

No.

IN THE
Supreme Court of the United States

RICHARD MICHAEL ARRINGTON,

v.

Petitioner,

STATE OF WISCONSIN,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court of Wisconsin**

**APPENDICES, VOLUME II,
TO PETITION FOR A WRIT OF CERTIORARI**

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1 STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY
2 BRANCH VII

3 STATE OF WISCONSIN,

4 PLAINTIFF,

MOTION HEARING

5 vs.

Case No. 16 CF 516

6 RICHARD M. ARRINGTON,

7 DEFENDANT.

COPY

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9
10 DATE: June 27, 2019

11 BEFORE: Hon. Timothy A. Hinkfuss
12 Circuit Court Judge

13 APPEARANCES:

14 WILLIAM R.F. ACKELL
Special Prosecutor
On behalf of the State of Wisconsin.

15 SUZANNE L. HAGOPIAN
16 Attorney at Law
On behalf of the Defendant.

17 RICHARD M. ARRINGTON
18 Defendant
Appeared in person.

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20 * * * * *

21 TRANSCRIPT OF PROCEEDINGS

22 Reported by Heather L. Burton, RMR, CRR

23 Official Court Reporter
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1 THE COURT: I am calling file 2006 CF 516,
2 State of Wisconsin v. Richard Arrington.

3 May I have the appearances, please.

4 MR. ACKELL: State of Wisconsin appears by
5 Special Prosecutor William Ackell.

6 MS. HAGOPIAN: Richard Arrington appears in
7 person and with his attorney, Suzanne Hagnopian.

8 THE COURT: Okay. You did file a
9 post-conviction motion to vacate convictions and
10 order a new trial. I have read the document as
11 well. And I was the trial judge in this case. I
12 sat through the entire thing, all the motions,
13 everything. So I'm very well acquainted with this
14 case.

15 The only thing I'm not acquainted with,
16 time is -- I didn't know it was that long ago but
17 it was that long ago. In any case, I'm very
18 familiar with this case.

19 So why don't we -- the first thing is on
20 the second part of your motion about the jury
21 instruction, I mean, the supreme court decided
22 that. And I know the supreme court had decided
23 it when you filed this motion, but based upon
24 this case, *State v. Trammell*, I am denying your
25 motion. I am finding that the jury instruction

1 is valid we're not to search for doubt but search
2 for the truth. That must be the -- not only this
3 case, but other cases as well it's been raised.

4 So I believe, if I'm correct, Mr. Hughes
5 filed objection and I overruled that objection
6 and ultimately went to the court of appeals and
7 the supreme court and the supreme court just
8 decided that.

9 Do you have anything you'd like to say
10 on that, Counselor?

11 MS. HAGOPIAN: No. I recognize the court
12 is bound by *Trammell*.

13 THE COURT: And Mr. Ackell, anything you'd
14 like to say about that?

15 MR. ACKELL: No, Your Honor, thank you.

16 THE COURT: Okay. So that leaves us with
17 the other motion. And Counselor, how would you like
18 to proceed with that?

19 MS. HAGOPIAN: We have several witnesses
20 that we would like to present.

21 THE COURT: Okay.

22 MS. HAGOPIAN: Trial counsel, couple of
23 detectives and then probably two other witnesses.

24 THE COURT: All right. If you would just
25 call your first witness then, that would be great.

1 MS. HAGOPIAN: Thank you. I would call
2 Attorney Michael Hughes.

3 MICHAEL HUGHES, called as a witness
4 herein, having been first duly sworn, was
5 examined and testified as follows:

6 THE WITNESS: Michael Hughes, M-I-C-H-A-E-L
7 H-U-G-H-E-S.

8 DIRECT EXAMINATION

9 BY MS. HAGOPIAN:

10 Q Attorney Hughes, well, let me ask, how are you
11 employed?

12 A I'm a lawyer.

13 Q And in that capacity did you represent
14 Mr. Arrington at earlier proceedings in this
15 case?

16 A I did.

17 Q And is it correct that you represented him at a
18 six day jury trial that began on October 27,
19 2017?

20 A I did.

21 Q Approximately how long before trial had you been
22 appointed to represent Mr. Arrington?

23 A I think it would have been somewhere between a year,
24 year and a half. Somewhere in that neighborhood.

25 Q And much more recently have you received from me

1 a copy of the post-conviction motion that is the
2 subject of this hearing?

3 A I have.

4 Q Have you had an opportunity to review it?

5 A I have.

6 Q Now, one of the claims concerns the activities
7 and testimony of Jason Miller and I'd like to
8 direct your attention to that.

9 Before trial were you aware that the
10 state had audio recordings of conversations
11 between Jason Miller and Richard Arrington while
12 both were inmates at the Brown County Jail?

13 A Yes.

14 Q Did the state provide you with copies of the
15 recordings?

16 A Yes.

17 Q Approximately how far in advance of trial had you
18 received the recordings?

19 A I don't remember.

20 Q If I said that at trial you mentioned that this
21 -- you'd had them for quite some time does that
22 sound about right?

23 A It does.

24 Q And did you have the opportunity to review the
25 recordings shortly after you received them?

1 A I did.

2 Q And at the time that you listened to the
3 recordings were you aware that Jason Miller was
4 the one acting as a confidential informant for
5 the police?

6 A Yes.

7 Q Did you at some point, I believe, let me ask
8 specifically during trial, receive a transcript
9 from the state of one of the recorded
10 conversations?

11 A Yes.

12 MS. HAGOPIAN: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. HAGOPIAN:

15 Q Going to show you what's been marked as Exhibit 1
16 and ask if you are familiar with that?

17 A It appears to be a copy of the transcript that the
18 state provided me of the conversation between
19 Mr. Miller and Mr. Arrington.

20 Q And would you agree that it's a transcript of one
21 of three conversations?

22 A Yes, specifically this is dated April 13, 2016.

23 Q And, just to be clear, the tape of the recordings
24 that you received, did that contain three
25 conversations?

1 A I believe it did.

2 Q While I'm showing you documents, got a couple
3 more. Before trial did you receive from the
4 state as part of discovery a police report
5 prepared by Detective Linzmeier describing a
6 meeting he had with Jason Miller?

7 A Yes.

8 Q I'm going to show you Exhibit 2 and ask if that
9 is the report you had received?

10 A It appears to be, yes.

11 Q And did you review that before trial?

12 A Yes.

13 Q Did you also about the same time receive a copy
14 of Jason Miller's written statement?

15 A I did.

16 Q Going to show you Exhibit 3 and ask if that is a
17 copy of the statement?

18 A It appears to be, yes.

19 Q Both the statement and the report refer to the
20 individual not as Jason Miller but as CI355. Who
21 did you think CI355 was?

22 A I thought that was Jason Miller.

23 Q Based upon the information that the state
24 provided to you before trial were you aware,
25 first of all, that Jason Miller was working as a

1 confidential informant for the police?

2 A I'm sorry, before the state provided me the material?

3 Q Before trial, based on the information that you

4 were provided with, were you aware that Jason

5 Miller was working as a confidential informant

6 for the police department?

7 A I believe I was.

8 Q Were you aware that Jason Miller while working as

9 a confidential informant was an inmate in the

10 Brown County Jail?

11 A Yes.

12 Q Were you aware as an inmate that he had access to

13 your client, Mr. Arrington?

14 A Yes.

15 Q Were you aware that police had outfitted Jason

16 Miller with a recording device that he used to

17 record conversations with one or more inmates?

18 A I was.

19 Q Were you aware that Jason Miller had the ability

20 to turn the recording device on and off at his

21 will?

22 A I don't think I knew that specifically.

23 Q I would ask if you would take a look at Exhibit 3

24 and the final paragraph. You had read this

25 before trial, correct?

1 A I did, yes.

2 Q If you just take a look at that final paragraph.

3 A Exhibit 3, the final paragraph does indicate that
4 Mr. Miller could have turned it on and off at will
5 and as a result of that I would have been aware of
6 that before trial.

7 Q Now, the report in the statement Exhibits 2 and 3
8 are dated March 30 of 2017. But was it your
9 understanding that the recordings of Jason
10 Miller's conversations with Mr. Arrington
11 happened long before that?

12 A Yes, they did.

13 Q And would you agree that the recordings with
14 Mr. Arrington were made on April 11, 12 and 13 of
15 2016?

16 A Yes.

17 Q Given that date, the April 11, 12 and 13, was it
18 your understanding that by that time a criminal
19 -- the criminal complaint against Mr. Arrington
20 had been filed?

21 A That was my understanding.

22 Q And indeed were you aware that Mr. Arrington had
23 counsel appointed by the time of the first
24 recording on April 11?

25 A I don't remember exactly when Mr. Arrington's first

1 counsel had withdrawn. And I don't remember how long
2 he had been without counsel or what those dates were.
3 Q Okay. And just so that we're clear, you were not
4 the first counsel?
5 A I was not his first attorney, correct.
6 Q At any time before or during trial had you
7 considered moving to suppress the recordings of
8 Miller's conversations with Mr. Arrington?
9 A I did not.
10 Q Had you considered whether the statements were
11 obtained in violation of Mr. Arrington's right to
12 counsel?
13 A I had not.
14 Q Had you researched the question?
15 A I did not.
16 Q If you hadn't, if I may say missed it, would you
17 have filed a motion before trial seeking to
18 suppress the statements that Miller obtained from
19 Arrington?
20 A I likely would have, yes.
21 Q Now, during your representation of Mr. Arrington,
22 was there a point at which he gave a statement to
23 Detective Linzmeier?
24 A There was.
25 Q And do you recall approximately when that

1 occurred?

2 A I think that would have been approximately April of

3 2017.

4 Q That is indeed what the record shows. So you

5 were pretty far into this case on representation?

6 A Absolutely.

7 Q And his speaking with the detective, was that

8 done with your knowledge?

9 A No.

10 Q Did you expect heading into trial that

11 Detective Linzmeier would testify about

12 Mr. Arrington's statements to him?

13 A After I was aware of the statement, yes.

14 Q How quickly did you become aware that he had

15 spoken with the detective?

16 A I think I first learned of it maybe two or so days

17 after the statement was given.

18 Q So mid -- mid April you knew he had spoken to the

19 detective?

20 A That sounds about right, yes.

21 Q And about that time did you know the contents of

22 what he had said?

23 A I did.

24 Q And then so that would have been several months

25 before the trial in October, would you agree?

1 A Yes.

2 Q Did Mr. Arrington's statement to the detective
3 impact the theory of defense?

4 A Yes.

5 Q Could you describe how?

6 A For most of my representation leading up to that
7 statement we had been focused on building an alibi
8 defense. An alibi and self-defense are relatively
9 antagonistic defenses.

10 Q Would you agree that at trial in broad terms the
11 defense was indeed self-defense?

12 A Yes, it was.

13 Q So the alibi had been abandoned?

14 A It had.

15 Q Now, as you I'm sure recall, Mr. Arrington
16 testified at trial. Did you think he should
17 testify?

18 A At the time I thought he should have, yes.

19 Q Did you advise him to testify?

20 A I did.

21 Q Did you think he'd be a good witness?

22 A I did.

23 Q And now sitting back looking back at how the
24 trial went did you think indeed he was a good
25 witness?

1 A I thought he was a good witness but obviously the
2 verdict came as it did so I don't know how much value
3 my thought really carries weight now.

4 Q What did you think about his demeanor on the
5 witness stand?

6 A It was fantastic. It was exactly what I wanted.

7 Q The audio recordings that are some of which the
8 jury got to hear, you agree these were one of the
9 conversations between Mr. Miller and your client,
10 correct?

11 A Yes.

12 Q And you had listened to those before trial?

13 A I did.

14 Q In your opinion did the audio recording that the
15 jury heard sort of cast Mr. Arrington's demeanor
16 in a different light?

17 MR. ACKELL: I'm going to object to
18 relevance. I don't think his opinion on the
19 demeanor is relevant to whether or not he was
20 effective counsel.

21 THE COURT: Well, he already testified
22 about demeanor. That's a somewhat complicated
23 question. Why don't you repeat the question.

24 BY MS. HAGOPIAN:

25 Q Okay. The question is do you believe that the

1 audio recording that the jury heard cast
2 Mr. Arrington's demeanor or character in a
3 somewhat different light than how he presented
4 himself in his testimony?

5 THE COURT: Well, he already answered the
6 question about demeanor at trial and now you're
7 subdividing it, really. I'm going to allow the
8 question and he can answer the question but I think
9 he already has. But if he hasn't go ahead.

10 THE WITNESS: I do think it cast him in a
11 different light.

12 BY MS. HAGOPIAN:

13 Q How so?

14 A On the witness stand at trial he was very calm and
15 very matter of fact in his delivery. I thought his
16 eye contact was good. He was very polite with the
17 prosecutor. There were a lot of yes, sirs, no, sirs.
18 But on the recording he was very animated. He wasn't
19 using appropriate English. There was a lot of, I
20 guess, more I don't know if outbursts is the right
21 word, but he was just a lot more animated than he was
22 at trial.

23 Q Would you agree that the recording contained
24 quite a lot of profanity?

25 A It did.

1 Q And do you believe that the recording contained
2 some conversations that the jury might find
3 offensive?

4 A I think that's fair.

5 MS. HAGOPIAN: That's all I have. Thank
6 you.

7 THE COURT: Mr. Ackell, do you have any
8 questions?

9 MR. ACKELL: Yes, Your Honor. Thank you.

10 CROSS-EXAMINATION

11 BY MR. ACKELL:

12 Q Attorney Hughes, how long have you been a lawyer?

13 A Since 2008.

14 Q And the entire time you've been a lawyer have you
15 been practicing while licensed in the State of
16 Wisconsin?

17 A Yes.

18 Q Where did you go to law school?

19 A Madison.

20 Q Have you practiced criminal law your entire
21 career?

22 A Not exclusively but yes.

23 Q So at least as part of your practice?

24 A Yes.

25 Q Currently -- well, actually, currently is not as

1 important, when representing Mr. Arrington, about
2 -- an estimation what percentage of your practice
3 was criminal law?
4 A At that time 100 percent.
5 Q How did you come to represent Mr. Arrington?
6 A A request was made by the public defender's office in
7 Green Bay.
8 Q And you take public defender appointments?
9 A Yes.
10 Q As part of taking public defender appointments do
11 you have to maintain along with the good license
12 -- well, are there different qualifications for
13 taking different levels of cases through the
14 public defender?
15 A There are.
16 Q And is first degree intentional homicide the
17 highest level?
18 A For trial certification, yes.
19 Q Are you certified to or were you certified when
20 representing Mr. Arrington to take such cases?
21 A Yes.
22 Q Do you have to maintain a certain level of
23 practice or a certain frequency of practice in
24 order to take such a level of cases?
25 A I don't think so. I think once you get a level

1 certification you hang on to it. But I haven't
2 really looked into what it would take to lose the
3 certification.

4 Q How do you obtain the certification in the first
5 place?

6 A I think to get up to A you need to have at least two
7 Class B jury trials within five years of your
8 request. And you also need to have "X" number of
9 jury trials within so many years before the request.
10 And you need to have I think it's the regional
11 director or some such bureaucratic decision maker
12 providing a level -- a letter of recommendation.

13 Q So is it fair to say that not every attorney who
14 practices criminal law would be certified by the
15 public defender's office to take an A level
16 felony?

17 A I don't think every attorney in Wisconsin is
18 certified, correct.

19 Q So you testified that there were three recordings
20 which you received; is that correct?

21 A Yes.

22 Q But there's only transcript of one of the
23 recordings, is that true?

24 A One that I have in front of me. I don't have
25 independent recollection of how many I received at

1 trial.

2 Q How many recordings were played at trial?

3 A I don't remember. There were excerpts played and I
4 believe there were three different excerpts, but I
5 don't have independent recollection of whether there
6 were three from the same recording or if they were
7 one from each or any other combination.

8 Q Can you recall the contents of the other
9 recordings not the one that's in front of you?

10 A Recall them?

11 Q Well, just in general what the conversations were
12 about in the other two?

13 A There was a lot of small talk and it sounded like a
14 lot of Mr. Arrington looking for guidance from
15 Mr. Miller.

16 Q Now, you had testified to being aware that, first
17 of all, Confidential Informant No. 355 was
18 Mr. Miller; is that correct?

19 A Yes.

20 Q And I guess on the reverse you also testified
21 that you were aware that Mr. Miller was acting as
22 a confidential informant?

23 A Yes.

24 Q Were you aware of when that relationship with the
25 police started?

1 A I don't remember offhand.

2 Q Mr. Miller testified in this trial; is that

3 correct?

4 A He did.

5 Q And you had the chance to cross-examine

6 Mr. Miller?

7 A I did.

8 Q Did you cross-examine Mr. Miller?

9 A I did.

10 Q Did you ask him about consideration that he may

11 have received?

12 A I don't remember but I'd be surprised if I didn't.

13 Q Do you recall if he received any consideration?

14 A I think there was a document in defense motion that

15 showed there was consideration but I don't remember

16 exactly what it was. I think he had a plea agreement

17 that would have required him to provide a full

18 debrief and testify against Mr. Arrington and some

19 other individual.

20 Q I believe I can bring that up to you.

21 All right. Attorney Hughes, I am

22 approaching you with what has been marked as

23 Exhibit 4. Do you recognize that document?

24 A Yes. This appears to be the offer given to

25 Mr. Miller.

1 Q And is that the consideration which you were just
2 testifying to?
3 A Yes.
4 Q Was that a part of discovery?
5 A Yes, it was.
6 Q What's the date of that global offer memo?
7 A March 23, 2017.
8 Q I'm going to ask you to turn your attention to
9 Exhibit No. 2, do you have that in front of you?
10 A I do.
11 Q What is the date of that meeting?
12 A The meeting was March 30, 2017.
13 Q Is it fair to say that March 30th is after
14 March 23rd?
15 A I'd be surprised if it wasn't.
16 Q So how could Mr. Miller receive consideration
17 when he hasn't even done anything yet?
18 A I have no idea how the determination of what
19 consideration or when is given. So I don't know how
20 your office works.
21 Q Moving forward, you said that you had not --
22 well, you said that you did not bring a motion as
23 to whether or not Mr. Arrington's Sixth Amendment
24 rights were violated; is that correct?
25 A That is correct.

1 Q And also that you did not research it; is that
2 correct?
3 A It is correct.
4 Q Did you research the cases which after receiving
5 the defense's motion?
6 A I reviewed maybe not all but certainly a lot of the
7 cases that were cited in defense motion.
8 Q And it is your testimony here today that if you
9 were aware of that you would have brought such
10 motion to the court?
11 A I believe I would have, yes.
12 Q You also testified that Arrington's statements to
13 Detective Linzmeier impacted the theory of
14 defense, is that true?
15 A Yes, it is.
16 Q In fact, it completely changed it?
17 A We had -- it was not the first time we had thought
18 about self-defense, but it was the first time I felt
19 obligated to think about self-defense exclusively.
20 Q And when was his meeting that he had with
21 Detective Linzmeier?
22 A April of '17.
23 Q Do you know whether or not that meeting came
24 after you had sent Mr. Arrington the report about
25 the wire recording?

1 A I don't know.

2 Q Is your law license currently in good standing?

3 A It is.

4 Q You testified that before trial you were aware
5 Mr. Miller was a confidential informant?

6 A Yes.

7 Q Were you aware independent of these documents or
8 from these documents?

9 A Independent of the documents?

10 Q Where did you gain that knowledge?

11 A Mr. Arrington told me that he believed Mr. Miller was
12 a CI.

13 Q Do you recall when he told you this?

14 A That would have been very early in my representation.

15 Q Before you received the report from March 30th or
16 after?

17 A Before the March 30th, 2017 report?

18 Q Yes.

19 A Before then.

20 Q And you said you were aware that Jason Miller as
21 a confidential informant was working for the
22 police; is that correct?

23 A Yes.

24 Q When did you gain that knowledge?

25 A That would have been the same conversation I had with

1 Mr. Arrington early in my representation of him.

2 Q When were you appointed?

3 A I believe it would have been sometime in the summer
4 of '16 is my best guess.

5 Q So it would have been after these recordings?

6 A It would have been, yes.

7 Q Were the recordings played in full at trial or
8 just portions?

9 A Just portions.

10 MR. ACKELL: I have no further questions.

11 THE COURT: Thank you. Do you have any
12 other questions?

13 MS. HAGOPIAN: Just a couple.

14 THE COURT: Go ahead.

15 REDIRECT EXAMINATION

16 BY MS. HAGOPIAN:

17 Q If I had told you that the record shows you were
18 appointed to represent Mr. Arrington on about
19 June 16 of 2016, does that sound right to you?

20 A It does.

21 Q And these conversations with Mr. Miller were
22 recorded in April of 2016, correct?

23 A Yes.

24 Q When Mr. Arrington told you he thought that
25 Mr. Miller was an informant, did he tell you that

1 he was wearing a recording device?

2 A Mr. Arrington said, if I remember correctly, that he
3 thought he talked with Mr. Miller who he thought was
4 a CI. I don't remember if Arrington was aware of any
5 recording device.

6 Q Was it your understanding that Mr. Arrington,
7 when he was speaking -- let me rephrase that, I'm
8 sorry.

9 Do you have an understanding as to
10 whether at the time Mr. Arrington was speaking
11 with Mr. Miller he believed Miller was an
12 informant?

13 A I got the impression that Arrington did believe
14 Mr. Miller was an informant at the time Arrington and
15 I had that conversation.

16 Q When you had the conversation, but -- perhaps not
17 asking clearly. Did you have an understanding
18 about whether Mr. Arrington in April of 2016,
19 some almost three months before you were
20 appointed, when he talked to Mr. Miller he knew
21 Miller was an informant?

22 MR. ACKELL: I'm going to object. That
23 calls for speculation.

24 THE COURT: That's a long question. Why
25 don't you restate the question.

1 BY MS. HAGOPIAN:

2 Q Okay. You were appointed in June. The
3 conversations occurred in April. Sometime after
4 you were appointed Mr. Arrington told you he
5 thought Miller was an informant, correct?

6 A Yes.

7 Q And he had talked to Miller?

8 A Yes.

9 Q Did you know whether Mr. Arrington, when he spoke
10 with Miller before you were appointed back in
11 April, when he was speaking to Miller, did he
12 know Miller was an informant?

13 MR. ACKELL: Object again. He can't know
14 what's in his head two months before he -- he's --

15 THE COURT: I think what she can do is ask
16 whether he stated this.

17 MS. HAGOPIAN: Did he tell that you?

18 THE COURT: Yes. That she can ask him,
19 overrule that objection.

20 THE WITNESS: My understanding was that
21 Mr. Arrington did not know at the time of his
22 conversations with Mr. Miller that Mr. Miller was a
23 CI.

24 MS. HAGOPIAN: Thank you. That's all I
25 have.

1 THE COURT: Thank you. Do you have any
2 other questions, Counselor?
3 MR. ACKELL: No, Your Honor, thank you.
4 THE COURT: Thank you. You can step down.
5 Is this witness excused then?
6 MS. HAGOPIAN: Yes.
7 MR. ACKELL: For my purposes as well.
8 THE COURT: You're excused then. Thank you
9 very much.
10 MS. HAGOPIAN: Thank you, Mr. Hughes.
11 THE COURT: Your next witness, please.
12 MS. HAGOPIAN: Sure. May I move admission
13 of Exhibits 1, 2 and 3, please?
14 THE COURT: Any opposition?
15 MR. ACKELL: No opposition. I would also
16 move Exhibit 4 as well.
17 THE COURT: What was four again?
18 MR. ACKELL: Four was the offer memo. That
19 the consideration --
20 THE COURT: To Mr. Miller?
21 MR. ACKELL: To -- yes, to Mr. Miller.
22 THE COURT: All right. Any objection on
23 that, Counselor?
24 MS. HAGOPIAN: No.
25 THE COURT: So I will receive Exhibits 1,

1 2, 3, and 4.

2 MS. HAGOPIAN: Then I would call to the
3 stand Michael Wanta.

4 MICHAEL WANTA, called as a witness
5 herein, having been first duly sworn, was
6 examined and testified as follows:

7 THE WITNESS: Michael J. Wanta,
8 M-I-C-H-A-E-L, W-A-N-T-A.

9 DIRECT EXAMINATION

10 BY MS. HAGOPIAN:

11 Q Mr. Wanta, were you employed at one time by the
12 Green Bay Police Department?

13 A Yes.

14 Q Are you now retired?

15 A I am.

16 Q And at the time of your retirement were you a
17 detective with the department?

18 A I was.

19 Q Were you also a detective in April of 2016?

20 A Yes.

21 Q And are you familiar with an individual by the
22 name of Jason Miller?

23 A I am.

24 Q And in April of 2016 was he an inmate at the
25 Brown County Jail?

1 A Yes, he was.

2 Q And at that time did Mr. Miller have a pending
3 charge against him?

4 A Yes, I believe so.

5 Q And the charge or charges would have been a Brown
6 County case; is that correct?

7 A That's correct.

8 Q Now, while Mr. Miller was an inmate was he also
9 working as a confidential informant for the Green
10 Bay Police Department?

11 A After I had contact with him?

12 Q Yes. Let me be clear on the time. I'm referring
13 to early April of 2016.

14 A He became a confidential informant for the police
15 department and myself in early April of 2016, yes.

16 Q And how did that come about?

17 A I was working as a day shift detective and I was one
18 of the detectives assigned to a homicide case
19 involving a suspect name Antwon Powell.

20 I became aware of Mr. Miller's request
21 to speak with law enforcement when a request had
22 come from Mr. Miller's attorney to the district
23 attorney's office which passed it on to the
24 police department. And then my lieutenants at
25 the time, because I was one of the detectives

1 involved in the Antwon Powell case and that was
2 what this information was relative to, it got
3 assigned to me and my partner, Brad Linzmeier.
4 Q When you say "partner" could you explain what
5 that means in terms of the work on your cases?
6 A Sure. In this particular instance Brad Linzmeier,
7 Detective Linzmeier and I, were both day shift
8 detectives. We worked on the Antwon Powell homicide.
9 And after the initial investigation is done with all
10 the officers and detectives and the work starts
11 getting pared down in the end it was Detective
12 Linzmeier and I who finished all the work on the
13 Antwon Powell case. We became the primary detectives
14 on that case which made us partners.
15 Q And then there was at least one other homicide
16 being investigated or worked at that time
17 involving Richard Arrington; isn't that correct?
18 A That's correct.
19 Q And was Brad Linzmeier the lead detective on that
20 case?
21 A He was one of them. I don't remember. I was not
22 assigned to that case.
23 Q You were not?
24 A No.
25 Q So you were partners but you were not involved in

1 the Arrington case?

2 A Correct. And by partners I didn't mean to imply we
3 work all cases together all the time. It just
4 happened in the Powell case that we were.

5 Q Okay. And just so I'm clear, sort of the channel
6 that this information came to you, it was from
7 the DA's office indicating that there was an
8 inmate in the jail, Jason Miller, who was
9 interested in providing information; is that
10 right?

11 A It was from Mr. Miller's attorney, Cole White, who
12 passed it -- to spoke with the District Attorney who
13 contacted the police department.

14 Q And then after the lieutenant tagged you on this
15 did you meet with Mr. Miller?

16 A I did.

17 Q Did that occur at the jail?

18 A Yes, it did.

19 Q And did you meet with him more than once?

20 A Through the course of the investigation?

21 Q I'm sorry, did you meet with him more than once
22 in the process of setting him up as an informant?

23 A I believe I did, yes.

24 Q Was Detective Linzmeier present at any of those
25 meetings?

1 A He was at some but not all of them.

2 Q At the time that you had these meetings with

3 Mr. Miller where he was expressing an interest as

4 working as an informant, did you have an

5 understanding about whether Mr. Miller was

6 contemplating some consideration for his

7 assistance?

8 A Your question was was I aware that he was seeking

9 consideration?

10 Q Yes.

11 A Yes.

12 Q Were you involved in negotiating what that

13 consideration might be?

14 A No.

15 Q Who does that?

16 A That is done by the District Attorney usually based

17 on what the confidential informant actually did.

18 Q Meaning what in the end they're able to produce?

19 A Correct.

20 Q So that the more they produce the more they might

21 get?

22 A Correct.

23 Q Had Mr. Miller previously worked as an informant

24 for the Green Bay Police Department?

25 A I don't believe it was for the Green Bay Police

1 Department. I was aware that he may have done some
2 work as a confidential informant for the Brown County
3 Drug Task Force.

4 Q Okay. Do you happen to know if he had received
5 consideration for that work?

6 A I do not know that.

7 Q At that time in April of 2016, do you recall
8 which pod of the jail Mr. Miller was housed?

9 A During my initial contact with him he was in, I
10 believe, in Golf Pod, G as in golf.

11 Q Okay. Did that change during?

12 A Yes.

13 Q During the course of his work as a CI?

14 A Yes, he then was transferred over to Fox Pod.

15 Q Was there a reason for the transfer?

16 A Yeah. During the investigation one of the subjects
17 that he identified that he could speak with to gather
18 further information was in Fox Pod.

19 Q And do you recall who that was that he was going
20 to speak to?

21 A Let me make sure I got this right. He was -- when he
22 came to speak with me on the 6th of April he gave me
23 information relative to an inmate named Donald Moore.
24 He and Donald Moore at that time were in Golf Pod
25 together. They ended up both being in Fox Pod later

1 on.

2 Q And was Powell in Fox Pod?

3 A He was.

4 Q Do you know if Mr. Arrington was in Fox Pod too?

5 A Mr. Arrington was not in jail at the time of these

6 initial conversations and information that was

7 gathered but he eventually was in Fox Pod, yes.

8 Q And when you say "eventually," he was in Fox Pod

9 at the time the recordings were actually being

10 made; isn't that right?

11 A Yes, I believe so.

12 Q So in addition to having information from

13 Mr. Miller that he thought he could get something

14 from Mr. Powell?

15 A Actually Mr. Moore initially but then also

16 Mr. Powell, yes.

17 Q Okay. At some point -- at any time during his

18 work for you as an informant in the jail, did

19 Mr. Miller indicate that he might also be able to

20 obtain information from Richard Arrington?

21 A Yes.

22 Q Do you recall when that occurred?

23 A I don't recall exactly when that occurred.

24 Q Did it occur while he was still working as an

25 informant?

1 A Yes.

2 Q When did he start as an informant?

3 A So my initial conversation with him was on the sixth.
4 And then through time working with jail staff and
5 working out all the things we had to get in order to
6 do this, I think he started his first day that he
7 made a recording for me was on the 11th.

8 Q And then how many more recordings did he make?

9 A He made one on the 12th and on the 13th.

10 Q And then what happened after the 13th?

11 A After the 13th I believe Antwon Powell was
12 transferred -- transferred back to Dodge. He had
13 only come back to Green Bay for a hearing that he
14 had. So he was only there a short time.

15 Q Okay. So is it fair to say that just in general
16 terms Miller's work as an informant went from
17 April 16 through the 13th?

18 A April 16?

19 Q Did I say 16? I'm sorry. April 6 through the
20 13?

21 A That would be fair. My initial conversation was
22 gathered from him on the sixth and his actual
23 recordings were 11, 12, 13.

24 Q And so it would have been sometime between the
25 sixth and the 13th that Miller told you he

1 thought he could also get something on -- from
2 Arrington?

3 A It wasn't put quite in that context. And I can't
4 remember exactly verbatim what he said, but what he
5 said was that Mr. Arrington was talking with him and
6 he believed that Mr. Arrington would tell him things
7 about the case and he asked if he should record it.
8 I said he could record conversations with
9 Mr. Arrington.

10 Q When you -- when you say "record," can you give
11 us a sense of how this recording device worked?

12 A So this was a digital audio recording device.
13 There's no way to monitor it or listen to this
14 particular device. It is a matter of basically
15 flipping a switch on the side of it on and off.

16 Q Okay. So when you say -- I always think of like
17 a wire where the police -- another officer can
18 listen in on what's being said contemporaneous to
19 the conversation but this didn't have the
20 capability?

21 A This was a digital audio recording device, right, so
22 we could not listen in live-time.

23 Q Okay. Can you just, more out of curiosity, how
24 large was this device?

25 A It was less than 2 by 2. It's a small square about

1 that big and it was about that thick.

2 Q And where is it worn on the informant's body?

3 MR. ACKELL: Object to relevance. I mean,
4 I don't see how this has to do with the crux of the
5 motion.

6 THE COURT: I'm going to overrule. I think
7 it's relevant. I'm kind of curious myself. So go
8 ahead, you can answer the question.

9 THE WITNESS: Mr. Miller was provided a
10 band to wear around his waist and then in the band
11 there was a place, a pocket, to slip the recording
12 device.

13 BY MS. HAGOPIAN:

14 Q Okay. And is it correct that it was Mr. Miller
15 then who had the ability to turn it on and off?

16 A Correct.

17 Q And he would have to do that because otherwise if
18 it was running all the time you'd run out of
19 tape?

20 A Correct.

21 Q Okay. And there wasn't any way for someone
22 remotely to turn it off?

23 A No.

24 Q How was it actually provided to Mr. Miller over
25 the course of the three days?

1 A So the way it was worked out was I would provide the
2 jail staff each day with a clean fresh, if you will,
3 recording device. Fresh batteries and blank. It's a
4 digital recording device so it's not like it's a
5 cassette or anything like that. So I would provide
6 them with that at around noon, I believe, maybe
7 earlier.

8 And at some point the jail staff would
9 have the opportunity to provide Mr. Miller with
10 that recording device. At the end of the night
11 the jail staff would recover that recording
12 device. And I would go each night then at
13 usually after 9:00 p.m. and recover the recording
14 device, bring it back to the police department
15 and place it into evidence. And then in the next
16 morning when I started my shift I would then
17 review or transfer the information on the
18 recording device, place it into evidence and then
19 prepare the recording device to go back to the
20 jail around noon.

21 Q When you say you would "transfer" it what do you
22 mean by that?

23 A Our recordings were transferred to CDs and then
24 placed into evidence.

25 Q When you made that transfer were you also

1 listening to the contents?

2 A I would make an original that would go into evidence,
3 and then I would make a working copy of it and then I
4 would use the working copy to review it.

5 Q And this would occur the morning of the next day?

6 A Yes.

7 Q And would you then listen that morning? Each
8 morning would you listen to the contents of the
9 tape?

10 A As much as I could, if I was able to.

11 Q So is it fair to say that each morning after you
12 retrieved or I'm sorry, after you transferred the
13 information to a CD, you're listening to it, were
14 you aware that he was recording conversations
15 beyond just Mr. Powell?

16 A Beyond? What do you mean by beyond?

17 Q Mr. Miller had made recordings of conversations
18 of Mr. Arrington, specifically?

19 A I'm sorry, one more time? The timeframe of me
20 knowing, is that what you're asking?

21 Q Yes. Uh-huh.

22 A So the original target was Mr. Donald Moore. It then
23 also because Mr. Powell had come back, Mr. Powell was
24 part of that target that -- the scope in the
25 investigation as well. At one point Mr. Miller

1 expressed to myself and Detective Linzmeier that
2 Mr. Arrington had -- was in their pod and he was
3 talking with Mr. Miller about his case. And
4 Mr. Miller asked us then if he could -- if he should
5 record that conversation and we said if you want to
6 record the conversation you can.

7 Q Okay. And I'm just perhaps in-artfully trying to
8 pin down when you became aware that the tapes did
9 include recorded conversations with
10 Mr. Arrington?

11 A To the best of my recollection on the 11th and 12th
12 he did not have any conversations with Mr. Arrington.
13 Now, again, I wasn't the case agent so I wouldn't
14 have listened to them. And if there was, it would --
15 that information would have been passed on to, but I
16 believe it was the 13th when we actually had a
17 recording with Mr. Arrington.

18 Q I can tell you that what the record shows what's
19 on the CDs that were provided is that there were
20 conversations with Mr. Arrington recorded on all
21 three days?

22 A Okay.

23 Q That doesn't ring any bells with you?

24 A I'm saying it's entirely possible. My focus was on
25 the Powell case so I don't remember that detail

1 specifically. But if I would have been made aware of
2 it because at that time Detective Linzmeier was
3 working the Arrington case and I was more focused on
4 the Powell case I would have turned it over to him.

5 MS. HAGOPIAN: All right. Thank you.

6 That's all I have. Thank you.

7 THE COURT: Mr. Ackell, any questions.

8 CROSS-EXAMINATION

9 BY MR. ACKELL:

10 Q Yes, Your Honor. Thank you. Before I begin,
11 just going to get something marked.

12 While that's being done, Detective
13 Wanta, is it common for people who are working or
14 people who are assisting law enforcement to ask
15 you for consideration?

16 A Yes, that's usually why they're doing it.

17 Q Did Mr. Miller ask you specifically for
18 consideration in this case?

19 A Not any specific consideration. I was aware that he
20 wanted to do the work for consideration in his own
21 case but not that -- there were no specifics
22 involved.

23 Q Do you recall what you told Mr. Miller about
24 consideration?

25 A I'm sorry?

1 Q Do you recall what you told Mr. Miller about
2 consideration if he had asked?
3 A I don't remember specifically. It would be my
4 standard and practice based on my experience, not
5 only as a detective my training -- and training and
6 experience not only as a detective but as a narcotics
7 investigator, that we did not get involved in
8 specifics regarding any consideration, that comes
9 from the District Attorney. And we make that very
10 clear from the start.
11 Q I'm approaching you with a few exhibits. Let's
12 start with Exhibit No. 5. Do you recognize this
13 document?
14 A Yes, I do.
15 Q What is that document?
16 A This is a summary of my initial meeting with
17 Mr. Miller when he expressed his interest to be a
18 confidential informant.
19 Q And when did this initial meeting take place?
20 A This is on April 6 of 2016.
21 Q Do you have any knowledge of when Mr. Arrington
22 was booked into jail?
23 A I believe it was on the tenth.
24 Q So after April 6?
25 A Yes.

1 Q So were you even aware of any possibility of --
2 of Mr. Miller's speaking to Mr. Arrington during
3 your April 6 meeting?

4 A No.

5 Q Did you give any direction to Mr. Miller as to
6 what types of information to record?

7 A I did not.

8 Q Did you give any direction to Mr. Miller as to
9 what types of questions to ask?

10 A I did not.

11 Q Did you give any type of direction to Mr. Miller
12 as to what types of things to listen for?

13 A I did not, no specifics.

14 Q What types of directions did you give to
15 Mr. Miller?

16 A Mr. Miller expressed an interest in recording
17 conversations that he was having with the parties
18 that we identified. And we told him that -- that we
19 would help facilitate that. And the information he
20 would gather would, again, be used as part of his
21 consideration.

22 Q Did you give him directions on how to use the
23 recorder?

24 A Yes.

25 Q What was the target of this investigation?

1 A The initial target of my investigation was Donald
2 Moore. That was who he had initially provided
3 information to me about but it was also relative to
4 Antwon Powell so he was considered a target as well.
5 Q And was this for building a court case or was it
6 for some other reason?
7 A Yes, it was reference a homicide trial.
8 Q The homicide that Mr. Powell was being held for?
9 A Correct.
10 Q I'm approaching you now with what has been marked
11 as Exhibit 6. Do you recognize this document?
12 A I do.
13 Q What is that document?
14 A This is a summary of my details from the 11th and it
15 is reference to the digital recording device or the
16 wire that we used that day.
17 Q Do you sum up the relevant conversations in this
18 report?
19 A I did, just a brief summary of them.
20 Q Is Mr. Arrington's name ever mentioned in this
21 report?
22 A No.
23 Q Why would that be?
24 A If his conversation was on that recording then it was
25 not relative to my case and so that information was

1 passed on to, I believe, Detective Linzmeier who was
2 working that Arrington case.

3 Q I'm going to approach you with what's been marked
4 as Exhibit 7. Do you recognize this document?

5 A I do.

6 Q What's that document?

7 A A summary of the digital recording device from the
8 12th.

9 Q So the next day?

10 A Yes.

11 Q Is Mr. Arrington's name ever mentioned in this
12 report?

13 A It is not.

14 Q Why?

15 A Again, that information wasn't relative to my case.

16 Q Finally, I'm providing you with what has been
17 marked as Exhibit 8. Do you recognize this
18 document?

19 A I do.

20 Q What's that?

21 A A summary of the digital recording device from the
22 13th.

23 Q Is Mr. Arrington's name ever mentioned in that
24 report?

25 A It is not.

1 Q Why?

2 A Again, because if there was a recording of him it
3 wasn't relative to my case specifically.

4 Q Would you have had any ability to direct
5 Mr. Miller while he was in the jail?

6 A No.

7 Q Did you ever direct Mr. Miller to speak with
8 Mr. Arrington?

9 A Mr. Miller approached us or myself about speaking
10 with Mr. Arrington and we said it was okay or we said
11 he could record conversations.

12 Q Did you ever tell him that you would hold it
13 against him or you would tell the district
14 attorney's if he didn't help with Mr. Arrington?

15 A No.

16 Q Are you aware of the current status of
17 Mr. Miller's case?

18 A Roughly or vaguely, not specifically.

19 Q Are you aware if he ever pleaded and received the
20 consideration he was looking for?

21 A I believe he did not receive the consideration.

22 Q So you had testified on direct about setting up a
23 transfer for Mr. Miller and Mr. Moore to Fox Pod;
24 is that correct?

25 A That's correct.

1 Q Were you aware of Mr. Arrington being in Fox Pod
2 when you set up this transfer?

3 A No.

4 MR. ACKELL: I have no further questions
5 for this witness.

6 THE COURT: Thank you. Counselor, do you
7 have any other questions?

8 REDIRECT EXAMINATION

9 BY MS. HAGOPIAN:

10 Q Just a couple. Detective, if I told you the
11 record showed that Mr. Arrington actually turned
12 himself in to the police department on April 8 of
13 2016, does that sound correct?

14 A I wouldn't know that specifics but I believe you,
15 yes, it sounds correct.

16 Q As I understand your testimony Mr. Arrington's
17 name doesn't appear in these exhibits, these
18 reports you prepared cause Arrington wasn't your
19 case, right?

20 A Correct.

21 Q But you would have provided that information to
22 Detective Linzmeier about what may have appeared
23 on the tapes concerning Mr. Arrington?

24 A Correct.

25 Q And you testified that as far as you know

1 Mr. Miller didn't actually in the end receive
2 consideration for his assistance; is that right?

3 A I believe that to be true, yes. I can't say I know
4 for sure.

5 Q Is that because he ultimately ended up taking
6 off?

7 A He violated his agreement with the District Attorney,
8 I believe.

9 Q And did that happen sometime after his work was
10 done with you?

11 A That's correct.

12 MS. HAGOPIAN: Thank you.

13 THE COURT: Counsel, do you have anything
14 else, Mr. Ackell?

15 RECROSS-EXAMINATION

16 BY MR. ACKELL:

17 Q Very briefly. April 8 is still after your
18 initial meeting with Mr. Miller; is that correct?

19 A That's correct.

20 Q So even with the two day change in date it
21 doesn't change the fact that you didn't know
22 Mr. Arrington would have even been in jail when
23 you spoke Mr. Miller; is that correct?

24 A That's correct.

25 MR. ACKELL: No further questions.

1 THE COURT: Thank you. You are excused
2 then. Is this witness excused from any subpoena?
3 MS. HAGOPIAN: Yes.
4 MR. ACKELL: For the state's purposes, yes.
5 THE COURT: You're free to go. Thank you..
6 MR. ACKELL: Your Honor, I would move
7 Exhibits 5 through 8 into evidence as well.
8 THE COURT: Any objection?
9 MS. HAGOPIAN: No.
10 THE COURT: Then I will receive Exhibit
11 No. 8, 7, 6 and 5. Thank you. Your next witness,
12 please.
13 MS. HAGOPIAN: Bradley Linzmeier.
14 **BRADLEY LINZMEIER**, called as a witness
15 herein, having been first duly sworn, was
16 examined and testified as follows:
17 THE WITNESS: Bradley Linzmeier,
18 B-R-A-D-L-E-Y; L-I-N-Z-M-E-I-E-R.
19 DIRECT EXAMINATION
20 BY MS. HAGOPIAN:
21 Q Thank you. Were you employed by the Green Bay
22 Police Department at one time?
23 A Yes.
24 Q Are you recently retired?
25 A Yes.

1 Q And in April of 2016 were you employed as a
2 detective for the department?

3 A Yes.

4 Q Is it correct to say that you were the lead
5 detective in the case involving Richard
6 Arrington?

7 A Yes.

8 Q And in April of 2016 were you aware that a jail
9 inmate by the name of Jason Miller was working as
10 an informant for the police department?

11 A Yes, for another homicide investigation, yes.

12 Q Were you at all involved in setting Mr. Miller up
13 as an informant in the jail?

14 A My involvement really I accompanied Detective Wanta,
15 I believe, one of the meetings when we met with
16 Mr. Miller prior to the recordings. Again, Detective
17 Wanta had the experience with these units, I had
18 never been in the drug unit. And so Detective Wanta
19 took on the recording part of it, supplying the wire
20 and explaining the wire.

21 Q Was it your understanding that Mr. Miller's
22 involvement came about from his attorney to the
23 DA's office to the police department?

24 A Yes.

25 Q And was it your understanding that initially the

1 information you had was that he could provide --
2 he could obtain information from an Antwon
3 Powell?

4 A Yes, and a Donald Moore.

5 Q Were you working the Powell case?

6 A Yes.

7 Q In addition to the Arrington case?

8 A Yeah. The Powell case originated in 2015.

9 Q But it was still ongoing in April of 2016?

10 A Correct.

11 Q Did there come a point in Mr. Miller's work as a
12 jail informant for your department in April of
13 2016 when you became aware that he was also
14 conversing with Mr. Arrington?

15 A Yes.

16 Q How did you come to find that out?

17 A Mr. Miller informed us that Mr. Arrington was talking
18 about his case. And he, I believe, or I recall
19 Mr. Miller saying he didn't know why Arrington felt
20 comfortable speaking with him but he did and he asked
21 if he should record any of those conversations.

22 Q And what did you tell him?

23 A Yes.

24 Q During this time frame we have that seems to go
25 from about April 6 through the 13th of 2016, are

1 you able to recall when during that time frame
2 this conversation occurred with Mr. Miller about
3 Mr. Arrington?

4 A Yeah, I do not know the exact date.

5 Q But it was during that period from the sixth to
6 the 13th?

7 A Correct.

8 Q Were you aware at the time that he made that
9 suggestion that he could also record
10 conversations with Mr. Arrington, were you aware
11 that Mr. Arrington was in the same pod as Miller?

12 A Yes, I believe so.

13 Q Did you believe that he would be able to have
14 access to Mr. Arrington?

15 A From what he told me I gathered that he had spoken to
16 him prior to bringing this information to me. So
17 yes.

18 Q During that period, the April 16 to the 13th,
19 were you listening to the tape-recordings that
20 Miller was making?

21 A You know, I would receive them from Detective Wanta.
22 We were also investigating the homicide that happened
23 on April 2 during this time frame. So I was very
24 busy in that. I can't recall exactly if there was
25 dates in there. I guess I would answer it's a

1 possibility that I listened to them.

2 Q Would you say you received from Detective Wanta
3 what did you receive?

4 A Well, it would be the recordings burned on to a CD.

5 Q Did -- during that time frame though you were
6 busy did Detective Wanta ever just brief you on
7 what was showing up on the recordings?

8 A I believe we would have had conversations about it,
9 yeah.

10 MS. HAGOPIAN: That's all I have. Thank
11 you.

12 THE COURT: Thank you. Mr. Ackell,
13 anything else.

14 CROSS-EXAMINATION

15 BY MR. ACKELL:

16 Q When did you first become aware of recordings of
17 Mr. Arrington?

18 A Again, early on. It wasn't a real focal point of the
19 April 2nd homicide. The Arrington incident, you
20 know, we were investigating a lot of other leads and
21 speaking with witnesses and so I can't recall. I
22 know early on at some point I listened to these
23 recordings and, to my knowledge, I didn't detail a
24 lot. To my recollection was they were very hard to
25 understand. They were hard to listen to as far as

1 decipher. And at that point it just wasn't a real
2 high focal point of the investigation. It wasn't
3 until later that March 30th, 2017 when I did
4 follow-up interview with Mr. Miller.

5 Q So let's talk about that gap a little bit.
6 Because all of the recordings happened between
7 April 11 and April 13th of 2016; is that correct?

8 A Correct.

9 MR. ACKELL: Your Honor, could the witness
10 have Exhibit 2 that's already been moved into
11 evidence?

12 THE COURT: Exhibit 2 you said?

13 MR. ACKELL: Yes.

14 THE COURT: Yes. the record should reflect
15 he does now have Exhibit 2.

16 BY MR. ACKELL:

17 Q Do you recognize that document?

18 A Yes.

19 Q What is that document?

20 A This would be details that I wrote referencing
21 recorded conversation between Arrington and Miller on
22 April 13.

23 Q So that's a gap of almost a year between the
24 recording and when you spoke to Mr. Miller about
25 the recording; is that correct?

1 A Correct.

2 Q Why is that?

3 A Like I said, the case was developing. We had, you
4 know, a lot of evidence. I guess I would explain it
5 that way, a lot of eyewitnesses or witnesses.

6 Through that course of time it just from
7 my initial listening to it, and I believe I may
8 have had a -- even had a conversation with ADA
9 Dana Johnson about whether or not we would even
10 be able to use them because they were difficult
11 -- from my recollection the first time I listened
12 to them they were difficult to ascertain. And so
13 I would explain it that we had a lot of other
14 things going on in the case that took priority
15 over those recordings.

16 Q What drew you to eventually have that meeting on
17 March 30th?

18 A You know, I can't recall if he reached out or if it
19 was just a follow-up. I can't recall the exact
20 origin of why we did a follow-up. He was still in
21 custody and he was brought down to the police
22 department that I interviewed him.

23 Q And you said "he" a few times in that answer.
24 When you said "he" did you mean Mr. Miller?

25 A Yes.

1 Q So it's either you just independently decided to
2 follow-up or Mr. Miller reached out to you and
3 said hey, what about these recordings that I made
4 of Mr. Arrington?
5 A Yeah, I can't recall which it was but most likely one
6 of those two.
7 Q But you said you had a conversation with Attorney
8 Johnson earlier on in the process about the
9 recordings; is that correct?
10 A Correct.
11 Q What did you tell Attorney Johnson?
12 A It was along the lines of I wasn't sure or confident
13 that we would be able to use these and, you know, in
14 the case in a trial just simply because of the
15 difficulty in understanding a lot of the language and
16 what was being said.
17 Q Did you even know what a lot of the conversation
18 meant?
19 A Well, when I -- when I reviewed it over and over that
20 April 13 when I was able to detail that it was about,
21 you know, the incident. But the other -- the other
22 conversations I didn't detail anything about on the
23 11th and 12th so either, yeah, I couldn't understand,
24 you know, a lot of what was said or it wasn't
25 pertinent.

1 Q Did the April 13 conversation, did that use a lot
2 of slang?
3 A Yes.
4 Q Was it a lot of slang that you understood?
5 A No.
6 Q Was part of the reason for having that March 30th
7 meeting to more or less translate?
8 A Yes. That is what we did with Mr. Miller. We
9 reviewed the recordings together.
10 Q Did you ever give any direction to Mr. Miller to
11 question Mr. Arrington?
12 A No.
13 Q Did you ever give any direction to Mr. Miller
14 telling him to speak with Mr. Arrington?
15 A No.
16 Q Did you ever give Mr. Miller any direction as to
17 any follow-up questions he might be able to ask
18 of Mr. Arrington?
19 A No.
20 Q Did you handle the interview with Mr. Arrington
21 on or about mid April of 2017?
22 A Yes.
23 Q Did he ever mention anything that he said to
24 Mr. Miller during that interview?
25 A No.

1 Q Did he ever mention any awareness of being
2 recorded by Mr. Miller?
3 A No.
4 Q Did you ever speak to Mr. Miller about any
5 consideration?
6 A No, not specifics of anything. I mean, I was aware
7 --
8 Q If somebody were to ask you for consideration in
9 a similar type case what is your standard
10 response?
11 A That's not -- that's not what we do in our position.
12 That is through the attorneys.
13 Q How long had you been a detective?
14 A I went into detectives in 2010.
15 Q So is it common for cooperating witnesses to ask
16 you for consideration?
17 A Yes.
18 Q And you're trained on how to respond?
19 A Yes.
20 Q You'd mentioned briefly, I just want to go back
21 to make sure it's clear, that you had only sort
22 of taken details and of one conversation; is that
23 correct?
24 A Correct.
25 Q Were there other conversations which were between

1 Mr. Miller and Mr. Arrington?

2 A Yeah. To the best of my recollection was there was
3 some other recorded conversations.

4 Q And why didn't you write details on those?

5 A Again, it would have been -- it would be my practice,
6 you know, the ones that were -- had information
7 regarding the case we're investigating would be the
8 ones I detail.

9 Q So was just either irrelevant or you couldn't
10 understand it?

11 A Correct.

12 Q Were -- scratch that.

13 Did Mr. Miller ever receive any
14 monetary payment for his help in this case?

15 A No, not to my knowledge.

16 MR. ACKELL: I have no further questions.

17 THE COURT: Any other questions, Counselor?

18 MS. HAGOPIAN: No.

19 THE COURT: All right. Is this witness
20 excused then?

21 MS. HAGOPIAN: Yes.

22 THE COURT: Mr. Ackell?

23 MR. ACKELL: He is for my purposes.

24 THE COURT: Okay. You're free to go.

25 Thank you. If you would call your next witness,

1 please.

2 MS. HAGOPIAN: Yes. I'll call Richard
3 Arrington.

4 THE COURT: All right. I suppose this is
5 going to be a little long so what I would like to do
6 is take a break before we start. So we'll take a 15
7 minute break now and then we'll come back.

8 MS. HAGOPIAN: Thank you.

9 THE COURT: How many more witnesses do you
10 have to go, Counselor?

11 MS. HAGOPIAN: This is my last witness.

12 THE COURT: Okay. Very good.

13 (A recess was taken.)

14 THE COURT: Okay. We're back here on the
15 record after the afternoon break. And Counselor, if
16 you would call your next witness, that would be
17 great. Thank you.

18 MS. HAGOPIAN: Yes. I will call Richard
19 Arrington.

20 RICHARD ARRINGTON, called as a witness
21 herein, having been first duly sworn, was
22 examined and testified as follows:

23 THE WITNESS: Richard Michael Arrington,
24 R-I-C-H-A-R-D, A-R-R-I-N-G-T-O-N.

25 DIRECT EXAMINATION

1 BY MS. HAGOPIAN:

2 Q Mr. Arrington, is it correct that you were found
3 guilty at a jury trial of first degree
4 intentional homicide?

5 A Yes, ma'am.

6 Q And that involved the shooting death of Riccardo
7 Gomez; is that right?

8 A Yes, ma'am.

9 Q And do you agree that the shooting occurred on
10 April 2 of 2016?

11 A Yes, ma'am.

12 Q At some point after the shooting did you turn
13 yourself into police?

14 A Yes, ma'am.

15 Q Do you recall the date?

16 A April 8 of 2016.

17 Q Thank you. When you turned yourself in were you
18 taken into custody?

19 A Yes, ma'am.

20 Q Where were you held?

21 A At the Brown County Jail.

22 Q And did you remain in the Brown County Jail
23 throughout this case until after sentencing?

24 A Yes, ma'am.

25 Q And at that point you were transferred to prison?

1 A Yes, ma'am.

2 Q When you were jailed, put in the Brown County
3 Jail in April of 2016, do you recall which pod
4 you were placed in?

5 A I was placed in Fox Pod.

6 Q Were you in a cell by yourself?

7 A Yes, ma'am.

8 Q Could you describe what the cell looks like?

9 A It had a window, a bed, a toilet, a sink, a desk and
10 a metal door provided -- preventing me from going out
11 into the day room.

12 Q Was there any sort of opening in the door?

13 A Yeah, it was a trap that's only opened by the
14 correctional officers.

15 Q Was there a window in the door?

16 A Yes, ma'am.

17 Q When you were put in Fox Pod were you allowed out
18 of your cell at any time during the day?

19 A Yeah. I was allowed out for about one hour a day.

20 Q One hour a day?

21 A Yes, ma'am.

22 Q How long did that continue?

23 A For about two weeks.

24 Q And then what happened after two weeks?

25 A Then with good behavior my status go down from high

1 max to regular max which means I be allowed out of my
2 cell two hours in the morning and two hours at night
3 for a total of four hours a day.

4 Q I would like to direct your attention to the
5 first two weeks that you're in the jail. Did you
6 have some conversations with another inmate named
7 Jason Miller?

8 A Yes, ma'am.

9 Q Did you know him before you were placed in jail?

10 A Yeah, I met him one time before previously and then I
11 knew of him.

12 Q At that time when you were having conversations
13 with him was Mr. Miller allowed out of his cell?

14 A Yes, ma'am.

15 Q Do you know how long he was allowed to be out?

16 A He was allowed out. He was on a regular max so he
17 was allowed two hours a day, two hours at night.

18 Q So a total of four hours during a day?

19 A Yes, ma'am.

20 Q When you were speaking with Mr. Miller in the
21 jail during those first two weeks did you know
22 that he was working as an informant for the
23 police?

24 A No, I did not.

25 Q Did you know that he was wearing a recording

1 device and recording his conversations with you?

2 A No, I did not.

3 Q Would you have spoken with him had you known he

4 was recording the conversations?

5 A No, ma'am.

6 Q Did you eventually learn that the state had

7 recordings of your conversations with Mr. Miller?

8 A Eventually, yes.

9 Q And was it your understanding that the state had

10 three recordings?

11 A Yes.

12 Q And was it your understanding that those

13 recordings were made on April 11, 12 and 13 of

14 2016?

15 A Yes, ma'am.

16 Q Like to direct your attention to the first

17 conversation on April 11. How did that

18 conversation get started?

19 A He approached my cell, asked me if I wanted to read a

20 magazine.

21 Q So where were you?

22 A Oh, I was inside my cell.

23 Q And where was -- where was he when he was

24 speaking to you?

25 A He was in the common area, the day room, on the other

1 side of the door.

2 Q And you were able to hear him?

3 A Yes, ma'am.

4 Q At that time did you have a copy of the criminal

5 complaint against you?

6 A Yes, ma'am.

7 Q Did you ask Mr. Miller to look at it?

8 A Yes, ma'am.

9 Q Why did you do that?

10 A Because I thought he was good with the law. I was

11 just really -- I asked him for guidance.

12 Q Mr. Miller older than you?

13 A Yes, ma'am.

14 Q Was he actually able to look at the complaint?

15 A Yes, ma'am.

16 Q How was he able to do that given you're on

17 opposite sides of the door?

18 A I slid it up under the door.

19 Q Now, the second conversation occurred on

20 April 12. How did that conversation get started?

21 A April 12? I believe I was in the day room. I

22 believe I was in the day room and I was on the phone

23 and he called me over to his cell.

24 Q So at that time you were out of your cell; is

25 that right?

1 A Yes, ma'am.

2 Q And he was in his cell?

3 A Yes, ma'am.

4 Q But he called you over to talk?

5 A Yes, ma'am.

6 Q And you went to speak with him; is that right?

7 A Yes, ma'am.

8 Q How about the third conversation, the one on

9 April 13, how did that begin?

10 A If I'm not mistaken I believe that's the one with the

11 magazine. If I'm not mistaken, I believe he

12 approached my door and asked me if I wanted to read a

13 magazine.

14 Q So you were in your cell at that time?

15 A Yes, ma'am.

16 Q And he was out in the day room?

17 A Yes, ma'am.

18 Q And came up to your door?

19 A Right.

20 Q Like to shift the focus a little bit. Your trial

21 attorney in this case was Michael Hughes,

22 correct?

23 A Yes, ma'am.

24 Q Before trial had you given thought to whether you

25 wanted to testify at trial?

1 A Yeah, before trial I didn't want to testify.
2 Q Why not?
3 A Because it was really the state's burden to prove
4 beyond a reasonable doubt that I committed this
5 crime.
6 Q Did you tell Attorney Hughes you didn't want to
7 testify?
8 A Yes, ma'am.
9 Q When you had this conversation about whether or
10 not to testify did Attorney Hughes tell you
11 whether he thought you should testify?
12 A Yeah, he thought I should testify.
13 Q And what was your feeling at that point?
14 A At that point I still didn't want to testify.
15 Q At some point did you change your mind?
16 A Yes.
17 Q When did that happen?
18 A I believe the 5th day of trial or the night before
19 the final day of trial.
20 Q So it would have been the night before you
21 testified?
22 A Yes, ma'am.
23 Q And why did you change your mind?
24 A Cause my lawyer came -- Mr. Hughes came the night
25 before. We had a meeting and he was telling me like

1 he thought it was in my best interest for me to
2 testify given the fact that they had the wires and
3 things like that. And I wouldn't be able to defend
4 or he wouldn't be able to defend me if I didn't
5 testify or correctly or to the best of his abilities
6 if I didn't testify.

7 Q So when he was talking about the need for you to
8 testify he referred to the wires?

9 A Yes.

10 Q What did you take that to mean?

11 A He was saying like I wouldn't -- or they would attack
12 my credibility and I wouldn't -- I wouldn't be able
13 to defend it.

14 Q By "wires" were you thinking of the recordings --

15 A Yeah.

16 Q -- the jury had heard?

17 A Yes, ma'am.

18 Q And you were present in trial, were you not, when
19 the state played the audio recordings of your
20 conversations with Mr. Miller?

21 A Yes, ma'am.

22 Q Did you believe that what appeared on those tapes
23 was harmful to you?

24 A Yes, ma'am.

25 Q If there had been a way to keep the jury from

1 hearing those audio tapes would you have wanted
2 that pursued?

3 A Yes, ma'am.

4 MS. HAGOPIAN: That's all I have. Thank
5 you.

6 THE COURT: Mr. Ackell.

7 CROSS-EXAMINATION

8 BY MR. ACKELL:

9 Q Thank you, Your Honor. To start -- to start at
10 the last line of questioning, you said you made
11 the decision to testify the night before the
12 final day of trial; is that correct?

13 A Yes, ma'am -- I mean, yes, sir. My apologies.

14 Q That's fine. So that would have been the night
15 before November 2nd, 2017?

16 A Yeah, I believe so.

17 Q Or the night before the day that you did testify,
18 is that a fair way to sum it up?

19 A Yes.

20 Q Had Jason Miller testified at that time?

21 A I believe so, yes.

22 Q And your decision to testify was based on what
23 Jason Miller had said in court the day before?

24 A Not only that, it was a lot of -- a lot of
25 testimonies that was like as far as the attacking my

1 credibility or as far as my character, I mean.

2 Q So other witnesses, other than Jason Miller and

3 other than the recordings, there were other

4 witnesses that were attacking your credibility?

5 A Yes.

6 Q And attacking your character?

7 A Yes, yes.

8 Q And the decision to testify also had to do with

9 combat that as well?

10 A Yes.

11 Q Do you recall having a meeting with Detective

12 Linzmeier without your attorney at your request

13 in mid April of 2017?

14 A Yes.

15 Q Why did you ask for that meeting?

16 A Because, again, there was a lot of like -- a lot of

17 stories being told, I wanted him to know the truth.

18 Q Did you have -- well, while you were in jail was

19 your attorney sending you copies of discovery?

20 A Yes.

21 Q Did you have a copy of discovery before you had

22 that meeting with Detective Linzmeier?

23 A Yes.

24 Q Did you have a copy of Exhibit 1, the report of

25 the -- actually, I think it will be easier if I

1 show it to him. Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 BY MR. ACKELL:

5 Q I'm handing you what has already been entered
6 into evidence as Exhibit 2. Do you recognize
7 that document?

8 A Yeah, this would be my first time seeing -- no. No,
9 I do recognize this document, yes.

10 Q Was that part of the discovery that your attorney
11 turned over to you?

12 A Yes, it was. Did you ask me a specific time?

13 Q Yes. So do you know -- do you know, and it's
14 okay if you don't, but do you know if you had
15 that document in your possession when you asked
16 for your meeting with Detective Linzmeier?

17 A I believe this came after.

18 Q Afterwards. So you had testified that you knew
19 Jason Miller before -- before you were next to
20 each other in jail; is that correct?

21 A Correct.

22 Q How did you know him?

23 A Like I said I met him -- I met him previously in
24 jail.

25 Q From a previous time in jail?

1 A Yes.

2 Q And you said you also knew of him; is that

3 correct?

4 A Yes.

5 Q What do you mean by that?

6 A He knew -- he knew some people that I knew.

7 Q So just some common friends?

8 A Yes.

9 Q Do you recall your attorney testimony -- excuse

10 me, testifying earlier this afternoon?

11 A Yes.

12 Q Do you recall your attorney saying that up until

13 your meeting with Detective Linzmeier the

14 strategy of the defense was going to be an alibi

15 defense?

16 A Yes, I believe so, yes.

17 Q Was that what you and your attorney had

18 discussed, was that accurate?

19 A Yes.

20 Q And then after you had your meeting with

21 Detective Linzmeier, you guys changed your

22 strategy; is that correct?

23 A Yes.

24 Q Did Attorney Hughes tell you to have that meeting

25 with Detective Linzmeier?

1 A No.

2 Q Did he ever tell you to discuss this case with
3 anybody?

4 A I believe he told me not to discuss the case with
5 anybody.

6 Q But then you went -- you went on and did it
7 anyway?

8 A Yes.

9 Q Because you had to combat the things?

10 A Yes, sir.

11 Q That you were hearing?

12 A Yes.

13 Q So on April 11 your first conversation with Jason
14 Miller, you said that the conversation started
15 over a magazine; is that correct?

16 A Yeah, I believe so, yes.

17 Q Do you remember what you talked about in that
18 conversation?

19 A Not really.

20 Q I believe you said that you handed him or you
21 slid to him your criminal complaint?

22 A Oh, yeah, yeah, yeah. I slid him my criminal
23 complaint and I asked him what he thought about it, I
24 believe.

25 Q Did he ever -- did he ask to see your criminal

1 complaint or did you ask to show it to him?
2 A I'm not for sure how it went. I believe he asked to
3 see -- I'm not for sure.
4 Q And we are talking about things a couple years
5 ago; is that correct?
6 A Yes, sir.
7 Q Can you recall your -- the conversation the next
8 day, April 12?
9 A I was on the phone and he called me over to his door.
10 And I can't remember how the conversation started.
11 Q Do you remember what it was about?
12 A No, not really.
13 Q And then the April 13 conversation, that was the
14 one where portions of it were played at trial,
15 correct?
16 A Yes.
17 Q Were any portions played at trial inaccurate?
18 A No, I don't believe so.
19 Q Did you and your attorney ever talk about the
20 contents of the recordings before trial?
21 A I believe so.
22 Q Do you recall if the attorney ever -- if you ever
23 asked the attorney if there was a way to keep it
24 out of evidence?
25 A I believe I did ask him.

1 Q Do you remember what he said?

2 A I believe he told me that the recordings really
3 didn't matter because they didn't -- he couldn't
4 really hear much on 'em.

5 Q Did you ever listen to the recordings before
6 trial?

7 A Yes.

8 Q Could you hear what was on the recordings?

9 A Not really.

10 MR. ACKELL: I have no further questions.

11 THE COURT: Counselor, any other questions?

12 MS. HAGOPIAN: I do not.

13 THE COURT: You're excused then. Thank you
14 very much. Do you have any other witnesses you wish
15 to offer?

16 MS. HAGOPIAN: No.

17 THE COURT: Mr. Ackell, do you have any
18 witnesses?

19 MR. ACKELL: No, Your Honor.

20 THE COURT: All right. Then argument.

21 MR. ACKELL: Your Honor, I think both sides
22 are going to be jointly asking for a briefing
23 schedule and written argument. I think given the
24 seriousness of the case and the amount of evidence
25 that came in over this hearing, and the fact that I

1 mean, there's a -- depending on how the court rules,
2 there's a good chance another court's going to be
3 looking at this case, I just think it would be
4 safest to do this in writing.

5 THE COURT: All right. We can do so. I
6 have some questions though. So, I mean, if you
7 would outline your basic position.

8 MR. ACKELL: Yes.

9 THE COURT: I would appreciate that. We'll
10 set up a briefing schedule. But at least if I could
11 get what your thoughts are. I think I know your
12 thoughts from your motion, but do you have anything
13 else you'd like to offer, Counselor?

14 MS. HAGOPIAN: No. I'd appreciate hearing
15 the state's and then I think the briefs might be
16 more useful that way.

17 THE COURT: All right. Mr. Ackell.

18 MR. ACKELL: So I think, first of all, the
19 threshold issue is whether or not Jason Miller was
20 acting as an agent for the state. And I think
21 looking at the case law, which the defense has
22 included in its motion, I think there's kind of one
23 key difference here that separates this case from
24 all the cases that the defense cites is that there
25 was not an investigation into Mr. Arrington. There

1 was an investigation into Donald Moore and there was
2 an investigation into Antwon Powell.

3 And then Mr. Arrington, the testimony
4 from Detective Wanta was, Mr. Miller came up to
5 Mr. Arrington (sic.) and said can I record -- can
6 I record his conversations while he's talking to
7 me and said yeah, you can record them. So that's
8 the first prong is on the threshold issue, Jason
9 Miller was not an agent for the state.
10 Therefore, that Sixth Amendment violation doesn't
11 even come in.

12 As a beyond that, if the court is
13 disinclined to accept that argument, we would
14 argue that it's not deficient performance to not
15 raise it by the attorney for a few reasons, but
16 the one I'll highlight today is that it's not a
17 clear and obvious error. Because Mr. Powell's
18 attorney brought up the same issue in
19 Mr. Powell's case and that court found that
20 Mr. Miller wasn't an agent. And I know that's
21 not holding on Your Honor what the other court
22 decided, but if that other court could go that
23 way for the target of the investigation, then
24 it's not unreasonable for an attorney to -- to
25 quote, unquote miss this issue or --

1 THE COURT: What is that -- what's the cite
2 of the case?

3 MR. ACKELL: That is in Brown County case
4 16 CF 119. I do know that transcripts are both in
5 the hands of the state and the defense. I don't
6 know if they're a part of the court record though.

7 MS. HAGOPIAN: Of this record?

8 MR. ACKELL: No, they are not. I could
9 mark them and move into evidence if the court is
10 going to weigh that.

11 MS. HAGOPIAN: I would object.

12 MR. ACKELL: That's fair. I think that the
13 -- but either way I think that's persuasive and not
14 holding on this court.

15 And then beyond that we would argue that
16 no prejudice and, I mean, that gets a lot more
17 fact specific so I will just broadly say that is
18 what the state will be arguing.

19 THE COURT: Okay. The questions I have,
20 counselor for Mr. Arrington is two questions -- I
21 guess several questions. One is on page 7 and 8 you
22 cited *Massiah*. I'm not sure of the name,
23 *M-A-S-S-I-A-H v. United States*. And later on *United*
24 *States v. Henry*. *Massiah* is a 1964 case. *Henry's* a
25 1980 case. That's almost 40 years old. And 1964 is

1 beyond 40 years old.

2 So my point is, jailhouse snitches are
3 not a new thing. So I'm just wondering -- or an
4 old thing, or I'm just wondering why there's --
5 you don't have a more recent case than 1980.

6 MS. HAGOPIAN: Right. I think because the
7 U.S. -- these really are the last words from the
8 U.S. Supreme Court. There is one other case that I
9 cited which is -- just one moment, please. *Coleman*,
10 which is cited -- it's not cited at the same length
11 as particularly *Henry* because it really wasn't
12 focused on the question of agency. But those --
13 those really are what the U.S. Supreme Court has had
14 to say about the topic.

15 In terms of what's in Wisconsin there's
16 the *Lewis* case court of appeals decision from I
17 believe 2010 which is cited in the motion. That
18 one they found no Sixth Amendment violation, but
19 that involved an inmate who was merely hoping for
20 some consideration, did not have a relationship
21 with the government at the time this inmate was
22 listening to other inmates, one in particular,
23 about his situation.

24 THE COURT: So do you think in this case
25 that we just heard all the testimony that Mr. Miller

1 did receive consideration from the state prior to
2 talking to Mr. Arrington?

3 MS. HAGOPIAN: He --

4 THE COURT: Because that's really, really
5 important.

6 MS. HAGOPIAN: I don't think it is
7 important that he received --

8 THE COURT: I do. I do. I think it's
9 important.

10 MS. HAGOPIAN: Okay. Well, I think under
11 the case law what matters is that there's an agency
12 relationship.

13 THE COURT: But first, before that, answer
14 my question.

15 MS. HAGOPIAN: Okay. The consideration did
16 come to Mr. Miller as set out in one of the exhibits
17 that contains the global offer. And it specifically
18 says what he was getting, which involved multiple
19 counts --

20 THE COURT: "He" being Mr. Miller.

21 MS. HAGOPIAN: -- being dismissed.

22 Multiple counts dismissed. A specific
23 recommendation in terms of sentencing from the
24 state. And there were a couple of contingencies in
25 addition to what he'd already provided. He needed

1 to testify both in Powell's case and in Arrington's
2 case which, of course, he did testify in Arrington's
3 case.

4 So I believe that the agency certainly
5 was established because when Mr. Miller was
6 working as an informant he was doing that with
7 the understanding that if he came through with
8 information he would receive consideration. I
9 fully acknowledge that the police officers are
10 not the ones who negotiate the specific terms of
11 the consideration, but I also believe what
12 matters is that he did this with the expectation
13 of consideration.

14 THE COURT: But my question is on this
15 offer memo, and I can't remember it, is
16 Mr. Arrington's case mentioned in the memo?

17 MS. HAGOPIAN: Yes.

18 THE COURT: And what does it read? I do
19 have the exhibit now.

20 MS. HAGOPIAN: Sure. It says: This offer
21 contemplates consideration for a full debrief and
22 testimony on Powell and Arrington.

23 THE COURT: Where are you reading that, I'm
24 sorry?

25 MS. HAGOPIAN: It's in the global offer

1 memo, Exhibit 4. And it appears in the first
2 paragraph after the listing of case numbers.

3 (Pause in the proceedings.)

4 THE COURT: All right. Then the other
5 question I have or another question I have is it
6 seems to me if this was going to be so critical for
7 the state, there was one year, approximately, that
8 went by before Mr. Linzmeier, from the testimony,
9 from Mr. Miller recording this to Mr. Arrington
10 speaking to Mr. Linzmeier. If this was so critical,
11 why did the state wait for one year to ask
12 Mr. Miller about this? Counselor, what is your
13 answer to that?

14 MS. HAGOPIAN: Well, the -- I mean, I can't
15 really speak for the detectives. He couldn't really
16 remember other than saying that he was busy. What I
17 think matters is that the state knew about, they had
18 this evidence. As it got closer and closer to
19 trial, then the state became more interested in what
20 it might do with it. I guess a year I would concede
21 is a long time; however, I don't think it's unusual
22 that as the state and, frankly, as defense gets
23 closer to the critical date of trial, that people
24 start looking more closely at what they have to work
25 with.

1 THE COURT: All right. Another question I
2 have is and Mr. Ackell, you can answer this as well,
3 it seems like what I heard here today, and I didn't
4 know about this other person, Mr. Wanta and the Paul
5 case.

6 MR. ACKELL: Powell.

7 THE COURT: I mean, you didn't put any of
8 that in your position whatsoever. I thought
9 Mr. Arrington (sic.) was given a tape recorder only
10 on Mr. Arrington, but the way it was presented today
11 is he was given it on this other case that we've
12 talked about, this Powell case and he just so
13 happened to use it on Mr. Arrington.

14 That's I think the state's threshold
15 question is it wasn't even an agent. So we don't
16 even get to that point. I didn't see that at all
17 in your motion at all the Powell case mentioned.
18 But be that as it may, if -- if I do find that, I
19 would ask you, counselor for Mr. Arrington, if a
20 person is an informant on another case, is that
21 person considered an informant for Mr. Arrington
22 or anyone else that he is -- that he is providing
23 information on? What I'm asking is, once an
24 informant always an informant on every case under
25 the sun from A to Z?

1 MS. HAGOPIAN: Well, I don't think we have
2 to reach --
3 THE COURT: Well, I do. I want to reach
4 that. I want an answer to that.
5 MS. HAGOPIAN: Okay. Not necessarily. But
6 what this evidence shows here today is that they
7 knew that he was going --
8 THE COURT: No, I understand your argument.
9 MS...HAGOPIAN: Okay.
10 THE COURT: But I asked a very specific
11 question and you answered "not necessarily." What
12 do you mean by that?
13 MS. HAGOPIAN: Well, I will say that I have
14 not found another case in which the police have
15 equipped an inmate who's working as an informant for
16 them with a recording device that that inmate has
17 full range to turn on and off however he or she
18 pleases.
19 THE COURT: Well, but the other information
20 I heard here today was that neither Linzmeier nor
21 Wanta directed Mr. Arrington (sic.) to record any
22 conversation. He asked Detective Linzmeier, but he
23 wasn't directed to. Would you agree with that?
24 MS. HAGOPIAN: They didn't direct him.
25 Also fair to say they didn't direct him to record on

1 Powell either.

2 THE COURT: I disagree with that.

3 MS. HAGOPIAN: Well, I think --

4 THE COURT: He was very much -- that's why
5 he was given this -- this recording device is for --
6 is -- I don't know if it's Mr. Powell or Ms. Powell
7 but regardless, that's why he was given the
8 recording device. And that's why I asked the
9 question, once an informant are you on informant on
10 each and every case.

11 So Mr. Ackell, anything you'd like to
12 say about that?

13 MR. ACKELL: Your Honor, I agree with the
14 defense in that there's no case right on point.
15 However, I do believe that *State v. Lewis*, 20 WI APP
16 52 where a cellmate acts of his own accord and then
17 comes to the government is the closest in that was
18 Mr. Miller acting as an agent towards Mr. Powell,
19 perhaps, but that doesn't matter as it applies to
20 Mr. Arrington's Sixth Amendment right.

21 Mr. Powell has no control over
22 Mr. Arrington's Sixth Amendment right. So the
23 question is was he an agent vis-a-vis
24 Mr. Arrington. And I think it's closest to *State*
25 *v. Lewis* where you have this one person saying

1 I'm going to do all this help for the government
2 and then they do it.

3 THE COURT: All right. Let me just see if
4 I have any other questions while I have both of you
5 here.

6 Now, I'm looking on page 3 of the
7 motion, Paragraph 7. The first sentence: Miller
8 was promised and ultimately received
9 consideration from the state for his work as an
10 informant in the jail.

11 And Counselor, you're -- where is that
12 exhibit? The basis for that statement is Exhibit
13 No. 4, is that what you're saying or not?

14 MS. HAGOPIAN: Yes. And it was also put on
15 the record during the trial. And I do cite to that
16 day five of the trial transcript it was put on the
17 record.

18 THE COURT: Did anybody order the trial
19 transcript?

20 MS. HAGOPIAN: Yes.

21 THE COURT: You did?

22 MS. HAGOPIAN: Yeah.

23 THE COURT: Okay. Then on page 6 I'm
24 looking at -- well, just about Paragraph 12 you've
25 written: Miller testified that Arrington never told

1 him that he saw Shorty with a gun, that Shorty fired
2 a gun or that it looked like Shorty was reaching for
3 a gun.

4 So rather than -- what you're saying is
5 rather than saying certain things, he didn't say
6 certain things, am I correct?

7 MS. HAGOPIAN: Correct.

8 THE COURT: But the things he didn't say,
9 why would -- why would he say these things? I guess
10 I'm -- I'm a little -- I mean, it's a reverse
11 argument in terms of what he didn't say. I mean, I
12 would think that he didn't say a lot of things on
13 that tape-recording.

14 MS. HAGOPIAN: Well, my point in that
15 sentence was that the -- they had -- they had these
16 conversations about what had happened, specifically
17 in the shooting, and it is inconsistent. What
18 Arrington told Miller is inconsistent with what
19 Arrington told Detective Linzmeier.

20 THE COURT: Okay. What is -- what is
21 inconsistent?

22 MS. HAGOPIAN: Because he didn't tell
23 Miller that he saw Shorty reaching for a gun. He
24 didn't tell Miller that it was actually Shorty who
25 fired a shot that killed Gomez.

1 THE COURT: But I'm just saying, what I'm
2 trying to say is you're arguing things that he did
3 not say as opposed to things he did say. To me,
4 that makes a difference. I mean, if you're going to
5 argue that things he didn't say, he didn't say a
6 whole lot. I mean, there are a lot of things he
7 didn't say to Mr. Miller aside from those three
8 things that you've picked out. So --

9 MS. HAGOPIAN: Well, it was something the
10 state thought was significant because they argued
11 that in closing argument the inconsistency between
12 what Mr. Arrington told Miller and what
13 Mr. Arrington both testified to and told
14 Detective Linzmeier. If the jury hadn't heard the
15 recordings, hadn't heard Miller's testimony, the
16 state would not have been able to make that argument
17 that there were inconsistencies.

18 THE COURT: I didn't -- yeah, I did not
19 read the trial transcript. I don't remember that.
20 But I'm sure what you're saying is accurate.

21 But, again, it's not the state that's
22 making the decision, it was the jury that made
23 the decision. And on your motion it's me who's
24 making the decision and the appellate court
25 that's making a decision. So what the state

1 thinks is important but it's not controlling is
2 what I'm saying.

3 (Pause in the proceedings.)

4 THE COURT: All right. So the record's
5 clear, on page 14 it's No. 2, I have denied that
6 aspect of the motion based upon the recent supreme
7 court ruling, and I already put that on the record
8 which actually received a great deal of publicity in
9 various newspapers.

10 So we will set up a briefing schedule.
11 We'll go off the record and then we'll go on the
12 record.

13 (Discussion held off the record.)

14 THE COURT: We're on the record. And Madam
15 Clerk, if you could announce the dates for the
16 scheduled dates or if the clerk can't do it or
17 Mr. Ackell or could you do it as well.

18 MS. HAGOPIAN: Sure. Okay.

19 THE COURT: Thank you.

20 MS. HAGOPIAN: So I will request a
21 transcript of this hearing and I will get the form
22 to the court reporter tomorrow. And the transcript
23 will be due on July 18.

24 I will file a brief by August 8. The
25 state will file its brief by August 29. I will

1 file a reply by September 11. And I will ask the
2 court of appeals to extend the time for the court
3 to decide the motion to November 1. And the
4 court will issue a written decision.

5 THE COURT: Very good. And then you will
6 -- you will file the document to the court of
7 appeals then, correct?

8 MS. HAGOPIAN: Yes. Yes.

9 THE COURT: Okay. Thank you very much. Is
10 there anything else that we should put on the
11 record?

12 MR. ACKELL: Not from my prospective, Your
13 Honor, thank you.

14 MS. HAGOPIAN: No.

15 THE COURT: Counselor, anything else?

16 MS. HAGOPIAN: No. Thank you.

17 THE COURT: Thank you. We are adjourned
18 then. Thank you very much.

19 (The proceedings were then concluded.)
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23
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25

STATE OF WISCONSIN)
) ss
COUNTY OF BROWN)

I, Heather L. Burton, Official Court Reporter for Circuit Court Branch VII and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 1st day of July, 2019.

Electronically signed by:

Heather L. Burton, RPR, RMR, CRR
Official Court Reporter