011.

1 THE COURT: '11.

2 MS. STEVENS: I just got that correction.

3 THE COURT: All right.

4 MS. STEVENS: Sorry for the confusion.

5 THE COURT: So that's after he was indicted?

6 MS. STEVENS: Yes, Your Honor.

7 THE COURT: But he's been in custody since then,
8 February 11th, 2011?

9 MS. STEVENS: That is correct, Your Honor.

10 THE COURT: All right. Now, the conspiracy ended,
11 as I recall, sometime in May, 2010, is that correct?

12 MS. STEVENS: June 28th, 2010, Your Honor.

13 THE COURT: Okay. So you -- you want to show --
14 now, do you have any evidence that Mr. Chambers knew that he
15 was wanted?

16 MS. STEVENS: Your Honor, I can actually ask that of
17 the witness here.

18 THE COURT: Well, do you have any knowledge that you
19 were -- that authorities were looking for you or --

20 THE WITNESS: Yes.

21 THE COURT: -- or for Mr. Chambers or both of you?

22 THE WITNESS: Yes.

23 THE COURT: What knowledge do you have of that?

24 THE WITNESS: From -- from -- from the day --

25 THE COURT: After May, 2010 when you were still --

281111 P MS. STEVENS: And that's when the delivery was intercepted, right?

2 MS. STEVENS: The delivery was intercepted on June
3 28th, 2010.

4 THE COURT: June 28, right.

5 MS. STEVENS: The indictment was issued and arrests
6 were attempted in December, beginning of December, 2010.

7 THE COURT: All right. Well, -- okay. What
8 knowledge do you have of the arrests that were attempted?

9 THE WITNESS: I never knew I was on -- I never knew
10 I was -- I never knew in June or May that I was wanted.

11 THE COURT: You didn't know that. When did you --

12 THE WITNESS: As far as indictment,

13 THE COURT: When did you first find out?

14 THE WITNESS: December the 2nd or 3rd.

15 MS. STEVENS: And that's the day after the

16 indictments were issued and arrests were attempted. Your

17 Honor. Your Honor, I think we're finished here.

18 THE COURT: Right, but isn't it a good idea to --

19 MS. STEVENS: So in December

20 THE COURT: All right. Well, he says he didn't know
21 he was wanted.

22 MS. STEVENS: Can I clarify?

23 THE COURT: I mean, everybody who sells drugs is
24 theoretically subject to being arrested, but --

25 MS. STEVENS: But, Your Honor, --

1 THE COURT: *...that doesn't necessarily make them a*
2 *fugitive!* *...the uninvited guest* *...FUGITIVE* *...the*

3 MS. STEVENS: Oh, absolutely not, Your Honor. But
4 if I can just follow up and I think it will clarify it.

5 THE COURT: "Yep."

6 BY MS. STEVENS: 1860-1861

7 Q So when -- you found out on December 2nd, 2010 that you
8 were being charged and being sought by federal authorities,
9 correct?

10. A Yes: 10% of the respondents said that they had

11 Q Did you find out on that day that Mr. Chambers was also
12 being sought by federal authorities?

13 A I knew -- yeah, I knew that both of us was -- was -- was
14 fugitive then. (10 seconds) (Continued)

15 ~~THE COURT: Well, do you know if Mr. Chambers knew~~
16 ~~that?~~

17 THE WITNESS: We had then -- we had a copy of the --
18 we had a copy of the indictment. 100-241

19 BY MS. STEVENS

20 Q. And when did you first do you recall

21 THE COURT: Did Mr. Chambers have

22 THE WITNESS: Yes. *Q* *W* *PT* *EE*

23 THE COURT: How do you know that

24 THE WITNESS: Because he the one that presented it
25 -- he the one brought it to me.

1 THE COURT: All right. Go ahead.

2 BY MS. STEVENS: Ready to continue, sir?

3 Q And when he brought you this indictment, it was after
4 Decem -- it was in December of 2010, correct?

5 A It was a few days -- it was a few days -- it was a few
6 days after -- after -- after we was indicted. Ishanell Dean
7 had got -- gave us a copy. I went and picked -- I went and
8 picked Zach up. He had a copy of it, and that's how we knew.

9 Q And after you and Mr. Chambers discussed that there were
10 these charges pending, federal charges had been issued against
11 you, what did you and Mr. Chambers discuss -- discuss doing at
12 that point?

13 A Getting some money and leaving.

14 Q And how were you going to get that money?

15 A Rob other drug dealers.

16 Q And did you, in fact, go and rob other drug dealers?

17 A Yes.

18 Q And do you recall how many different drug dealers that
19 you and Mr. Chambers robbed?

20 A A few.

21 Q A few? More than one?

22 A Yes.

23 Q More than two?

24 THE COURT: Do you remember how many drug dealers
25 you robbed?

1 THE WITNESS: It was two or three.

2 THE COURT: Two or three.

3 BY MS. STEVENS: Two or three.

4 Q Two or three. And --

5 THE COURT: Was that both of you together?

6 THE WITNESS: Yes.

7 Q And I want to ask you specifically, do you recall robbing
8 these drug dealers during the time from December -- sometime in
9 December of 2010 until the time that Mr. Chambers got arrested
10 in February 11th of 2011?

11 A Yes.

12 Q These drug dealers, did you use any items to help assist
13 you in successfully robbing these drug dealers?

14 A Yes.

15 Q And what did you use?

16 A A firearm.

17 THE COURT: Used what? Sorry.

18 THE WITNESS: A firearm.

19 THE COURT: Firearm?

20 THE WITNESS: Yes.

21 BY MS. STEVENS:

22 Q So you used a firearm. And I'm showing you what has been
23 previously --

24 MS. CINQUANTO: Objection. Leading.

25 THE COURT: Well, you can --

1 A Yes.

2 Q And was there a firearm used during this kidnapping?

3 A Yes.

4 Q And who had the firearm?

5 A Zach.

6 Q Were there any other shootings that you were engaged in
7 with Mr. Chambers during this December, 2010 to February 11th,
8 2011?

9 A He was involved in a shooting.

10 Q A shooting where?

11 A Down at Onyx Nightclub.

12 Q And was Mr. Chambers present?

13 A Yes, he was present.

14 Q And who had the firearm during that shooting?

15 A Me.

16 MS. CINQUANTO: Your Honor, I object. We are going
17 far afield of the reason why we are here today, which is a
18 sentencing for a drug distribution. We have plenty of time in
19 which to work under the guidelines for that particular case.
20 But we are going far afield. This is outside the course of
21 the conspiracy, and I don't believe it's appropriate relevant
22 conduct. And I would very much like to move on to the actual
23 reason why we're here.

24 THE COURT: All right. When was the kidnapping?

25 THE WITNESS: In January.

1 THE COURT: Of what year?

2 THE WITNESS: '11. 2011.

3 THE COURT: Overruled. Go ahead.

4 MS. STEVENS: Your Honor, if I can just take a
5 minute?

6 THE COURT: Yes.

7 THE WITNESS: No, it was February.

8 THE COURT: February? Just before Mr. Chambers was
9 arrested?

10 THE WITNESS: Yes.

11 MS. STEVENS: Your Honor, I think I've asked all the
12 questions of this witness.

13 THE COURT: All right. Cross-examine.

14 MS. STEVENS: Thank you.

CROSS-EXAMINATION

15 BY MS. CINQUANTO:

16 Q Good afternoon, Mr. Smith.

17 A Good afternoon, ma'am.

18 Q It's good to see you again.

19 A You, too.

20 Q Mr. Smith, so your testimony here today is that between
21 December of 2010 and the early part of February of 2011, you
22 and Mr. Chambers robbed two to three drug dealers, is that
23 correct?

24 A Yes.

1 Q Okay. Including the one that got away?

2 A Well, we didn't get -- we didn't get anything.

3 Q Okay. You also --

4 A Well, we -- we were the one that -- which situation because
5 we -- the one that got away, we eventually -- we eventually
6 did rob him, --

7 Q Okay.

8 A -- but not that -- not the way that we tried.

9 Q So you were involved in two to three robberies of drug
10 dealers, is that right?

11 A Yes.

12 Q And you also testified that there was a kidnapping that
13 you two were involved in, is that right?

14 A Yes, ma'am.

15 Q And that Mr. Chambers, conveniently Mr. Chambers is the
16 one holding the weapon during that kidnapping, is that right?

17 A Yes. I was the driver of your car to the club.

18 Q Okay. But Mr. Chambers was the one holding the weapon,

19 is that right? And you also said that there was a shooting at the Onyx

20 A Yes.

21 Q And you also said that there was a shooting at the Onyx

22 Nightclub, is that right?

23 A Yes.

24 Q So let me guess, Mr. Chambers is the one who did the
25 shooting at the Onyx Nightclub, is that right?

1 A No, I did the shooting.

2 Q Okay. Mr. Chambers was with you, though, right?

3 A Yes.

4 Q Okay. So there's no supporting documentation at all to
5 support any of these things that you're alleging in court here
6 today, is there?

7 A Yes.

8 Q Okay. Well, let me rephrase--

9 A Well, not no court --

10 Q -- the question. Okay. There's nobody who corroborates
11 what you have to say, except for you, is that right?

12 A Yes.

13 Q Okay. Yes, you're the only one, is that right?

14 A And Chambers, but he -- he's not cooperating.

15 Q Okay. So your testimony here today wouldn't have
16 anything to do with the fact that you're basically trying to
17 work off a mandatory life sentence, is that right?

18 A What I'm telling you is the truth. The one
19 -- the one incident, it was reported. It was reported by law
20 -- to law enforcement and the other --

21 Q But to answer my question, sir, regarding your testimony
22 here today, there's absolutely no motivation to testify here
23 today against Mr. Chambers, has nothing to do with the fact
24 that you're going to ask Judge Bayson very shortly to come
25 down from, what is it, a mandatory life sentence that you're

and looking at? and is every case handled differently and not

2 A No. Superior Court of Appeals.

3 Q What is it, mandatory 20?

4 A No, 10.

5 Q Mandatory 10. What are your guidelines?

6 A I believe it's 360 --

7 Q 360. So --

8 A -- to life.

9 Q -- you're going to be asking Judge Baylson very soon to
10 come down from a guideline range of 360 months, is that right?

11 A Well, I mean, I don't know if I can do that.

12 Q Is that right?

13 A That's for the Court. I don't -- I'm not -- I'm not able
14 to ask Your Honor to do that, am I?

15 Q Well, your hope is that His Honor will do that, is that
16 right?

17 A Yes, ma'am, at this point --

18 Q And testifying in court against Mr. Chambers, I mean,
19 that -- that gets you some time off, but you get -- you get
20 some more time off if you come in here at the sentencing
hearing and come up with some new stuff, isn't that true?

22 A No, ma'am. I'm just telling --

23 Q Well, you know --

24 A I'm just telling the truth.

25 Q -- that testifying as I get to ask the questions. This

1 is the second time that you've had to testify here in this
2 matter, is that right?

3 A Yes, ma'am.

4 Q Okay. Once at the trial, --

5 A Uh-huh.

6 Q -- right?

7 A Yes.

8 Q And once at the sentencing here today?

9 A Yes, ma'am.

10 Q All right. And you're trying to tell this Court that you
11 -- the fact that you're testifying here today at this
12 sentencing has -- you have no expectation that the Judge is
13 going to take that into consideration when imposing sentence?

14 A I was --

15 MS. STEVENS: Objection, Your Honor. It's a
16 mischaracterization of his response.

17 THE COURT: Well, that's a double negative. Do you
18 want to rephrase the question?

19 MS. CINQUANTO: I'll rephrase the question.

20 BY MS. CINQUANTO:

21 Q Your testifying here today you would hope would result in
22 a lower sentence, is that correct?

23 A I was just -- I -- when you say that, I was -- I was told
24 that I was testifying today. I didn't -- I didn't know like
25 that -- that I was going to have to testify at a sentencing.

1 I never -- I didn't know that, ma'am. It's like -- it's not
2 like I planned it.

3 Q Well, you've been brought down here to testify -- today
4 to testify for the sentencing, correct?

5 A Yes, ma'am, and all the --

6 Q And you knew -- -- that you were going to
7 the -- crimes that I committed, I pled guilty.

8 Q And you knew about a month ago that you were going to
9 be coming down here to testify for a sentencing hearing, is
10 that right?

11 A Yes, ma'am.

12 Q So your testifying at the sentencing hearing is not a
13 complete surprise to you?

14 A No. A month ago, it was a surprise to me.

15 Q All right. Now, at trial, I asked you how much -- how
16 many kilos of cocaine that you had put on the streets of
17 Philadelphia since the time that you were 12 years old. Do
18 you remember me asking that question?

19 A Yes, ma'am. No, I didn't tell me any exact number.

20 Q All right. And you responded that, "I put on the street
21 between 50 and 70 kilos of cocaine." Do you remember that
22 answer?

23 A I remember saying that it was more than 50. When you
24 asked me an exact number, I told you I couldn't, from when I was
25 12 years old all the way 'til now.

1 MS. CINQUANTO: The Court's indulgence.

2 BY MS. CINQUANTO:

3 Q The question I asked you was: "So, why don't you just
4 think about how?" -- this is the question I asked you at trial.

5 A Yes, ma'am.

6 Q "So why don't you just think about how many kilos of
7 cocaine and crack cocaine that you managed to get onto the
8 streets of Philadelphia, southwest Philadelphia." And your
9 response was, "Over 50." And I said, "Over 50?" And you
10 said, "Or 70." It was over 50 or 70 kilos. Do you remember
11 giving that answer?

12 A Yes, ma'am.

13 Q Okay. And you wanted to be truthful at that -- when you
14 testified at trial, is that right?

15 A That is the truth. As far as I'm concerned.

16 Q Everything you said was the truth, is that correct?

17 A Yes, ma'am.

18 Q All right. So when I asked you how many -- how much
19 cocaine you put on the streets of Philadelphia between the age
20 of 12 and the time that you were arrested, you said it was
21 over 50 or 70 kilos. Do you remember saying that?

22 A Yes, ma'am.

23 Q Okay. Now, you started selling drugs at the age of 12,
24 is that right?

25 A Yes.

1 Q Okay. And you've -- so you've been selling drugs for
2 roughly 23 years, is that correct?

3 A Well, aside from the years I was incarcerated.

4 Q Sure.

5 A Yes.

6 Q That would be correct, is that right?

7 A Yes.

8 Q Okay. And you met with Mr. Ramos, the drug supplier in
9 this particular conspiracy, in December of 2008, is that
10 right?

11 A Yes.

12 Q So before 2008, between the time you were 12 and before
13 2008 when you met Mr. Ramos, how many kilos do you think that
14 you put on the streets of Philadelphia?

15 A From 12 to then?

16 Q Um-hmm.

17 A I wasn't a kilo -- I don't -- because when I was -- when
18 I was younger, when I was younger and sold drugs at 12, I was
19 so much of a -- I was little and a small dose, so --

20 Q Okay. But let's get beyond -- I know you were not
21 selling kilos at the age of 12. Okay. But let's move on from
22 12 years old. How many kilos, as you grew older and you
23 became more established, because you were a big drug dealer,
24 even before you met Mr. Ramos, how many kilos did you put on
25 the streets of Philadelphia before you hooked up with Mr.

1 Ramos as your supplier? Q

2 A I was -- I'd say maybe -- maybe 15. Q

3 Q Okay. Now, let's

4 A Or 16.

5 Q -- let's talk about the time between -- you met Mr. Ramos
6 in December of 2008, is that correct?

7 A Yes, ma'am.

8 Q Okay. And that was a year before Mr. Chambers, according
9 to you, joined the conspiracy, because he joined in November
10 of 2009, is that right?

11 A Well, he -- he -- I knew him since '06.

12 Q I don't care about when you knew him since, but we've --
13 we've all agreed, even the Government agrees, that Mr.
14 Chambers did not join into this conspiracy until November of
15 2009. Do you agree with that?

16 A I agree, --

17 Q Okay.

18 A -- as far as dealing with Ramos.

19 Q So between December of 2008 and a year later when Mr.
20 Chambers, according to you, joins into this conspiracy, I want
21 to talk about that time period, okay? Okay? You with me?

22 A From -- from '08 to '09.

23 Q Okay. You first started dealing with Mr. Ramos, you were
24 dealing with him alone, is that right?

25 A Yes.

1 Q Okay. And in fact during that time period, when you were
2 dealing with him alone, that was about seven kilos that you
3 were distrib -- that you worked with him, is that right?

4 A In the beginning, yes.

5 Q Okay. And then you worked with a man named Suton -- am I
6 saying that correct? S-U-T-O-N?

7 A Suton.

8 Q Suton. Excuse me. How many kilos did you move with Mr.
9 Suton?

10 A Well, when I took -- excuse me. When I started -- when I
11 started taking Suton -- when I started taking Suton with me, I
12 took Suton maybe about two or three -- about two or three
13 times.

14 Q Okay. How many kilos per time did you -- did you move
15 with Mr. Suton?

16 A Well, Suton -- Suton would get one, I would get one. So
17 maybe three or four.

18 Q Three or four kilos with Mr. Suton?

19 A Well, with -- as far as together or just me alone?

20 Q Both of you together.

21 A Two, four -- maybe about six or seven.

22 Q Six to seven kilos. Okay. Then you went once with
23 Julio, is that right?

24 A Who? Oh, Julio.

25 Q Julio?

1 A Julio, yes. His partner goes to him, right?

2 Q Okay. You went one time with him, right? How many kilos
3 with him?

4 A He went more than one time.

5 Q Oh, okay. How many times did he go?

6 A What --

7 Q I'm only talking about before Mr. Chambers joins the
8 conspiracy, according to you. How many times did he -- how
9 many times did he go?

10 A Julio went, but it was just me buying kilos, not Julio.

11 Q Okay. Well, how many did you buy when you were with
12 Julio?

13 A I think I might've got like two or three.

14 Q Okay. Two or three. Then in the summer of 2009, okay,
15 that's when Rock came home, is that right?

16 A Yes.

17 Q And what's Rock's real name?

18 A Robert Sills.

19 Q Okay. And that's when things started heating up with you
20 guys because you were getting a lot of kilos in the summer of
21 2009, is that correct?

22 A Yes.

23 Q Okay. And I think you testified that sometimes he'd get
24 three and you'd get three; sometimes he'd get four and you'd
25 get four, is that correct?

1 A Yes, ma'am. I would have many more. Now, the
2 Q All right. And I also believe that you testified between
3 -- so between the drugs that you bought and -- the drugs that
4 you bought or you received before September of 2009, which is
5 before Mr. Chambers was involved in this conspiracy, according
6 to you, it was between 15 and 20 kilos. Do you remember
7 testifying to that?

8 A Yes. I would have many more. Now, the
9 Q Now, you only had three or four addresses where the drugs
10 were shipped, is that right?

11 A Yes, ma'am. I would have many more. Now, the
12 Q Okay. There was the Bishop Hill addresses, which was
13 your house?

14 A Yes.

15 Q Sharon Hill, which was Dean's house?

16 A Yes. Bishop Hill, Bishop Hill, Bishop Hill, Bishop Hill.

17 Q Murphy's house, which was Brookhaven?

18 A Yes. Bishop Hill, Bishop Hill, Bishop Hill, Bishop Hill.

19 Q 895 Parley Avenue, which was Dean's house, is that correct?

20 A House, yes. Bishop Hill, Bishop Hill, Bishop Hill, Bishop Hill.

21 Q All right. Now, you also testified that there was

22 marijuana that was shipped during the same time period that

23 Mr. Chambers, according to you, was involved in this

24 conspiracy, correct?

25 A Yes.

1 Q All right. And you said that there was two packages that
2 were shipped during that time period, is that right?

3 A Yes. The other two were mostly packages from the UPS.

4 Q All right. And where did those packages go to?

5 A One went to -- one went to Dean house, to the one on
6 Sharon Avenue. One went to Sharon Avenue, and one went to
7 Murphy house.

8 Q Okay. So if -- when Agent Malone testifies and he tells
9 His Honor that five packages were shipped to Dean's house in
10 Sharon Hill, only -- there was one of those that was marijuana
11 that did not include cocaine, is that right?

12 A At that time?

13 Q Yes.

14 A Yes, ma'am.

15 Q Okay. I want to make sure I understand this.

16 A Well -- well, see, one of -- the one box, -- the one box
17 that was with marijuana, they wasn't -- they wasn't -- they
18 wasn't on to because it came FedEx. They was only -- the
19 agents was only used to -- they was hip to the UPS. They was
20 on to the UPS boxes, not the FedEx. I had got a FedEx box
21 with marijuana with the weed in it with the 20-something, with
22 the like 22, 24 pounds of weed in it that was overnighed that
23 they -- that was the first and only time I ever heard of.

24 Q But one -- but that marijuana came to Sharon Hill, is
25 that right?

1 A : So Yes, ma'am, I believe according to the records, and so

2 Q All right. And the second package arrived at Murphy's
3 house, is that right? 4

4 A Yes.

5 Q : The marijuana. 6

6 A : The one with the 10 pounds. That was at -- that was at
7 Murphy's. 8

8 MS. CINQUANTO: The Court's indulgence.

9 (Pause)

10 MS. CINQUANTO: Okay. Just one moment, Your Honor.
11 I have no further questions, Your Honor. Thank you.

12 THE COURT: All right. Any redirect?

13 MS. STEVENS: Just briefly, Your Honor.

14 THE COURT: Very briefly.

15 MS. STEVENS: Very brief.

REDIRECT EXAMINATION

16 BY MS. STEVENS: 17

18 Q : I just want to just clarify something. When Ms.
19 Cinquanto asked you at trial to think about how many kilos of
20 cocaine and crack cocaine that you managed to get onto the
21 streets of southwest Philadelphia, your answer was -- and this
22 is a complete answer -- "It's over 50." Ms. Cinquanto then
23 repeated, "Over 50." And then you said, "Or 70." So I just
24 want to make sure it's clear to the Court that your response
25 was that you had put over 50 or over 70 kilos of cocaine out

1 on the streets of southwest Philadelphia, correct? *

2 A Yes, ma'am.

3 THE COURT: Did you ask him about cocaine base at
4 all or not? *

5 MS. STEVENS: Your Honor, as the Government
6 indicated in its sentencing memo, the crack cocaine amounts
7 were all established at trial. I can do it with this witness,
8 or I actually have all of the page references to all the
9 testimony. *

10 THE COURT: Well, I'm not sure it's necessary, I'm
11 just asking. *

12 MS. STEVENS: Okay. I don't think it's necessary.
13 I'm trying not to repeat the previous testimony, Your Honor.

14 THE COURT: Right. *

15 MS. STEVENS: I'm trying to -- *

16 THE COURT: Right. *

17 MS. STEVENS: -- keep it focused. *

18 THE COURT: Okay. All right. Thank you. *

19 MS. STEVENS: On what the additional needs are. *

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

22 MS. STEVENS: And, Your Honor, our final witness,
23 just briefly, is Special Agent Gary Malone. *

24 THE COURT: All right. Well, what's the offer of
25 proof? *

1 MS. STEVENS: Offer of proof for

2 THE COURT: Yeah, for this witness.

3 MS. STEVENS: Mr. Malone? Oh, he's simply going
4 to testify, Your Honor, that the packages -- the package that
5 was seized has a particular weight, and the packages that were
6 -- that Mr. Smith had testified previous to, is consistent in
7 weight as to that.

8 THE COURT: Well, then it's redundant. Do you
9 have --

10 MS. STEVENS: And that's fine.

11 THE COURT: Do you want to stipulate to that or --
12 Ms. Cinquanto, or do you want him to testify?

13 MS. CINQUANTO: One moment, Your Honor.

14 MS. STEVENS: And we certainly can. We can
15 certainly stipulate to that, Your Honor. But there is one
16 additional question that I do need to ask Mr. Malone.

17 THE COURT: What --

18 MS. CINQUANTO: Your Honor, I think we should have
19 Agent Malone testify.

20 THE COURT: All right. All right. I'm going to
21 allow you to lead the witness because he's been here and he's
22 the case agent, so --

23 MS. STEVENS: And absolutely, Your Honor, we can get
24 this done.

25 THE COURT: Let's cover this quickly.

1 GARY MALONE, GOVERNMENT'S WITNESS, SWORN

2 BY THE CLERK: Please state your name for the record.

3 THE WITNESS: It's Gary Malone, M-A-L-O-N-E.

4 Special Agent with ATF. Just coming up from Atlanta.

5 DIRECT EXAMINATION

6 BY MS. STEVENS: Now, Agent Malone, you have stated that you

7 Q Now, Agent Malone, consistent with your testimony at
8 trial, the packages that were received on May 10th of 2010,
9 were you able to get the weights from those packages?

10 A Yes, I was.

11 Q And the Murphy package was 8.7 pounds, correct?

12 A Correct.

13 Q And the Dean -- the package that went to Dean's residence
14 was 6.20 pounds, correct?

15 A Correct.

16 Q On May 21st, 2010, the package that went to Murphy's
17 house --

18 MS. CINQUANTO: Can you slow down -- I'm sorry. Can
19 you slow down? Thank you. Go ahead.

20 BY MS. STEVENS:

21 Q The package that was received at Murphy's house was 12.5
22 pounds, correct?

23 A That is correct.

24 MS. CINQUANTO: What date is that?

25 MS. STEVENS: May 21st, 2010.

1 Q 12.5. MST CINQUANTO. Okay. Thanks. DREAGH

2 Q 12.5. BYMS. STEVENS: Background of it is -- and in your notes

3 Q And the package that was received at Ishanell Dean's

4 house was 13 pounds, correct?

5 A 12.5. I think that package was 12.5 pounds.

6 Q 12.5. Thank you.

7 A Correct.

8 Q So I just want to be clear. The package that was
9 received at Ahyne Murphy's house was how much?

10 A 12.5.

11 Q And the package that was received at Ishanell Dean's
12 house?

13 A 12.5 pounds.

14 Q On June 9th, 2010, the package that was received at
15 Murphy's house was how much?

16 A 10.2 pounds.

17 Q And the package that was ultimately seized by ATF was how
18 many pounds?

19 A 12 pounds.

20 Q And that 12 pounds, it ultimately had how many kilograms
21 of cocaine inside?

22 A Four kilograms.

23 Q And based on your review of the weights, was that -- was
24 the weights from the seized packages consistent with the June

25 and May 21st packages?

1 A Based on different packaging that might have been
2 involved in the -- in the packages that we did not intercept,
3 of course, the weights were consistent and in -- in the ball
4 park of what we would believe would be inside the packages.

5 Q And, in fact, the weights for May 10th, 2010, they were
6 slightly less, correct?

7 A That's correct.

8 Q Now, during the course of your investigation, you had an
9 opportunity to meet on several occasions with Bellvin Smith in
10 advance of the trial, correct?

11 A That's correct.

12 Q And during your meetings with Bellvin Smith, he disclosed
13 engaging in a number of crimes, correct?

14 A Correct.

15 Q Including crimes that involved the defendant, Zachary
16 Chambers, correct?

17 A That's correct.

18 Q Now, he also testified today about being involved with
19 robberies of drug dealers, kidnapping, and a shooting at Onyx,
20 correct?

21 A That's correct.

22 Q Did you, during the course of your investigation,
23 determine whether any of those crimes, those offenses were
24 reported to law enforcement?

25 A Yes. The shooting that occurred at Onyx and the

1 attempted kidnapping for the kidnapping, rather, that occurred
2 were both reported to the Philadelphia Police Department. I
3 subsequently passed on the information to the assigned
4 detectives for each district concerning those crimes.

5 MS. STEVENS: No further questions, Your Honor.
6 THE COURT: All right. Cross-examine.

CROSS-EXAMINATION

8 BY MS. CINQUANTO:

9 Q Good afternoon, Agent Malone.

10 A Good afternoon.

11 Q All right. That was just a little too quick for me, so
12 I'm going to slow it down.

13 A Sure. I think I'm going to do that.

14 Q Just a little bit. There was a number of packages
15 that arrived at three different residences during the course
16 or during the time that Mr. Chambers was involved allegedly
17 in this conspiracy, is that correct?

18 A Correct. I think I'm going to do that.

19 Q All right. And we're talking of the time period between
20 November of 2009 and June of 2010, is that right?

21 A Correct.

22 Q All right. Now, the Sharon Hill address received, I
23 believe, was it - it was five packages, is that correct?
24 A I would have to go through my records to give you an
25 accurate amount.

10 Q. All right. If you could do that, that would be great.

11 A. Sure. Q. Okay. Let's do it.

12 THE COURT: Well, you're welcome to ask these
13 questions, you know, I'm looking at paragraph 119 of the
14 presentence report and it appears to me that the evidence
15 that's taken here today from the other witnesses support the
16 calculations there. I mean, we can go into great detail with
17 this, Ms. Cinquanto, but I'm not sure where it's going to take
18 us.

19 MS. CINQUANTO: Well, Your Honor, I mean, clearly --

20 THE COURT: If it's over 10,000 kilograms of
21 marijuana, we get a base level of 36. I mean, --

22 MS. CINQUANTO: Your Honor, where this -- where
23 that's coming from, Your Honor, is -- is if you can see

24 paragraph 119, this is -- this is why I'm going into this with
25 such excruciating detail. Okay. Paragraph 119 makes the
assertion that there was 50 kilograms of cocaine. That's --

26 THE COURT: Well, Mr. Smith testified to that at

27 trial and repeated it here today.

28 MS. CINQUANTO: But this is the -- but this is the
problem with that, Your Honor, --

29 THE COURT: Yeah.

30 MS. CINQUANTO: -- is this, okay. There is -- there
is evidence of packages arriving and there is evidence of --
31 that corroborates some of what Mr. Smith has to say.

8 said to the COURT: Right. (Continued) 3,4

12 MS. CINQUANTO: But Mr. Smith also said basically
13 that will add up to much less than 50 kilograms.

14 THE COURT: Yeah, but he testified -- but he
5 testified also at trial that he was dealing cocaine for a
6 couple years and he would sell --

7 MS. CINQUANTO: But that's not -- but that weight
8 can't be attributed to Mr. Chambers.

9 THE COURT: Sure, if he's a -- he was convicted of
10 conspiracy.

11 MS. CINQUANTO: But Mr. Chambers is only responsible
12 for six months. He was only in the conspiracy from November
13 of 2009 until June of 2010. So what I'm trying to do is --

14 THE COURT: Is that right, Ms. Stevens?

15 MS. STEVENS: Your Honor, it is true that he was
16 involved between November 2009 and January 2010.

17 MS. CINQUANTO: No, June.

18 MS. STEVENS: -- but even --

19 THE COURT: December of 2010.

20 MS. STEVENS: I'm sorry, December -- November 2009
21 to June of 2010. But even if you look at those numbers, just
22 based on Mr. Smith's testimony at trial and today, it still
23 equals to approximately 60 kilograms. It's actually 10
24 kilograms more than what's in the presentence investigation
25 report.

1 MS. CINQUANTO: And, Your Honor, this is -- this is
2 the problem. This is the problem that I have with Mr. Smith.
3 Mr. Smith testified at trial that he has sold over 50 or 70
4 kilos of cocaine. If you do what I'm trying to do is reverse
5 engineer this. That's what I'm trying to do is reverse
6

7 THE COURT: Right.

8 MS. CINQUANTO: He basically said over his entire
9 life, that's what he sold, was between -- was over 50, or even
10 over 70. They didn't -- he didn't say over 80 or over 100, he
11 basically said 50 to 70 kilos of cocaine.

12 THE COURT: Right.

13 MS. CINQUANTO: If you backtrack how much he sold
14 before he started this particular conspiracy, which I believe
15 he testified was 15 kilos, then you add the year where he was
16 on his own and Mr. Chambers was not involved in this
17 conspiracy, I believe you have another 15 kilos. Your Honor,
18 we're getting much far below the 50-kilo threshold. That's
19 all I'm trying to do. I'm just trying to show Your Honor --

20 THE COURT: All right.

21 MS. CINQUANTO: -- that we have a real issue with
22 this weight and, you know, you can't have -- you know, it's --
23 and I was going to -- you know, I can save this for argument,
24 but I think it would be helpful if the agent can say, you
25 know, we received this many packages, it went to these
addresses on these dates, and this is how much they weighed.

1 THE COURT: Yeah, that's -- that's fine.

2 MS. CINQUANTO: But that doesn't add up to 50 kilos.

3 THE COURT: Well, I agree it doesn't, but that

4 doesn't account for what Mr. Smith says he sold, that the agent
5 doesn't have any knowledge of. The agent is not the -- is not
6 -- he's not knowledgeable of all the sales that were made.

7 MS. CINQUANTO: No, actually, Your Honor, in this
8 particular case, what is really -- actually what is really
9 interesting is that this is a very well documented conspiracy.
10 You've got flight records. He was getting all of his kilos
11 from Ramos in Las Vegas. So we know -- and the drugs were
12 shipped back to Philadelphia. So we can -- we can, as I said,
13 reverse engineer this. If you have these many packages that
14 arrived in Philadelphia between November of 2009 and June of
15 2010, we have that many packages which weighed this amount of
16 -- this amount, we're going to know exactly how much Mr.
17 Chambers is responsible for, and it is not 50 kilos.

18 THE COURT: Well, as I recall here, Ms. Stevens, --
19 I don't recall what Mr. Ramos testified he sold --

20 MS. STEVENS: No, Mr. Ramos did not testify, Your
21 Honor. The testi --

22 THE COURT: No, at trial he did.

23 MS. STEVENS: No, Mr. Ramos did not testify. It was
24 Mr. Smith and a number of other --

25 THE COURT: All right.

1 MS. STEVENS: -- cooperators.

2 THE COURT: Okay. All right. I stand corrected.

3 MS. STEVENS: But, Your Honor, the testimony from
4 Mr. Smith does add up to the thresh -- to the threshold here,
5 which is over 50 kilograms.

6 THE COURT: Well, I'll -- she can -- I'll allow the
7 cross-examination. Go ahead.

8 BY MS. CINQUANTO:

9 Q How many packages went to Sharon Hill?

10 A Five packages.

11 Q Okay. And what were -- what was the weight of those
12 packages?

13 A A package was delivered on November 24th of 2009, which
14 weighted three pounds. A package was delivered on December
15 8th, 2009, which weighed 24 pounds. A package was --

16 Q -- THE COURT: 24 pounds?

17 A THE WITNESS: 24. Yes, Your Honor.

18 Q Now, we don't know -- just by the way, we don't know if
19 that was marijuana, and we don't know if that was cocaine, is
20 that correct?

21 A These are just weights of packages.

22 Q Right. We have -- and we know that marijuana was shipped
23 to that address, is that right?

24 A Based on Mr. Smith's testimony, yes.

25 Q Right. And we also know that Mr. Smith routinely would

1 buy two to three kilos and -- is that right, or up to eight
2 kilos, is that right?

3 A No. The packages were -- there was a range of --

4 Q Well, let me -- I think Agent Smith said that he
5 A -- kilos that he would get.

6 Q Okay. Let me ask you this, Agent Malone: Mr. Smith never
7 told you that he purchased 24 kilos at one time in one
8 package, did he?

9 A No, that's correct.

10 Q Okay. So this is probably marijuana?

11 A I would be speculating.

12 Q But Mr. -- but Mr. Smith, again, never told you he came
13 anywhere near to 24 pounds of cocaine in one package?

14 A Did you say pounds or -- because you said kilograms.

15 A Before I get into -- about 24 kilograms, I --

16 Q Well, I'm sorry. Well, it's 24 pounds, is that right?

17 A 24 pounds, yes.

18 Q Okay. How many kilos is that?

19 A Based on --

THE COURT: It's about 10 kilos.

20 A Yeah. Based on what we know, a four-kilogram package
21 weighed 12 pounds.

22 Q Right. So if we expand on that, it would be eight.

23 A So if we're expanding on that, it would be eight.

24 Q Okay. But he said okay. So, go ahead. Keep going.

1 A I'm sorry, what was the last one I gave you?

2 Q December 8th.

3 A December 8th. The next one was delivered March 8th, 2010,
4 and that weighed 22.8 pounds.

5 Q Um-hmm.

6 A One was delivered on March 26th, 2010, and it weighed 15.4
7 pounds.

8 Q I'm sorry, what was that date?

9 THE COURT: How many pounds?

10 THE WITNESS: 15.4, Your Honor. And that was March
11 26th, 2010.

12 A And then the last one delivered there was on March 23rd,
13 2010, and that weighted 10.4 pounds.

14 Q Okay. Now, Agent Malone, regarding that March 8th
15 shipment which was 22.8 pounds, again, we don't know what was
16 in that shipment, is that right?

17 A That's correct.

18 Q And we do know that Mr. Smith was also trafficking in
19 marijuana, is that right?

20 A That's correct.

21 Q Okay. And we also know that he used that address for
22 marijuana deliveries, is that correct?

23 A I believe Mr. Smith testified that he sent one package of
24 marijuana to that address.

25 Q Okay. Can we talk about the next address?

1 A Yes.

2 Q To Brookhaven. There were six packages, I believe; five
3 arrived?

4 A Five arrived and one didn't, yes, that's correct.

5 Q Okay. And the one that didn't arrive is the one that you
6 confiscated, is that right?

7 A Correct.

8 Q And how much did that package weigh?

9 A The one that we interdicted?

10 Q Um-hmm.

11 A 12 pounds.

12 Q Okay.

13 THE COURT: And what was in that?

14 THE WITNESS: Four kilograms of cocaine, Your Honor.

15 BY MS. CINQUANTO:

16 Q And that one was only 12 pounds, is that right?

17 A 12 pounds, correct.

18 Q Okay. All right. And when was the -- if you could just
19 go through that.

20 A Go through them? Sure.

21 Q -- that would be great. Thank you.

22 A The first package was delivered on April 12th, 2010. That
23 weighed 10.9 pounds.

24 Q Um-hmm.

25 THE COURT: How many? Sorry.

1 THE WITNESS: 10.9, Your Honor.

2 A The next package was delivered April 23rd, 2010; that
3 weighed 13.1 pounds. The next one was May 10, 2010; that
4 weighed 8.7 pounds. Then there was May 21st, 2010; that
5 weighed 12.5 pounds. June 9th, 2010; that weighed 10.2 pounds.
6 And then the package that we interdicted was sent there -- was
7 supposed to arrive on June 28th, 2010, and that weighed 12
8 pounds.

9 Q Got it. And again, we -- he used this address as well to
10 ship marijuana, is that right?

11 A I believe he stated he sent one package of marijuana to
12 that address.

13 Q Okay. So at least one of these packages that arrived
14 contained marijuana?

15 A I believe he said, based on his testimony today, that it
16 was approximately 10 pounds of marijuana.

17 Q Okay. One of these packages, is that right?

18 A Based on his testimony, yes.

19 Q Right. And if -- and it also could be more; if he also
20 sent another package with marijuana and he just didn't tell
21 you about that, right?

22 A I'm just going based on what he testified to today.

23 Q Okay. All right. The next address, which is Parmley.

24 MS. CINQUANTO: And that's the last one, Your Honor.

25 A Yes. Parmley, there's two packages, Your Honor. One on

1 May 10th, 2010; it weighed 6.2 pounds. And then the next
2 package on May 21st, 2010, and that weighed 12.5 pounds.
3 Q And again, we don't know if this -- any of this contained
4 marijuana, is that right? perhaps -- the cocaine and
5 A I believe Mr. Smith testified today that it contained
6 cocaine.

7 Q Well, let's just say we don't find Mr. Smith particularly
8 credible. We don't know if these contained marijuana, is that
9 right?

10 THE COURT: Well, --

11 Q It's possible, and -- and -- and -- and -- and -- and --
12 THE COURT: you can rephrase the question.

13 Q It's possible that these packages, also, contained
14 marijuana, is that right?

15 A Again, I'm just going off what Mr. Smith testified today.

16 Q But all you know are weights; for certain, all you know
17 are weights?

18 A For -- all I can -- all I know is weights of the
19 packages, yes. I do not know what's in them.

20 Q All right. (Laughter) (New TPC) (SPEECH) (Laughter)

21 MS. CINQUANTO: One moment, Your Honor. I have
22 nothing further, Your Honor. Thank you. Thank you, Agent.

23 THE COURT: Okay. All right. Any redirect?

24 MS. STEVENS: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. STEVENS: Could you tell me if you were given

2 Q Now, Agent Malone, in addition to receiving the weights
3 for the packages, did you receive any other information about
4 the contents of the packages from anyone?

5 A Oh, yes, we did, actually. Of course, Ms. Murphy
6 testified during trial, Your Honor, about the contents of the
7 packages during her both direct and cross-examination. Also
8 other individuals who have cooperated and who were present
9 during these packages being opened stated what was inside of
10 them.

11 Q And, in fact, you had an opportunity to speak with Mr.
12 Smith, who was able to go through each of the packages and
13 explain exactly how many kilograms of cocaine or other --
14 other items that were inside of those packages, correct?

15 A That's correct. No problem with that.

16 Q And amongst the individuals you spoke with was Aaron
17 Coggins, correct?

18 A Correct. As could I like - also I like - now

19 Q And Aaron Coggins indicated that there was at least 10
20 pounds of marijuana that was received, correct?

21 A I believe so, yes.

22 Q And for Mr. Smith, you were able to go through each of
23 the shipments or deliveries and account for how many were
24 inside of each of those packages, correct?

25 A That's correct.

130 Q All right. So starting in November of 2009, just to make
1 sure it is clear, what I'd like you to do is to start give
2 the date of the either identified or expected delivery, and
3 then explain to the Judge how many kilos, based on your
4 investigation, came in those packages.

5 A Is this based off of statements made by --

6 Q Your entire -- yes, in your entire investigation,
7 including statements.

8 A Okay. The package that arrived on November 24th, 2009 to
9 1713 Sharon Avenue weighed three pounds. Mr. Smith stated that
10 it was at least two kilograms of cocaine.

11 Q The next on December the 8th?

12 A December the 8th weighed 24 pounds. Mr. Smith was unsure
13 as to the contents of this package, if it was cocaine or if it
14 was marijuana.

15 Q Is the next package?

16 THE COURT: All right. Can I let me see if I can
17 shortcut this because it is kind of a

18 shortcut this because it is kind of a
19 reason. MS. STEVENS: The only reason why, Your Honor, I was
20 doing this is because I just want to make sure it wasn't -- it
21 was confused with the questioning as to what the amounts were.

22 I think that Mr. Smith's testimony was clear.

23 THE COURT: Well, the agent doesn't have personal
24 knowledge of a lot of these, whether it was cocaine or
25 marijuana. Okay?

1 MS. STEVENS: That is absolutely correct, Your
2 Honor. Mr. Smith --

3 THE COURT: Now, Mr. Smith --

4 MS. STEVENS: Well, testified to this at trial --

5 THE COURT: Mr. Smith did and he's testified.

6 MS. STEVENS: -- and he testified here.

7 THE COURT: Now, to me, I'm looking at the
8 sentencing guideline. Under 2D1.1 Sub 3, at least 15
9 kilograms but less than 50 kilograms of cocaine is a level 34.
10 All right. Now, Ms. Maxwell calculated this as being 11,000
11 kilograms of the marijuana equivalent and that gave her level
12 36. She used 2.1.1 Sub 2. But, you know, as I look at the
13 guidelines here, which I have to have to be the starting point
14 for the computation, you know, I don't think it really matters
15 whether we're at level 36 or level 34. And I don't see,
16 frankly, the value of getting into an extended debate about
17 this because the defense in -- he's in Category -- criminal
18 history five. It would make a little bit of difference, but
19 we still -- we still have to come to the two-point enhancement
20 for the firearm.

21 MS. STEVENS: That is correct, Your Honor.

22 THE COURT: But, you know, I really -- I mean, I
23 think it's -- you know, it's good to be accurate, it's
24 important to be accurate in the guideline computation as you
25 can. But the agent doesn't have personal knowledge of the

1 contents of these packages, and Mr. Smith does, but he was not
2 positive exactly which ones were cocaine and he -- he
3 estimated how much cocaine he sold, but he couldn't put it
4 into the exact months here. So --

5 MS. STEVENS: Well, Your Honor, what I would suggest
6 is, in the Government's sentencing memorandum, I cited to all
7 of the testimony that was presented at trial --

8 THE COURT: Right.

9 MS. STEVENS: -- as it related to the amounts of
10 cocaine. And then --

11 THE COURT: Yeah, but it wasn't divided specifically
12 into the six months that Mr. Smith was part of the -- Mr.
13 Chambers, rather, was part of the conspiracy.

14 MS. STEVENS: Actually, Your Honor, that's not
15 correct.

16 THE COURT: Well, where in your sentencing
17 memorandum is that?

18 MS. STEVENS: If you go to -- go to page 3 of the
19 Government's sentencing memorandum.

20 THE COURT: Yeah. Okay.

21 MS. STEVENS: And if you go down to the middle of
22 the page, it says between November 2009 and January 2010, --

23 THE COURT: Yes.

24 MS. STEVENS: -- they, the DTO, sold approximately
25 30 kilograms of cocaine. There's a citation to the trial

1 transcript as it relates to that. Also on April 23rd,

2 THE COURT: All right. But some of those 30 are the
3 ones that is what's delivered, so you can't double count them.

4 MS. STEVENS: Your Honor, I'm just looking at the
5 testimony that says during that time period there were 30
6 kilos.

7 THE COURT: All right. So they purchased -- they
8 sold approximately 30 kilograms. Okay.

9 MS. STEVENS: That's correct. Then there was the
10 testimony for April 23rd, 2010 that there were two UPS
11 packages --

12 THE COURT: Right.

13 MS. STEVENS: -- that were delivered.

14 THE COURT: All right. So that adds eight.

15 MS. STEVENS: -- each containing eight. That's
16 correct.

17 THE COURT: All right.

18 MS. STEVENS: Then based on his testimony today,
19 Your Honor, he testified about the packages that came between
20 May 2010 and June 28th of 2010, and those are the numbers that
21 he provided today, which was -- give me one second, Your
22 Honor.

23 THE COURT: All right. Well, that added -- those
24 numbers added up to 22 kilos.

25 MS. STEVENS: It should be 22 kilos. Three and

right. We have spent an hour on this and given that the
1 guidelines are not mandatory, I'm interested in coming to a
2 conclusion. I'm going to find that the appropriate level
3 here, based on 3 - 2D1.1, Sub 3, that has been proven to my
4 satisfaction well beyond a preponderance, is that during the
5 period of the conspiracy, Mr. Chambers was responsible for at
6 least 15 kilograms, but less than 50. And that gives us a
7 level 34. All right. So that's what I'm going to find. All
8 right. I know it's a little less than was calculated in the
9 presentence report, and a little less than was summarized in
10 the Government's sentencing memorandum, but I'm going to give
11 the defendant the benefit of possible inaccuracies in Mr.
12 Smith's estimates, and I want to move on to the other issue.

14 Now, as far as the firearm goes, it's my view that
15 the evidence is sufficient to satisfy by a preponderance that
16 during the period of the conspiracy, that Mr. Smith did have
17 sufficient connection to the conspiracy and the defendant to

18 MS. STEVENS: Mr. Chambers, Your Honor, you

19 THE COURT: What?

20 MS. STEVENS: Did you say -- you said Mr. Smith.

21 THE COURT: Mr. Chambers.

22 MS. STEVENS: Mr. Chambers. Thank you.

23 THE COURT: Mr. Chambers did have sufficient

24 connection to a firearm to justify the two-point enhancement.

25 So I'm going to overrule the objection that was made to the --

1 to the calculation. All right. That will then give us an
2 offense level of 36, rather than 38. So, Ms. Maxwell, I'm
3 going to ask you to change that to reflect 36.

4 There's no dispute about the criminal history. That
5 brings us to a guideline of 225 to 285 months.

6 MS. CINQUANTO: Your Honor, if I may. I'm sorry to
7 interrupt. I have a request for a departure, Your Honor,
8 under the criminal history.

9 THE COURT: We'll talk about that in a minute.

10 MS. CINQUANTO: Got it.

11 THE COURT: I first want to establish the guideline
12 level, according to the presentence report and the testimony
13 here, and that will be level 36 at criminal history five, is
14 292 to 365 months.

15 Now, let me rule on more thing, and that is the
16 objection that Ms. Cinquanto has to the testimony about the
17 other conduct of the defendant after the conspiracy ended. In
18 my view, this is proper testimony as to the public safety
19 issue under the sentencing statute. So I will overrule the
20 objection, and I will consider that, not for the guideline
21 calculations, but on the public safety consideration.

22 Okay. Now, Ms. Cinquanto, the floor is yours.

23 MS. CINQUANTO: Okay. Just briefly, Your Honor.

24 I've already set forth my argument in my sentencing
25 memorandum. However, Your Honor, I -- Mr. Chambers' criminal

All right. We'll now move to closing arguments on what sentence to impose. Ms. Stevens, I'll hear you first, then Ms. Cinquanto, then I'll hear from Mr. Chambers.

MS. STEVENS: Your Honor, the Government has set forth its position fairly clearly in its sentencing memo that Mr. Chambers' conduct, a combination of all of the factors in 3553, would justify sentence within the guideline range. And here it would be the adopted guideline range the Court just set, which is 292 to 365 months.

If you look at Mr. Chambers' history, as well as the nature and characteristics of this offense, they all point towards a guideline sentence range, Your Honor. In addition to Your Honor's point just now about Mr. Chambers' lifelong involvement with criminal activity, which started at a young age and has gone pretty much unabated all the way up through this charged conspiracy, and even afterwards when he engaged in more crimes, including the robberies of drug dealers, kidnapping, and being in possession of a stolen vehicle in which he had the items that they used during these robberies, all of that demonstrates that he has no respect for the law and a complete disdain for the law. What's interesting about his criminal history, too, is it's not as if the court system hasn't tried to give him some help, because they have. They repeatedly tried to give him help as a juvenile. And within a month, month and a half

1. Now 1 year of coming off of his last juvenile adjudication, he got his
2. first adult arrest. Within a month and a half, Your Honor.
3. And what is more troubling to the Government is the fact that
4. this criminal history has shown that he is escalating. He
5. started out in the juvenile system, getting arrested for
6. simple assault charges, and then ultimately escalated up to
7. possession of weapons. And now, Your Honor, he was convicted
8. by a jury of engaging in very serious drug trafficking
9. offenses involving a substantial amount of cocaine, possessing
10. a firearm during the course of that conspiracy in order to
11. protect their drugs, protect their money. And there is no
12. indication that Mr. Chambers is going to stop this behavior.
13. Indeed, if there is an appropriate commentary to 4A1.3, which
14. says that

15. MS. STEVENS: All right. Ms. Stevens, all right, I'm
16. familiar with that. I think you want a final sentence?

17. MS. STEVENS: Well, Your Honor, I want to have the
18. opportunity to put my final sentence on the record.

19. MS. STEVENS: I've read your memorandum and I -- I've
20. heard the jury trial, and I appreciate your position, but I
21. don't need you to speak longer than another sentence. Thank
22. you. This has already gone an hour and a half, and I have a
23. lot of other hearings.

24. MS. STEVENS: Well, Your Honor, the Government
25. adheres to its position in the sentencing memorandum, and

1 given that the Court has truncated what I have to say, I would
2 I would ask the Court to adopt all of my positions that are
3 set forth in my sentencing memorandum and impose a sentence
4 that is within the guidelines, if not at the high end of the
5 guidelines for Mr. Chambers, because it certainly is one that
6 is justified in this case when you balance all of the 3553
7 factors.

8 THE COURT: All right... Thank you. All right, Ms.
9 Cinquanto?

10 MS. CINQUANTO: Your Honor, we have very brief
11 testimony from one family member, Robert Chambers. Very
12 brief.

13 THE COURT: Yes.

14 ROBERT CHAMBERS, DEFENSE WITNESS, SWORN.

15 THE CLERK: Please state your full name and spell
16 your last name for the record.

17 THE WITNESS: Robert Chambers, R-C-H-A-M-B-E-R-S.

18 THE COURT: All right. Good afternoon, Mr.

19 Chambers. I'm happy to hear whatever you'd like to say on
20 behalf of the defendant, Zachary Chambers.

21 THE WITNESS: Okay. Your Honor, first of all, good
22 afternoon. I would like to give you some background about
23 myself and to show the support system that I will provide to
24 my brother, Zachary Chambers, upon his release. At 18, when
25 Zachary was three years old, I joined the military. I served

1 I had 10 years in the Armed Forces, I mean Armed Forces veteran.
2 Upon my discharge, I went to college and currently
3 hold a nursing degree, and have been practicing in the State
4 of Pennsylvania for the last 10 years. I'm also in school
5 presently to further my education and currently seeking my
6 bachelor's degree in behavioral health and human services.
7 I'm also an owner of my - I've also been a homeowner for the
8 last 15 years and productive member of my community. I have
9 never been in trouble with the law in my entire career. And
10 upon his release, I plan to make sure that he receives the
11 guidance required to integrate him back into society in any
12 which way I can, and also provide a place to stay and positive
13 reinforcements for his integration back into society.
14 THE COURT: All right. Thank you. Well, is there
15 anything else you want to say about your brother?
16 THE WITNESS: At the age of -
17 THE COURT: I mean, I have a question for you. I
18 mean you've heard the testimony here today and I have his
19 criminal record here, and you've done admirably well in life
20 and he has had a life of crime. Do you have any explanation
21 for that?
22 THE WITNESS: Because he was preyed upon by Bellvin
23 Smith and influenced as a youngster to follow in his footsteps
24 because, to my knowledge, as a teenager, Zachary worked at the
25 at the local grocery store. He made his own money at that

1 point and provided certain -- and basically took care of a lot
2 of his own -- okay. He worked at the local supermarket, made
3 his own money, he bought his own clothes, shoes, and paid for
4 basically a lot of his own miscellaneous, you know, expenses,
5 the same as I did when I was a youngster.

6 "Okay." Even though he was -- you know, had a
7 challenging four years, he graduated high school. Okay. He
8 became a father, and to make a better life for himself, he
9 started attending a heating and cooling internship to
10 eventually become certified in heating and cooling to provide
11 a better life for his son. And he had a plan. You know, he
12 had planned on attending college after that. And I don't know
13 -- I don't know where -- you know. I mean, I mean,

14 THE COURT: All right. Thank you very much for
15 coming in. All right. Any other witnesses?

16 MS. CINQUANTO: No, Your Honor. In the courtroom,
17 we do have his mother and his father and sister.

18 THE COURT: All right. Thank you all for coming in.

19 MS. CINQUANTO: Your Honor, the reason why Mr.
20 Robert Chambers, his brother, testified was because we wanted
21 to show Your Honor that there will be a support system when
22 Mr. Chambers, Zachary, is released from prison.

23 We know -- we understand that Your Honor is going to
24 give a lengthy sentence here today, but Your Honor needs to
25 understand that when he is released from prison, that there

10 you will be people who are able to take care of him. And this
1 isn't just sending him back into the community, you know,
2 surrounded by the same old people we're talking about. Mr.
3 Chambers, you know, is an outstanding member of society who
4 served in the military and who is a veteran. So just so Your
5 Honor is assured that there is a safety net for him when he
6 gets out. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

26 Your Honor, Robert Chambers could not say it any
27 better than -- than what I'm saying. And I don't like to
28 blame anybody's actions on anybody else, but this man, he's 19
29 years old, okay, and from the time he was a child, Mr. Smith
30 testified to this today, he's known him for a long time, he's
31 known him from the age of 14, and he, you know, took him under
32 his wing. What kind of taking him under his wing do you think
33 that Mr. Bellvin Smith was doing? 34 35 36 37 38 39 40 41 42 43 44 45
46 Mr. Bellvin Smith was grooming a young kid to become
47 part of his drug entourage, and it would be a crime, an
48 additional crime if this young man is to get more time than
49 that man. 50 That man is an admitted kidnaper, shooter, and he's
51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 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1 get, and it would be a crime if Mr. Zachary Chambers was to
2 get one day more than that. So what I'm asking Your Honor to do is to consider
3 where he fell in the course of this conspiracy, and at that
4 point place him in there and appropriately give him a sentence
5 which is reflective of his role and what he has really done.

6 So, Your Honor, I'm asking that -- I'm asking that you take
7 into consideration Bellvin Smith's background, what he has not
8 been charged with, what the Government has not proceeded to go
9 forward with, and the fact that Mr. Smith came in here and
10 testified he took advantage of him as a kid, and he's taking
11 advantage of him now, and I ask Your Honor to take that into
12 consideration when you render your sentence. Thank you.

13 THE COURT: All right. Well, Ms. Stevens, let me
14 ask you, based on your knowledge of the case, because it's
15 much more thorough than mine, even though we -- I mean, this
16 -- we had two defendants go to trial, one was acquitted of
17 conspiracy, but convicted of other charges. But most of the
18 defendants pled guilty. So I always ask for defendants who
19 pled guilty, you know, what's the Government's view of their
20 culpability. That's a subject of sentencing, I suppose.
21 And now -- So leaving aside for the moment the fact that
22 Bellvin Smith has cooperated and pled guilty, whereas Mr.
23 Chambers went to trial, what is your view as to culpability of
24 Mr. Chambers vis-a-vis all the other defendants, Mr. Smith and

11 19 Q19.11 the others? Do you still believe that Mr. Chambers is still high up in culpability as it relates to Mr. Chambers and the other co-conspirators? He falls at the 20 at the top. 12 20 13 21 14 22 15 23 16 24 17 25 18 19 20 21 22 23 24 25

He's going to fall somewhere between either third in culpability to fifth in culpability. So he's right up there at the top. And the large part of it, Your Honor, is because he traveled extensively with Mr. Smith from November 2009 until this conspiracy went down in June 28th, 2010.

He not only traveled down to Los Angeles and Las Vegas, he helped drive him. But the biggest thing is when he came back, he was one of the few of the co-conspirators whose role was also to sell the drugs. So not only did he travel, but he also sold the drugs, cocaine, crack cocaine, and marijuana. He also helped cook the cocaine into crack cocaine as well, Your Honor. So his role within this was extensive, and because of that, he would be high up in terms of culpability.

THE COURT: All right. MIGHTY LADY.

MS. STEVENS: And if I can just respond briefly, Your Honor.

THE COURT: Yes.

MS. STEVENS: I think that the one thing that has not been said is that Mr. Chambers is here, Your Honor, because of the choices that he made. He had the choice to try

1 to turn his life around when he got out of prison, or to turn
2 back to drugs. He ultimately made that choice to turn to
3 drugs. Each of the wonderful individuals who are members of
4 his family have been there for him this entire time. It's
5 admirable what his brother has been able to achieve. But they
6 were a part of his life when he started going into crime when
7 he was a juvenile, and they were a part of his life when he
8 got involved with this drug conspiracy. So it is the choices
9 that he made. He had the choice to move forward and do drugs
10 and other crimes with Mr. Smith. He chose to proceed to trial
11 and be found -- convicted by -- by a jury.

12 MS. STEVENS: THE COURT: Okay. All right.

13 MS. STEVENS: So I just wanted to make sure --

14 THE COURT: Okay. Thank you.

15 MS. STEVENS: That was known to the Court.

16 THE COURT: Thank you. All right. Mr. Chambers,
17 I'm happy to hear anything you'd like to say on your own
18 behalf at this time.

19 MS. CINQUANTO: Your Honor, respectfully, Mr.

20 Chambers is going to waive his right to allocution. We intend
21 to file an appeal in this case, and if Your Honor wouldn't
22 mind, he'd like to remain silent.

23 THE COURT: All right. That's -- that's fine. I
24 will respect that. All right. Mr. Chambers, first of all, I
25 want to advise you, before I impose sentence, that you have

1 I have the right to appeal from the sentence that I'm now about to
2 impose, and to do so, you have to file a notice of appeal
3 within 14 days. Now, I assume, Ms. Cinquanto, that you'll
4 continue to represent Mr. Chambers as Court-appointed counsel
5 and you'll file an appeal -- a notice of appeal on his behalf,
6 is that correct?

7 MS. CINQUANTO: That's correct, Your Honor, yes.

8 THE COURT: All right. Do you understand, Mr.
9 Chambers, you're entitled to counsel free of charge, since you
10 can't afford your own counsel?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Okay. All right. Now, in considering
13 the sentence, I've determined that the guideline range that
14 applies here, after extensive testimony and argument, is 292
15 to 365 months. And under the Third Circuit and Supreme Court
16 procedures, I have to have made that determination, which I
17 think is an accurate determination, based on all of the
18 evidence at the trial and at the hearing today, and the
19 contents of the presentence report, as I've corrected it
20 slightly.

21 I then have to consider the sentencing factors, and
22 in my mind the most important one in this case -- most
23 important ones, in the plural, are the public safety factor,
24 the dangerousness of the defendant, as represented by his
25 consistent life of crime that is inexplicable under what I

1 heard here about his family, and his -- and the need for
2 deterrence. He has consistently gotten himself in trouble. I
3 can't accept the fact that he -- you know, that his crimes are
4 due to somebody else having influence over him. He was --
5 he's had a lot of experience with -- as a juvenile having been
6 adjudicated delinquent, having been in different custodial
7 situations. Every time he got out of jail or custody, he went
8 back to committing more crimes.

9 He got involved in this, which is a very large and
10 dangerous conspiracy, that spread a lot of drugs throughout
11 neighborhoods of Philadelphia. And even for the relatively
12 short time that he was involved in it, he was a consistent and
13 very important member of it and gave a lot of aid and support
14 to Bellvin Smith as the leader of the conspiracy.

15 So I don't see any reason in this case to depart --
16 I'm not -- I do not intend to vary, I don't see any reason to
17 vary from the guideline computations here. And I think that
18 Mr. Chambers needs a substantial period of time in a custodial
19 setting to learn that he's got to conform his conduct to the
20 expectations of society, and that committing crimes is
21 completely unacceptable.

22 I also find that he needs to become mature in a
23 custodial setting, and he needs a lengthy period of custody in
24 order to determine that and to protect others from his
25 criminal conduct that he has exhibited so consistently. And,

1610 11 Mr. Chambers, you'll get out of jail at some point and I hope
1611 12 that you will have learned your lesson, and you'll use your
1612 13 family members to help you go straight when you do get out of
1613 14 jail. But I -- I cannot see any reason, and I think I would
1614 15 be doing a disservice to the concept of deterrence by that
1615 16 making sure people who engage in the kind of conduct you do
1616 17 know that if and when convicted they -- they have to serve a
1617 18 lengthy sentence. That's the only way we're going to get rid
1618 19 of these large-scale drug conspiracies, such as you were
1619 20 involved in.

1620 21 So the sentence of the Court is that the defendant
1621 22 is committed -- what I'm going to do is give him a sentence
1622 23 midway in the guideline range here. And the defendant is
1623 24 committed to the custody of the Bureau of Prisons for a term
1624 25 of 330 months on each of Counts 1 and 6, to be served
1625 26 concurrently. And the court --

1626 27 And finally upon release from imprisonment, the defendant is
1627 28 placed on supervised release for a term of five years on
1628 29 Counts 1 and 6, to run concurrently. While on supervised
1629 30 release, the defendant shall not commit another federal,
1630 31 state, or local crime; is prohibited from possessing a firearm
1631 32 or other dangerous device; shall not possess an illegal
1632 33 controlled substance; and shall comply with the other standard
1633 34 conditions adopted by this Court.

1634 35 The judgment and commitment order will have other

1 conditions, including drug testing, disclosure of financial
2 records, prohibition on new credit charges, cooperation in the
3 collection of DNA. And I'm going to impose a fine of \$5,000.
4 I know you don't have that, but that will help you get a job
5 while you're in prison. You may participate in the Bureau of
6 Prisons Inmate Financial Responsibility Program and make
7 payments of \$50 per quarter while in prison, and then \$50 per
8 month while on release. In addition, you must pay a special
9 assessment of \$200, which is due immediately.

10 All right. That's the sentence. All right.

11 MS. CINQUANTO: Two requests, Your Honor.

12 THE COURT: Yes.

13 MS. CINQUANTO: Could you recommend that he be
14 accepted into the drug residential drug and alcohol
15 program, as it's known in our prison system?

16 THE COURT: Yes, I'll recommend that.

17 MS. CINQUANTO: as well as a prison facility
18 which is closer to Philadelphia, as close as possible.

19 THE COURT: Closer to Philadelphia. I'll recommend
20 that, to one of the two facilities in the area.

21 MS. CINQUANTO: Thank you. I will do that.

22 (Proceedings concluded at 3:16 p.m.)

23 (Applause) (Applause) * * * * * (Applause)

24 (Applause) (Applause) * * * * * (Applause)

25 (Applause) (Applause) (Applause) (Applause)

C E R T I F I C A T I O N

2 I, Roxanne Galanti, court approved transcriber,
3 certify that the foregoing is a correct transcript from the
4 official electronic sound recording of the proceedings in the
5 above-entitled matter.

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December 10, 2013

Roxana Galassi

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