IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPEAL NUMBER 22-1601

UNITED STATES OF AMERICA,
Appellee,

v.

ADAM N. SANTANA,
Appellant.

APPEAL FROM THE MARCH 22, 2022 JUDGMENT OF CONVICTION AND SENTENCE ENTERED IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AT NUMBER 19-CR-251

APPENDIX TO BRIEF FOR THE APPELLANT

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

UNITED STATES OF AMERICA,	:	
	:	Docket Number
vs.	:	
	:	19-CR-251
	:	
ADAN N. SANTANA,	:	
Defendant.	:	

NOTICE OF APPEAL

Please take notice that on this day, Defendant Adan N. Santana, appeals the sentence imposed by this Honorable Court on March 22, 2022. The Defendant does not have the funds to pursue the appeal and needs counsel appointed. Attached as *Exhibit* "A," is a copy of the Defendant's Application to Proceed in District Court Without Payment of Fees or Costs.

José Luis Ongay

Date: April 1, 2022

CERTIFICATE OF SERVICE

I certify that I served a copy of this Notice of Appeal upon AUSA Scott Ford at Scott.Ford@usdoj.gov.

José Luis Ongay

Date: April 1, 2022

UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

UNITED STATES OF AMERICA
v.
ADAM NEFTALI SANTANA

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:19-CR-00251

USM Number: 76982-067

Jose Luis Ongay, Esquire
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☑ was found guilty on count(s) 1,2,3
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846	Conspiracy to Distribute and Possess with Intent to Distribute 5 Kilograms and More of Cocaine Hydrochloride	2/22/2019	1
21 U.S.C. § 846	Attempted Possession with Intent to Distribute 500 Grams	2/22/2019	2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/22/2022
Date of Imposition of Judgment

Signature of Judge

Jennifer P. Wilson, United States District Court Judge
Name and Title of Judge

3/22/2022
Date

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846	and More of Cocaine Hydrochloride (continued)		2
18 U.S.C. § 924(c)	Possession of a Firearm in Furtherance of Drug Trafficking	2/22/2019	3

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
One hundred eighty (180) months. This sentence consists of a sentence of 120 months on each of Counts 1 and 2 to run concurrent with each other and 60 months on Count 3 to run consecutive to Counts 1 and 2.

☑ The court makes the following recommendations to the Bureau of Prisons:
The court recommends placement in a facility as close as possible to Chambersburg, Pennsylvania.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Five (5) years. This consists of 5 years on each count to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines or special assessments.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court. The defendant must not attempt to obstruct or tamper with the testing methods.

2. The defendant must cooperate in the collection of a DNA sample.

3. The defendant must submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 300.00	$	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ADAM NEFTALI SANTANA
CASE NUMBER: 1:19-CR-00251

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPEAL,INTERPRETER,PTRCV19

United States District Court
Middle District of Pennsylvania (Harrisburg)
CRIMINAL DOCKET FOR CASE #: 1:19-cr-00251-JPW-1

Case title: USA v. Santana

Date Filed: 08/28/2019
Date Terminated: 03/22/2022

Assigned to: Honorable Jennifer P. Wilson

Appeals court case number: 22-1601 Third Circuit

Defendant (1)

Adam Neftali Santana
TERMINATED: 03/22/2022

represented by **Jose Luis Ongay**
Jose Luis Ongay, Attorney at Law
600 West Germantown Pike
Suite 400
Plymouth Meeting, PA 19462
(484) 681-1117
Email: jlolaw@live.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Thomas A. Thornton
Federal Public Defender
100 Chestnut St
Suite 306
Harrisburg, PA 17101
717-782-2237
Email: thomas_thornton@fd.org
TERMINATED: 09/16/2019
Designation: Public Defender or Community Defender Appointment

Pending Counts

21:846 CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE COCAINE HYDROCHLORIDE
(1)

21:846 ATTEMPTED POSSESSION WITH INTENT TO DISTRIBUTE COCAINE HYDROCHLORIDE
(2)

Disposition

Imprisonment - 180 months. This sentence consists of a sentence of 120 months on each of Counts 1 and 2 to run concurrent with each other and 60 months on Count 3 to run consecutive to Counts 1 and 2. Supervised release - 5 years. This consists of 5 years on each count to run concurrently. Special assessment - $100.

Imprisonment - 180 months. This sentence consists of a sentence of 120 months on each of Counts 1 and 2 to run concurrent with each other and 60 months on Count 3

to run consecutive to Counts 1 and 2. Supervised release - 5 years. This consists of 5 years on each count to run concurrently. Special assessment - $100.

18:924 POSSESSION OF FIREARM IN FURTHERANCE OF A DRUG TRAFFICKING CRIME (3)

Imprisonment - 180 months. This sentence consists of a sentence of 120 months on each of Counts 1 and 2 to run concurrent with each other and 60 months on Count 3 to run consecutive to Counts 1 and 2. Supervised release - 5 years. This consists of 5 years on each count to run concurrently. Special assessment - $100.

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

USA

represented by **Daryl Ford Bloom**
U.S. Attorney's Office
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, PA 17108
717-221-4482
Email: Daryl.Bloom@usdoj.gov
TERMINATED: 06/24/2021
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Scott R Ford
U.S. Attorney
228 Walnut Street
Suite 220
Harrisburg, PA 17101
717-614-4905
Email: scott.r.ford@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
08/28/2019	1	INDICTMENT as to Adam Neftali Santana (1) count(s) 1, 2, 3. (aaa) (Entered: 08/28/2019)
08/28/2019	2	Sealed Document (aaa) (Entered: 08/28/2019)
08/28/2019	3	Criminal Cover Sheet (Access Restricted to Court Users) - Defendant: Adam Neftali Santana. (aaa) (Entered: 08/28/2019)
08/28/2019	6	MOTION for Writ of Habeas Corpus ad prosequendum by USA as to Adam Neftali Santana. (kjn) (Entered: 08/29/2019)
08/29/2019	7	WRIT ISSUED as to Adam Neftali Santana for Initial Appearance (Rule 5 Hearing) and Arraignment set for 9/5/2019 at 9:00 AM in Harrisburg - Courtroom 5 before Magistrate Judge Martin C. Carlson. Signed by Magistrate Judge Martin C. Carlson on August 29, 2019. (kjn) (Entered: 08/29/2019)
09/05/2019	9	MOTION to Detain by USA as to Adam Neftali Santana. (ktt) (Entered: 09/05/2019)
09/05/2019	10	CJA 23 - FINANCIAL AFFIDAVIT by Adam Neftali Santana (ktt) (Entered: 09/05/2019)
09/05/2019	11	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Adam Neftali Santana. Thomas A. Thornton for Adam Neftali Santana appointed. Signed by Magistrate Judge Martin C. Carlson on 9/5/2019. (ktt) (Entered: 09/05/2019)
09/05/2019	12	NOT GUILTY PLEA ENTERED as to counts 1-3 as to Adam Neftali Santana (ktt) (Entered: 09/05/2019)
09/05/2019	13	SCHEDULING ORDER as to Adam Neftali Santana Jury Selection and Trial set for 11/4/2019 at 9:30AM before Honorable Sylvia H. Rambo. Signed by Magistrate Judge Martin C. Carlson on 9/5/2019. (ktt) (Entered: 09/05/2019)
09/05/2019	14	ORDER OF DETENTION as to Adam Neftali Santana. Signed by Magistrate Judge Martin C. Carlson on 9/5/2019. (ktt) (Entered: 09/05/2019)
09/05/2019	15	CRIMINAL PRACTICE ORDER as to Adam Neftali Santana. Signed by Honorable Sylvia H. Rambo on 9/5/2019. (ktt) (Entered: 09/05/2019)
09/13/2019	16	NOTICE OF APPEARANCE: Jose Luis Ongay appearing for Adam Neftali Santana (Ongay, Jose) (Entered: 09/13/2019)
09/16/2019	17	Unopposed MOTION to Withdraw as Attorney by Thomas A. Thornton. by Adam Neftali Santana. (Attachments: # 1 Certificate of Concurrence, # 2 Proposed Order) (Thornton, Thomas) (Entered: 09/16/2019)
09/16/2019	18	First MOTION for Extension of Time to File *Pre-Trial Motions* by Adam Neftali Santana. (Ongay, Jose) (Entered: 09/16/2019)
09/16/2019	19	ORDER granting the mtn to withdraw as cnsl 17 by Thomas A. Thornton as to Adam Neftali Santana.. Signed by Honorable Sylvia H. Rambo on 9/16/19. (ma) (Entered: 09/16/2019)
09/19/2019	20	ORDER granting dft's mtn for exttm 18 as to Adam Neftali Santana. The ddl for the filing of pretrial mtns is cxt'd to 10/15/19.. Signed by Honorable Sylvia H. Rambo on 9/19/19. (ma) (Entered: 09/19/2019)
10/15/2019	21	First MOTION to Suppress *Evidence* by Adam Neftali Santana. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C)(Ongay, Jose) (Entered: 10/15/2019)

10/15/2019	22	MOTION to Suppress *Corrected* by Adam Neftali Santana. (Ongay, Jose) (Entered: 10/15/2019)
10/23/2019	23	Unopposed MOTION to Continue *the Trial* by Adam Neftali Santana. (Ongay, Jose) (Entered: 10/23/2019)
10/23/2019	24	ORDER granting dft's mtn to continue 23 as to Adam Neftali Santana. Jury Selection continued from 11/4/19 to 1/6/2020 @ 9:30 AM in Harrisburg - Courtroom 3. EOJ time excluded.. Signed by Honorable Sylvia H. Rambo on 10/23/19. (ma) (Entered: 10/23/2019)
10/25/2019	25	MOTION for Extension of Time to File Response/Reply as to 22 MOTION to Suppress *Corrected* by USA as to Adam Neftali Santana. (Attachments: # 1 Certificate of Concurrence, # 2 Proposed Order)(Bloom, Daryl) (Entered: 10/25/2019)
10/28/2019	26	ORDER granting dft's mtn for exttm 25 . The Gvt's bropp to dft's mtn to suppress 22 is due by 11/12/2019 as to Adam Santana.. Signed by Honorable Sylvia H. Rambo on 10/28/19. (ma) (Entered: 10/28/2019)
11/12/2019	27	BRIEF IN OPPOSITION by USA as to Adam Neftali Santana re 22 MOTION to Suppress *Corrected*, 21 First MOTION to Suppress *Evidence* Reply Brief due by 11/26/2019. (Attachments: # 1 Exhibit(s))(Bloom, Daryl) (Entered: 11/12/2019)
11/18/2019	28	Unopposed MOTION for Extension of Time to File Response/Reply *to Government's Response* by Adam Neftali Santana. (Ongay, Jose) (Entered: 11/18/2019)
11/19/2019	29	ORDER granting dft's mtn for exttm 28 as to Neftali Santana. The Dfts Reply is due on or before 11/26/19.. Signed by Honorable Sylvia H. Rambo on 11/19/19. (ma) (Entered: 11/19/2019)
11/26/2019	30	REPLY BRIEF by Adam Neftali Santana re 25 MOTION for Extension of Time to File Response/Reply as to 22 MOTION to Suppress *Corrected* (Ongay, Jose) (Entered: 11/26/2019)
01/06/2020	31	MOTION to Continue by Adam Neftali Santana. (Ongay, Jose) (Entered: 01/06/2020)
01/07/2020	32	ORDER granting dft's mtn to continue 31 as to Adam Neftali Santana. Jury Selection continued from 1/6/20 to 3/2/2020 at 9:30 AM in Harrisburg - Courtroom 3 before Honorable Sylvia H. Rambo. EOJ time excluded.. Signed by Honorable Sylvia H. Rambo on 1/7/20. (ma) (Entered: 01/07/2020)
02/21/2020	33	MOTION to Continue by Adam Neftali Santana. (Ongay, Jose) (Entered: 02/21/2020)
02/21/2020	34	ORDER granting dft's mtn to continue 33 as to Adam Neftali Santana. Jury Selection continued from 3/2/20 to 5/4/2020 beginning at 9:30 AM in Harrisburg - Courtroom 3 before Honorable Sylvia H. Rambo. EOJ time excluded.. Signed by Honorable Sylvia H. Rambo on 2/21/20. (ma) (Entered: 02/21/2020)
03/05/2020	35	MEMORANDUM re dft's mtn to suppress 22 filed by Adam Neftali Santana (Order to follow as separate docket entry). Signed by Honorable Sylvia H. Rambo on 3/5/20. (ma) (Entered: 03/05/2020)
03/05/2020	36	ORDER - In accord with the accompanying Memorandum 35 : Dft's mtn to suppress 22 filed by Adam Neftali Santana is Denied.. Signed by Honorable Sylvia H. Rambo on 3/5/20. (ma) (Entered: 03/05/2020)
04/03/2020	37	MOTION for Bail *Home Confinement* by Adam Neftali Santana. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C, # 4 Exhibit(s) D, # 5 Exhibit(s) E) (Ongay, Jose) Modified on 4/3/2020 (cl).(PERRY COUNTY) (Entered: 04/03/2020)

04/03/2020		Case as to Adam Neftali Santana Referred to Magistrate Judge Magistrate Judge Martin C. Carlson. (ma) (Entered: 04/03/2020)
04/03/2020		ORDER as to Adam Neftali Santana re 37 MOTION for Pretrial Release CV19 (Defendant detained in) filed by Adam Neftali Santana. Counsel shall confer by telephone within 72 hours (and jointly with the Probation Officer as appropriate), and thereafter, counsel for defendant shall file a notice upon the docket as to whether there is an agreed upon resolution of the Motion (and if so, shall submit an agreed upon Order for consideration by the Court). If not so resolved, the United States shall file its response to the Motion within 72 hours of the filing of the Notice. If the Motion was not resolved, then the Notice should also include whether the parties believe an in-court hearing is necessary, and if so, what evidence the parties plan to present at the time of a hearing. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. Issued by the Honorable Sylvia H. Rambo on April 3, 2020. (kjn) (Entered: 04/03/2020)
04/06/2020	38	NOTICE *STATUS* by Adam Neftali Santana (Ongay, Jose) (Entered: 04/06/2020)
04/07/2020	40	SUR REPLY BRIEF by Adam Neftali Santana re 37 MOTION for Pretrial Release CV19 (Defendant detained in) (Ongay, Jose) (Entered: 04/07/2020)
04/07/2020	41	MEMORANDUM AND ORDER denying 37 MOTION for Pretrial Release CV19 (Defendant detained in) filed by Adam Neftali Santana. Signed by Magistrate Judge Martin C. Carlson on April 7, 2020. (kjn) (Entered: 04/07/2020)
04/14/2020	42	ORDER as to Adam Neftali Santana. Pursuant to General and amended order 20-01, Jury Selection is continued from 5/4/20 to 7/6/2020 at 9:30 AM in Harrisburg - Courtroom 3 before Honorable Sylvia H. Rambo. EOJ time is excluded. Pretrial mtns ddl ext'd to 6/15/20.Signed by Honorable Sylvia H. Rambo on 4/14/20. (ma) (Entered: 04/14/2020)
06/22/2020	43	ORDER as to Adam Neftali Santana. Jury Selection continued pursuant to standing order 2020-16 from 7/6/20 to 8/3/2020 at 9:30 AM in Harrisburg - Courtroom 3 before Honorable Sylvia H. Rambo. EOJ time excluded.Signed by Honorable Sylvia H. Rambo on 6/22/20. (ma) (Entered: 06/22/2020)
07/23/2020	44	MOTION to Continue *Trial* by Adam Neftali Santana. (Ongay, Jose) (Entered: 07/23/2020)
07/23/2020	45	ORDER granting dft's mtn to continue 44 filed by Adam Neftali Santana. Jury Selection continued from 8/3/20 to 10/5/2020 at 9:30 AM in Harrisburg - Courtroom 3 before Honorable Sylvia H. Rambo. EOJ time excluded. Pretrial mtns ddl ext'd to 9/14/20.Signed by Honorable Sylvia H. Rambo on 7/23/20. (ma) (Entered: 07/23/2020)
09/14/2020	46	MOTION to Suppress by Adam Neftali Santana. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B)(Ongay, Jose) (Entered: 09/14/2020)
09/28/2020	47	BRIEF IN OPPOSITION by USA as to Adam Neftali Santana re 46 MOTION to Suppress Reply Brief due by 10/13/2020. (Bloom, Daryl) (Entered: 09/28/2020)
10/01/2020	51	MOTION to Continue by Adam Neftali Santana. (Ongay, Jose) (Entered: 10/01/2020)
10/05/2020	52	ORDER granting dft's mtn to continue 51 filed by Adam Neftali Santana. Jury Selection continued from 10/5/20 to 1/11/2021 at 9:30AM before Honorable Sylvia H. Rambo. EOJ time excluded. Pretrial mtns ddl ext'd to 12/21/20.Signed by Honorable Sylvia H. Rambo on 10/5/20. (ma) (Entered: 10/05/2020)
12/08/2020	53	MOTION to Continue *Trial* by USA as to Adam Neftali Santana. (Attachments: # 1 Certificate of Concurrence, # 2 Proposed Order)(Bloom, Daryl) (Entered: 12/08/2020)

12/08/2020	54	ORDER granting the Gvt's mtn to continue 53 as to Adam Santana. Jury Selection continued from 1/11/21 to 3/1/2021 at 9:30AM before Honorable Sylvia H. Rambo. EOJ time excluded. Pretrial mtns ddl ext'd to 2/1/21.Signed by Honorable Sylvia H. Rambo on 12/8/20. (ma) (Entered: 12/08/2020)
12/14/2020	55	MEMORANDUM (Order to follow as separate docket entry) as to Adam Neftali Santana re 46 MOTION to Suppress. Signed by Honorable Sylvia H. Rambo on 12/14/2020. (sc) (Entered: 12/14/2020)
12/14/2020	56	ORDER - IT IS ORDERED that the 46 Motion to Suppress as to Adam Neftali Santana (1) is DENIED.Signed by Honorable Sylvia H. Rambo on 12/14/2020. SEE MEMORANDUM FOR DETAILS. (sc) (Entered: 12/14/2020)
02/25/2021	57	Joint MOTION to Continue *Trial* by Adam Neftali Santana. (Ongay, Jose) (Entered: 02/25/2021)
02/25/2021	58	ORDER Granting the joint mtn to continue 57 as to Adam Neftali Santana. Jury Selection continued from 3/1/21 to a DATE CERTAIN OF 6/21/2021 at 9:30AM before Honorable Sylvia H. Rambo. EOJ time excluded. Pretrial mtns ddl ext'd to 5/28/21.Signed by Honorable Sylvia H. Rambo on 2/25/21. (ma) (Entered: 02/25/2021)
03/15/2021	59	MOTION to Continue by Adam Neftali Santana. (Ongay, Jose) (Entered: 03/15/2021)
03/16/2021	60	ORDER Granting dft's mtn to continue 59 filed by Adam Neftali Santana. Jury Selection continued fromn6/21/21 to 8/16/2021 at 9:30AM before Honorable Sylvia H. Rambo. EOJ time excludcd.Signed by Honorable Sylvia H. Rambo on 3/16/21. (ma) (Entered: 03/16/2021)
06/24/2021	61	ATTORNEY SUBSTITUTION - Withdrawal and Entry of Attorney Appearance. Attorney Daryl Ford Bloom terminated. Attorney Scott R Ford for USA added (Ford, Scott) (Entered: 06/24/2021)
08/05/2021	62	Proposed Jury Instructions by USA as to Adam Neftali Santana (Ford, Scott) (Entered: 08/05/2021)
08/06/2021	63	Proposed Voir Dire by USA as to Adam Neftali Santana (Ford, Scott) (Entered: 08/06/2021)
08/08/2021	64	TRIAL BRIEF by Adam Neftali Santana (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) D1, # 3 Exhibit(s) D2, # 4 Exhibit(s) D3, # 5 Exhibit(s) D4, # 6 Exhibit(s) D5, # 7 Exhibit(s) D6, # 8 Exhibit(s) D7)(Ongay, Jose) (Entered: 08/08/2021)
08/13/2021	65	EXHIBIT LIST by USA as to Adam Neftali Santana (Ford, Scott) (Entered: 08/13/2021)
08/13/2021	66	WITNESS LIST by USA as to Adam Neftali Santana (Ford, Scott) (Entered: 08/13/2021)
08/13/2021	67	MOTION to Dismiss *Indictment* by Adam Neftali Santana. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C)(Ongay, Jose) (Entered: 08/13/2021)
08/16/2021	69	BRIEF IN OPPOSITION by USA as to Adam Neftali Santana re 67 MOTION to Dismiss *Indictment* Reply Brief due by 8/30/2021. (Ford, Scott) (Entered: 08/16/2021)
08/16/2021		DOCKET ANNOTATION: Document 68 deleted and refiled as document 69 . (rw) (Entered: 08/16/2021)
08/16/2021	71	Jury List as to Adam Neftali Santana (ma) (Entered: 08/17/2021)
08/17/2021	72	ORDER Denying dft's mtn to dismiss indictment 67 filed by Adam Neftali Santana. Signed by Honorable Sylvia H. Rambo on 8/16/21. (ma) (Entered: 08/17/2021)
08/17/2021	73	EXHIBIT LIST by USA as to Adam Neftali Santana (ma) (Entered: 08/17/2021)

08/26/2021	75	ORDER as to Adam Neftali Santana. Jury Selection and Trial set for 11/8/2021 at 9:30 AM in Harrisburg - Courtroom 3 before Honorable Sylvia H. Rambo. EOJ time excluded.Signed by Honorable Sylvia H. Rambo on 8/26/21. (ma) (Entered: 08/26/2021)
09/03/2021	76	ORDER - Case reassigned to Honorable Jennifer P. Wilson for all further proceedings as to Adam Neftali Santana Signed by Honorable Sylvia H. Rambo on 9/3/21. (ma) (Entered: 09/03/2021)
09/03/2021	77	VERBAL ORDER as to Adam Neftali Santana - AND NOW, on this 3rd day of September, 2021, IT IS ORDERED THAT a telephone conference is SCHEDULED for **Tuesday, September 7, 2021, at 9:30 a.m.** to discuss scheduling. The parties shall call-in to the conference call number 877-336-1828 using the access code 2529544. Signed by Honorable Jennifer P. Wilson on 9/3/2021. **(Text-only entry; no PDF document will issue. This text-only entry constitutes the order of the court or notice on the matter.)** (ve) (Entered: 09/03/2021)
09/08/2021	79	TRIAL SCHEDULING ORDER as to Adam Neftali Santana - The above case REMAINS listed for trial on November 8, 2021. Jury selection will commence at 9:30 a.m. on the above date, in Courtroom No. 1, Ninth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania. Counsel are attached for trial. Trial will commence immediately following the completion of jury selection. A final pretrial conference will be held for counsel only on November 5, 2021, at 9:00 a.m., via telephone. Government counsel shall initiate the call when all parties are on the line to chambers at 717-221-3970. Signed by Honorable Jennifer P. Wilson on 9/8/2021. (ve) (Entered: 09/08/2021)
10/25/2021	80	EXHIBIT LIST by USA as to Adam Neftali Santana (Ford, Scott) (Entered: 10/25/2021)
11/03/2021	81	Proposed Voir Dire by USA as to Adam Neftali Santana (Attachments: # 1 Certificate of Service)(Ford, Scott) (Entered: 11/03/2021)
11/04/2021	82	Proposed Jury Instructions by Adam Neftali Santana (Ongay, Jose) (Entered: 11/04/2021)
11/08/2021	84	RULE 5 NOTICE re: Brady disclosure obligations as to defendant Adam Neftali Santana. Signed by Honorable Jennifer P. Wilson on 11/8/2021. (ve) (Entered: 11/08/2021)
11/08/2021	86	Jury Seating Arrangement as to Adam Neftali Santana. (ve) (Entered: 11/08/2021)
11/10/2021	90	JURY VERDICT as to Adam Neftali Santana (1) - Guilty on Counts 1,2,3. (ve) (Entered: 11/10/2021)
11/10/2021	92	TRIAL EXHIBIT LIST. (Attachments: # 1 JERS exhibits released to jury)(ve) (Entered: 11/10/2021)
11/12/2021	93	SCHEDULING ORDER as to Adam Neftali Santana - Pre-Sentence Conference set for 2/16/2022 at 11:00 AM before Honorable Jennifer P. Wilson. The probation officer shall disclose the presentence report to government and defense counsel no later than January 5, 2022. See order for further details. Signed by Honorable Jennifer P. Wilson on 11/12/2021. (ve) (Entered: 11/12/2021)
01/06/2022	94	DRAFT PRESENTENCE INVESTIGATION REPORT as to Adam Neftali Santana. ***The AUSA and the Attorney for the applicable defendant were notified electronically through ECF. NOTE: This document will only be accessible to the government attorney and the attorney for the applicable defendant. The judge in this case, other defendants, their counsel and the general public will NOT be able to view this draft document. Parties should submit objections to this report directly to the probation officer on this case. IMPORTANT!!! Government attorneys and federal public defenders should send objections by SECURE E-MAIL to the probation officer;private***

		attorneys and CJA panel attorneys MUST send objections by MAIL, HAND-DELIVERY or FAX ONLY! NOTE! For those entitled to a free look at this document, enter your CM/ECF login and password and then your PACER login and password to confirm your right to view this document. It is recommended that you print or save the document now or PACER fees will be incurred the next time you view this document. *(aga) (Entered: 01/06/2022)*
02/04/2022	95	FINAL PRESENTENCE INVESTIGATION REPORT as to Adam Neftali Santana. ***The AUSA, Attorney for the applicable defendant, and the presiding judge were notified electronically through ECF. NOTE: This document will only be accessible to the presiding judge, government attorney and the attorney for the applicable defendant. Other defendants, their counsel and the general public will NOT be able to view this document. NOTE! For those entitled to a free look at this document, enter your CM/ECF login and password and then your PACER login and password to confirm your right to view this document. It is recommended that you print or save the document now or PACER fees will be incurred the next time you view this document.*** *(aga) (Entered: 02/04/2022)*
02/04/2022	96	FIRST ADDENDUM TO FINAL PRESENTENCE INVESTIGATION REPORT as to Adam Neftali Santana. ***The AUSA, Attorney for the applicable defendant, and the presiding judge were notified electronically through ECF.NOTE: This document will only be accessible to the presiding judge, government attorney and the attorney for the applicable defendant. Other defendants, their counsel and the general public will NOT be able to view this document. NOTE! For those entitled to a free look at this document, enter your CM/ECF login and password and then your PACER login and password to confirm your right to view this document. It is recommended that you print or save the document now or PACER fees will be incurred the next time you view this document.*** *(aga) (Entered: 02/04/2022)*
02/17/2022	99	SCHEDULING ORDER as to Adam Neftali Santana - Sentencing set for 3/22/2022 at 09:30 AM in Harrisburg - Courtroom 1 before Honorable Jennifer P. Wilson. Signed by Honorable Jennifer P. Wilson on 2/17/2022. (ve) (Entered: 02/17/2022)
03/07/2022	100	SENTENCING MEMORANDUM by Adam Neftali Santana (Attachments: # 1 Exhibit(s) A)(Ongay, Jose) (Entered: 03/07/2022)
03/16/2022	101	Character Letters ***The AUSA, Attorney for the applicable defendant, and the presiding judge were notified electronically through ECF. NOTE: This document will only be accessible to the presiding judge, government attorney and the attorney for the applicable defendant. Other defendants, their counsel and the general public will NOT be able to view this document. NOTE! For those entitled to a free look at this document, enter your CM/ECF login and password and then your PACER login and password to confirm your right to view this document. It is recommended that you print or save the document now or PACER fees will be incurred the next time you view this document.*** *(aga) (Entered: 03/16/2022)*
03/22/2022	104	JUDGMENT as to Adam Neftali Santana (1) - Count(s) 1, 2, 3, Imprisonment - 180 months. This sentence consists of a sentence of 120 months on each of Counts 1 and 2 to run concurrent with each other and 60 months on Count 3 to run consecutive to Counts 1 and 2. Supervised release - 5 years. This consists of 5 years on each count to run concurrently. Special assessment - $100 on each count. Signed by Honorable Jennifer P. Wilson on 3/22/2022. (ve) (Entered: 03/22/2022)
03/22/2022	105	PSR-Statement of Reasons as to Adam Neftali Santana ***The AUSA, Attorney for the applicable defendant, and the presiding judge were notified electronically through ECF. NOTE: This document will only be accessible to the presiding judge, government attorney and the attorney for the applicable defendant. Other defendants, their counsel***

		and the general public will NOT be able to view this document. NOTE! For those entitled to a free look at this document, enter your CM/ECF login and password and then your PACER login and password to confirm your right to view this document. It is recommended that you print or save the document now or PACER fees will be incurred the next time you view this document. (aga) (Entered: 03/22/2022)
04/01/2022	106	NOTICE (Ongay, Jose) (Entered: 04/01/2022)
04/01/2022	107	NOTICE OF APPEAL by Adam Neftali Santana re 104 Judgment, Filing Fee and Docket Fee NOT PAID - Motion for IFP PENDING. Representing Attorney: Motion Pending. Court Reporter Lori Shuey. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (eo) (Entered: 04/01/2022)
04/04/2022	108	USCA Case Number as to Adam Neftali Santana 22-1601 for 107 Notice of Appeal, filed by Adam Neftali Santana. USCA Case Manager Caitlyn (CJG) (DOCUMENT IS RESTRICTED AND CAN ONLY BE VIEWED BY COURT STAFF.) (Caitlyn) (Entered: 04/04/2022)
07/05/2022	109	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Jury Trial Proceedings (Day 1) as to Adam Neftali Santana held on 11/8/21 before Judge Wilson. Court Reporter L. Shuey, Telephone Number 717-215-1270. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022. (Shuey, L.) (Entered: 07/05/2022)
07/05/2022	110	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Jury Trial Proceedings (Day 2) as to Adam Neftali Santana held on 11/9/21 before Judge Wilson. Court Reporter L. Shuey, Telephone Number 717-215-1270. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022. (Shuey, L.) (Entered: 07/05/2022)
07/05/2022	111	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Jury Trial Proceedings (Day 3) as to Adam Neftali Santana held on 11/10/21 before Judge Wilson. Court Reporter L. Shuey, Telephone Number 717-215-1270. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022. (Shuey, L.) (Entered: 07/05/2022)
07/05/2022	112	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Sentencing Proceedings as to Adam Neftali Santana held on 3/22/22 before Judge Wilson. Court Reporter L. Shuey, Telephone Number 717-215-1270. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022. (Shuey, L.) (Entered: 07/05/2022)
07/05/2022	113	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Jury Trial Proceedings - Day 1 - as to Adam Neftali Santana held on 8/16/2021, before Judge Rambo. Court Reporter Wendy Yinger, Telephone number 717-440-1535. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction

		Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022. (Yinger, Wendy) (Entered: 07/05/2022)
07/05/2022	114	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Jury Trial Proceedings - Day 2 - as to Adam Neftali Santana held on 8/17/2021, before Judge Rambo. Court Reporter Wendy Yinger, Telephone number 717-440-1535. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022. (Yinger, Wendy) (Entered: 07/05/2022)
07/15/2022	115	MOTION for Appointment of Appellant Counsel Pursuant to the Sixth Amendment by Adam Neftali Santana. (rw) (Entered: 07/15/2022)
07/19/2022	116	ORDER denying 115 Motion to Appoint Counsel as to Adam Neftali Santana (1). Signed by Honorable Jennifer P. Wilson on 7/19/2022. (ve) (Entered: 07/19/2022)

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

UNITED STATES OF AMERICA	:	
	:	Docket No.
v.	:	
	:	19-CR-251
ADAM N. SANTANA,	:	
Defendant.	:	

DEFENDANT'S CORRECTED[1] MOTION TO SUPPRESS THE EVIDENCE OBTAINED PURSUANT TO THE CONTINGENCY WARRANT

Now Comes the Defendant, through the undersigned, and moves this Court to suppress the evidence and in support thereof states the following:

1. On February 22, 2019, at approximately 10:58 a.m., Trooper Steven Nesbit of the Pennsylvania State Police ("Trooper Nesbit") applied for a Contingency Search Warrant for 35 Redwood Street, Chambersburg, PA ("the property").[2] A contingency search warrant requires certain facts and conditions to be established before the execution of the search warrant. Contingency warrants are also referred to as anticipatory search warrants or executory search warrants.

2. The Affidavit of Probable Cause of the Warrant ("the Affidavit") describes the relevant facts establishing probable cause as follows:

> [AFFIANT'S QUALIFICATIONS AND EXPERIENCE][3]
>
> Your Affiant is Tpr. Steven NESBIT of the Pennsylvania State Police. I am currently assigned to the Drug Law Enforcement Division, Central Interdiction Unit. I have been employed by the PA State Police for over 13 years. During my employment, I have conducted numerous investigation and attended numerous

[1] I filed the wrong version of the Motion. This version had a different conclusion. As such, the last paragraph is now in italics so the Court and the Government could see the change.
[2] A copy of the Application for the Search Warrant and Authorization ("the Warrant") is attached hereto as *Exhibit* "A."
[3] The bracketed headings are not part of the Affidavit.

trainings that pertain to the "Controlled Substances, Drug, Devices, and Cosmetic Act" of 1972. Many of these investigations involved covert surveillance, controlled delivers of narcotics, intercepting narcotics during transportation, drug interdiction, and the execution of search warrants.

In addition, I am currently cross designated with the U.S. Homeland Security Investigations for Customs Investigations to conduct joint investigations. I have attended numerous schools related to drug trafficking and identification conducted by the Drug Enforcement Administration (DEA), Homeland Security Investigations (HSI), Pennsylvania State Police (PSP), and the Northeast Counterdrug School.

I am also Class "A" certified (A-4506) by the Pennsylvania State Police and the Pennsylvania Attorney General's Office to conduct Wiretap and Electronic Surveillance in criminal investigations.

Through a combination of training and experience, your affiant has become familiar with the manner and methods of operation of persons involved in the distribution and use of controlled substances.

[EVIDENCE EXPECTED TO BE FOUND IN THE PROPERTY]

Based upon that training and experience your affiant believes that residents of 35 Redwood St. are involved in a drug vending operation and that:

Drug traffickers and their accomplices commonly have in their possession, within their residence, within outbuildings and structures or within their vehicles, controlled substances, drug related paraphernalia, weapons and other equipment or items used in the furtherance of their illegal narcotics trafficking activities.

That those involved in drug trafficking maintain books, records, ledgers, notes, receipts and or other documentation pertaining to and relating information concerning the telephone numbers, addresses of others involved, as well as the procurement, processing, transportation, sale and distribution of controlled substances. The aforementioned items are maintained where these individuals have ready access to them.

That those persons involved in the purchasing, sales and distribution of controlled substances will maintain on hand quantities of United States currency in order to finance and facilitate their on-going drug activities, as narcotics dealings are namely a cash transaction. Additionally, they are more than likely to possess or have within a close proximity, weapons to protect themselves as well as their money and narcotics.

That those involved in narcotics trafficking use, will take or cause to be taken photographs, video and audio recordings of themselves, their associates, activities

and their controlled substances. These items will then be maintained in their possession.

The Warrant at p. 3, *Exhibit* "A."

[FACTS ESTABLISHING PROBABLE CAUSE]

On 02/22/19, The United States Postal Inspector(s) intercepted a parcel. The parcel is described as a United States Postal Service (USPS) Express Mail parcel bearing tracking # 9505511017439050164 88 addressed to Carman DIAZ, 35 Redwood St., Chambersburg, PA 17201 measuring approximately 12 ¼" x 12 ¼" x 6" and weighing approximately 8 pounds 8 ounces. The return address listed on the parcel is Juan RIVERA PO BOX 2819 Juncos, P.R. 00777. Through further investigation a Federal search warrant was applied for and granted by a US Federal Judge. Upon executing the search warrant the parcel was found to contain a multicolored bag. Inside the bag two kilograms of cocaine were located. The bricks weigh approximately 2,088 grams. Tpr. David LONG tested the suspected cocaine using a Tru Narc analyzer. The TruNarc provided a positive test result for cocaine HCL.

On 02/22/19, a check through available data bases indicated a Carman Diaz[4] was a name not associated with the address of 35 Redwood St ST. It is typical for drug traffickers to utilize fictitious names to deny culpability of their crimes. The listed names for the address are Adam SANTANA and Ana Flores LOPEZ.

On 2/22/19, Members of the PA State Police, Franklin County Drug Task Force, and The United States Postal Inspectors, ["the Agents"]intend to perform a controlled delivery of the aforementioned parcel to 35 Redwood ST. Chambersburg Boro, Franklin County.

The execution of this search warrant shall be contingent upon the delivery and acceptance of the aforementioned parcel and the parcel being taken inside of the residence listed as 35 Redwood St. Chambersburg, PA. In the event the delivery and acceptance of the aforementioned parcel does not occur, then and in that event, this search warrant will become null and void, will not be executed and will be returned to the issuing authority unserved. In the event the parcel is accepted by an individual and taken inside 35 Redwood ST., this search warrant will be executed.

This officer believes that additional narcotics, as well as other supporting evidence may be inside the residence due to the fact that the amount of the controlled substance being shipped is indicative of sales and distribution of narcotics. Along with the sale and distribution of cocaine there is certain possibility that there will be cash proceeds also at this location.

[4] While the Affidavit spells the first name of the parcel's recipient as "Carman," the correct spelling of the first name is "Carmen."

> This officer is requesting that the search warrant include any and all persons inside the residence due to the fact that narcotics may be hidden on their persons and include all curtilage, outbuildings and vehicles which are within the boundaries of the residence. It has been this officer's experience that at times narcotics traffickers hide drugs and monies in vehicles and sheds on their property in addition to the residence itself.
>
> Based upon the above information I respectfully request that a search warrant be granted for 35 Redwood ST. Chambersburg Boro, Franklin County, upon the delivery and acceptance of the aforementioned parcel.

Id. at p. 4, *Exhibit* "A."(*emphasis added*).

3. On page 2, the Warrant list ten categories of items the Government will search for upon execution of the Warrant. *See Exhibit* "A," p. 2.

> 1.) Any and all controlled substances. Any non-controlled substances packaged to represent a controlled substance. Any agent that can/could be used as a cutting or processing agent. Any item/material that can/could be used to package controlled substances for distribution. Any item used as paraphernalia in the processing, packaging, preparing, compounding, storing, concealing, injecting, ingesting or inhaling a controlled substance.
>
> 2.) Financial proceeds derived from the illegal distribution of controlled/non-controlled substances, namely United States currency. Any and all documentation relating to financial activity, including bank statements, account records, receipts, money drafts, letters of credit, money orders and receipts, ledgers, safe deposit keys, as well as any device that shows/evidences the secreting of, or expenditure of monies gained through illegal narcotics trafficking. This would include vehicle titles and registrations, property deeds, leases and any other legal document showing the ownership/interest in property and articles, or businesses where a financial relationship exists.
>
> 3.) Firearms, ammunition and weapons, including but not limited to: handguns, pistols, revolvers, rifles, shotguns and any other weapon, including any record, receipt pertaining to firearm ownership and possession, to include weapons permits.
>
> 4.) Records of occupancy for the aforementioned address to include utility and telephone bills, tax records, pay stubs, deeds, lease/rental agreements and owing evidence of any and all individuals residing there.
>
> 5.) Cellular and digital mobile phones, pagers and electronic devices that may be used to communicate and monitor in furtherance of violations of the Controlled Substance, Drug Device and cosmetic Act, Act. 64.

6.) Photographs, negatives, videotapes, film, developed and undeveloped, audio tapes and recordings that does or may document conspirators, assets and activities involved in the distribution of controlled substances.

7.) Books, records, notes, receipts, ledgers, computer, computer discs and files or any other form of record documenting the: ordering, purchasing, distribution, processing and transportation of controlled substances, or otherwise documenting the names, phone numbers, pager numbers, contact points, locations of suppliers, conspirators, clientele, businesses and any other individual involved in narcotics trafficking.

8.) Papers, tickets, notes, receipts, rental agreements and any other item relating/documenting domestic and international travel by any conveyance.

9.) Any and all persons found in said residence during the course of the search, as well as those arriving at the residence, to prevent the destruction of evidence as well as the protection of all the officers involved.

10.) Any and all other items identified in the Affidavit of Probable Cause relating to the trafficking of Controlled Substances and the proceeds derived from trafficking in Controlled Substances

Id. at p. 2, *Exhibit* "A."

4. The above list is extremely broad, and the facts in the Affidavit do not support the possibility that the items on the list will be found in the property.

5. Before fully addressing the basis of this motion, the Defendant submits that he has "standing" to file and litigate this motion because he was one of the residents of the property. As such, he had an expectation of privacy in the property. *Rakas v. Illinois*, 439 U.S. 128, 138-139 (1978).

6. The Fourth Amendment states that the people have the right against unreasonable searches and seizures of their persons, houses, papers, and effects. Also, it states that warrants to search or to seize property require, among other, probable cause. U.S. Const. amend. IV. The search here was of the Defendant's home. The law is clear, to search a home, absent consent, a warrant is required. The Third Circuit, in *United States v. Mallory*, 765 F. 3d 373, 383 (3rd Cir.

2014), stated that warrantless searches of the home are presumptively unreasonable. Here it is respectfully submitted that Affidavit does not establish probable cause that drugs will be found in the property. Also, the conditions precedent required for the execution of the contingency warrant did not take place. Therefore, the search was warrantless.

7. The Supreme Court has said the following about anticipatory search warrants:

> Probable cause exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). Because the probable-cause requirement looks to whether evidence will be found when the search is conducted, all warrants are, in a sense, "anticipatory." In the typical case where the police seek permission to search a house for an item they believe is already located there, the magistrate's determination that there is probable cause for the search amounts to a prediction that the item will still be there when the warrant is executed. *See People v. Glen*, 30 N.Y.2d 252, 258, 282 N.E.2d 614, 617, 331 N.Y.S.2d 656 (1972) ("Present possession is only probative of the likelihood of future possession.") [Footnote 2] . . . . Thus, when an anticipatory warrant is issued, "the fact that the contraband is not presently located at the place described in the warrant is immaterial, so long as there is probable cause to believe that it will be there when the search warrant is executed." *United States v. Garcia*, 882 F.2d 699, 702 (CA2 1989) (quoting *United States v. Lowe*, 575 F.2d 1193, 1194 (CA6 1978) (internal quotation marks omitted).
>
> Anticipatory warrants are, therefore, no different in principle from ordinary warrants. They require the magistrate to determine (1) that it is now probable that (2) contraband, evidence of a crime, or a fugitive will be on the described premises (3) when the warrant is executed. . . . [T]he probability determination for a conditioned anticipatory warrant looks also to the likelihood that the condition will occur, and thus that a proper object of seizure will be on the described premises. In other words, for a conditioned anticipatory warrant to comply with the Fourth Amendment's requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that if the triggering condition occurs "there is a fair probability that contraband or evidence of a crime will be found in a particular place," *Gates*, supra at 238, but also that there is probable cause to believe the triggering condition will occur. The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable-cause determination. *See Garcia*, supra, at 703.

Footnote 2

> For this reason, probable cause may cease to exist after a warrant is issued. The police may learn, for instance, that contraband is no longer located at the place to be searched. *See, e.g., United States v. Bowling*, 900 F.2d 926, 932 (C.A.6 1990) (recognizing that a fruitless consent search could "dissipat[e] the probable cause that justified a warrant"). Or the probable-cause showing may have grown "stale" in view of the time that has passed since the warrant was issued. *See United States v. Wagner*, 989 F.2d 69, 75 (C.A.2 1993) ("[T]he facts in an affidavit supporting a search warrant must be sufficiently close in time to the issuance of the warrant and the subsequent search conducted so that probable cause can be said to exist as of the time of the search and not simply as of some time in the past"); *see also Sgro v. United States*, 287 U.S. 206, 210-11 53 S.Ct. 138, 77 L.Ed. 260 (1932).

*United States v. Stiff, 2018 U.S. Dist. LEXIS 223059, *21-24 citing United States v. Grubbs*, 547 U.S. 90, 95-97 (2006).

8. In essence, as stated above, a contingency warrant requires the magistrate to make three determinations: (1) that there is now probable cause that evidence of a crime will be in the property, (2) that the evidence will be there when the warrant is executed, and (3) that there is probable cause to believe the triggering condition will occur permitting the execution of the search warrant.

9. There are two problems with the Warrant. The first is that there are no facts that support probable cause that the items to be searched and seized will be found in the property. The two kilos of cocaine found inside the parcel, and the sender and the recipient address discrepancies, do not establish probable cause. This problem is further compounded because the two kilos were replaced with sham kilos. Thus, the two kilos do not establish probable cause that drugs will be found in the property. The address discrepancy is not sufficient to authorize a search. Again, a review of the Affidavit fails to reveal any other fact that would establish probable cause that drug related evidence would be found in the property. While it is possible that the Agents may have known about other

facts that may have supported probable cause, the Affidavit does not contain those facts. This means the magistrate did not consider these facts. As such, here, it cannot be argued that on the bases of the contents of the Affidavit, it has been established that the listed items would be found in the property.

10. However, even if the Court disagrees and finds that the Affidavit contained sufficient facts establishing probable cause, the search was warrantless because the contingent conditions required to take place, i.e., delivery of the parcel, acceptance of the parcel, and the entry of the parcel into the property, that would have permitted the execution of the Warrant, did not take place.

11. On February 22, 2019, armed with the Warrant, the Agents went to the property to make a controlled delivery to an occupant of the property so that they could then execute the search warrant. Below is a quotation of Trooper Nesbit's Pennsylvania State Police Incident Report ("the Report") describing what happened once the Agents arrived at the property.[5]

12. The Report describes the relevant facts as follows:

> Upon delivery of the parcel, by a US Postal Inspector, it was placed on the front porch and in front of the main door to the residence.
>
> . . .
>
> At approximately 1324 hours, Eric A. WAGAMAN, 82 West Queen St. Chambersburg, PA, 17201, PA OLN 26343042, of Valley Community Housing Corporation, was observed pulling into 35 Redwood St. WAGAMAN is a maintenance mechanic. He was operating a Valley Community Housing Corporation vehicle. Upon pulling into the driveway he and James DUVALL another maintenance employee, exited the vehicle and approached the front door. WAGAMAN proceeded to pick up the parcel and enter the residence.
>
> The parcel was placed inside and WAGAMAN proceeded to open the garage door of the residence. At this time, I made contact with an employee at the Community Center of Redwood Park. I spoke with the employee and asked that WAGAMAN be contacted and for him to return to the office. She agreed and WAGAMAN proceeded to the center.

[5] A copy of the Report is attached hereto as *Exhibit* "B."

> Upon speaking with WAGAMAN it was learned he was at the residence to complete several maintenance tasks. New flooring was installed in the first floor of the residence. He was there to put the stove, refrigerator, toilet, and several other items into the proper place. When asked, he advised he did observe a parcel at the front door. He advised it is common practice for him to pick up parcels and put them inside the residence. He advised he will then leave a note on the door that advises the homeowner that he was there, and he put the parcel inside the home. I advised him we were conducting an active investigation on the residence. He was advised of some of the details of this investigation and requested for safety reasons not to enter the home. It should be noted WAGAMAN was not acting under any law enforcement direction when he picked up the parcel and took it inside the residence.
>
> As I spoke with WAGAMAN near the community center, surveillance members advised SANTANA pulled into the driveway. He was operating a white Ford Expedition. Upon his arrival, he walked into the residence with a female, later identified as his 10 YOA daughter Adanielis SANTANA. At 1345 hours, the GPS tracking indicated the parcel had moved. At 1347 hours, the light sensor was activated. The activation indicated the parcel was opened and the kilogram containing the Gps tracker/light sensor was exposed to light.
>
> Upon receiving this information, PSP, Franklin County Drug Task Force, and The Postal Inspectors converged on the residence to execute the search warrant.

The Report, pp. 3 and 4, *Exhibit* "B."

13. Upon completion of the search, the Agents found and seized A Glock 19 serial number SYK946; several Glock magazines; 9mm ammunition; a digital scale; the parcel; the multicolored bag that contained the sham kilograms; five bags similar in size and shape to the multicolored bags; a black iPhone; and a bottle of Polyethylene Glycol. A copy of the Receipt/Inventory of Seized Property ("the inventory") is attached hereto as *Exhibit* "C." The Agents also attempted to interview the Defendant, and in the process of advising him of his rights obtained several statements.

14. Specifically, the contingency warrant stated, "*the execution of this search warrant shall be contingent upon the delivery and acceptance of the aforementioned parcel and the parcel*

being taken inside of the residence listed as 35 Redwood St. Chambersburg, PA." (emphasis added).

15. The parcel was addressed to Carmen Diaz. The Warrant stated that the investigation revealed that Carmen Diaz was not associated with the property, but instead that Adam Santana and Ana Flores Lopez were associated with the property. Yet, the controlled delivery did not attempt to personally deliver the parcel to either Adam Santana or Ana Flores Lopez who were the adults associated with the property.[6] The Agents did not attempt to deliver the parcel to anyone. The parcel was left by the front door. The Agents did not even knock on the front door. It is respectfully submitted that the word delivery meant actual delivery to an occupant of the home. This means that leaving the parcel in front of the front door was insufficient.

16. The word acceptance also implies that the parcel will be accepted by an adult occupant of the home and more importantly that this person knowingly accepted the parcel from a sender named Carmen Diaz. This means that the occupant knowing and voluntarily received, accepted, and brought the parcel into the property. This also means, as argued in footnote 5, that the person that accepted the parcel knew the parcel was addressed to Carmen Diaz. This could have been accomplished in two ways. By either telling the recipient that the parcel was addressed

[6] Because the parcel was not addressed to either Adam Santana or Ana Flores Lopez, the two adults associated to the property, it was important to make sure that the parcel was delivered personally to one of them and that it was established that whoever accepted the parcel knew the parcel was addressed to Carmen Diaz. This would have established that they knowingly accepted the package addressed to another person. If either Mr. Santana or Ms. Flores had been shown that the parcel was not addressed to them and they still had accepted the parcel, then the conditions of the warrant would have been met. However, if after been shown that the parcel was not addressed to either of them, the parcel was rejected, the conditions of the warrant would not have been met, and the warrant would have been null and void. It should be noted that the Government was going to enter a home to conduct a search, as such, they should have insured that all required conditions were fully met. Again, here the parcel was not delivered, accepted, and brought into the property by one of the adult known occupants of the property.

to Carmen Diaz or by making sure that the recipient signed a receipt where it was explicitly stated that the parcel was addressed to Carmen Diaz. Neither took place. The Warrant states that the parcel has to be taken inside. This also implies that the occupant who accepted the parcel voluntarily took the parcel inside the property. Here, the parcel was not taken inside by the associated occupants of the property, but by Mr. Eric A. Wagaman, an employee of the Valley Community Housing Corporation, the company that managed the property. Suffice it to say, that his acceptance of the parcel cannot fulfill the requirements of the warrant. It is implicit by the conditions of the contingency warrant that the parcel was required to be accepted and brought into the property by an adult associated with the property.

17. These were the conditions *precedent* for the execution of this contingency search warrant. However, they did not take place during the controlled delivery.

18. The Government had the time, the ability, and the resources to make a perfect controlled delivery. The Government had Letter Carriers or Postal Inspectors that could have made the necessary delivery attempts to deliver the parcel to an adult associated with the property. Because this was an Express Mail parcel, it would have been perceived as normal if it were personally delivered to the occupants of the property. Instead, the Government abandoned the parcel on the front porch. Once the Agents saw Mr. Wagaman pick up the parcel and bring the parcel into the property, they should have immediately moved to retrieve the parcel and directed Mr. Wagaman to leave the area. The Agents then could have left with the parcel, and arranged for a Letter Carrier to deliver the parcel. Had the Government done this, we could have verified that the delivery had been made to an adult occupant of the home, the parcel would have been voluntarily accepted by an adult occupant of the home, and the parcel would have been brought into the home by an adult occupant of the home. These would have complied with the requirements

of the contingency warrant. Again, this did not happen here. As such, the conditions of the contingency warrant were not met. This means that the warrant was null and void. Specifically, the Warrant states: "[i]n the event the delivery and acceptance of the aforementioned parcel does not occur, then and in that event, this search warrant will become null and void, will not be executed and will be returned to the issuing authority unserved." Such an occurrence would render the search of the property warrantless.

19. Last, the Government cannot argue that Mr. Wagaman's actions constituted an exigent circumstance that permitted the warrantless search of the property because this alleged exigency was caused by the Agent's inappropriate delivery of the parcel. As stated above, the parcel could have been personally delivered by a Letter Carrier or a Postal Inspector dressed as a Letter Carrier. The Government cannot create exigencies, intentionally or negligently, and then rely on them to conduct a warrantless search.

WHEREFORE, the Defendant respectfully requests that this Honorable Court should suppress all the physical evidence, the defendant's statements, and everything that transpired, from the Agents' arrival to the property to the time they left, e.g., the entry into the property, the opening of the parcel, and the Defendant's reaction, because the evidence was the result of, and the behavior was caused by, a warrantless search.

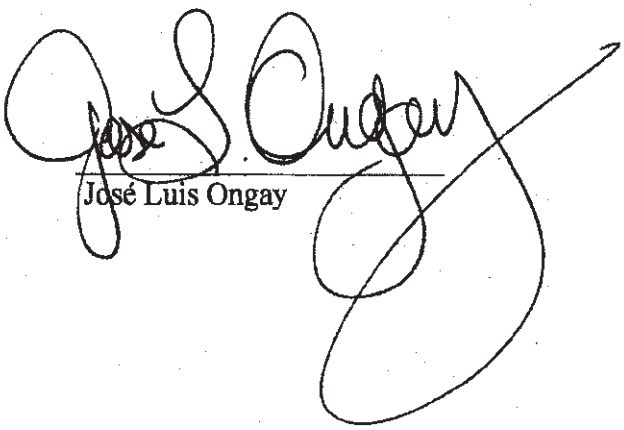
Respectfully,

José Luis Ongay

Date: October 15, 2019

CERTIFICATE OF SERVICE

I certify that on this date, a copy of this motion was served via email upon AUSA Daryl S. Bloom at daryl.bloom@usdoj.gov.



José Luis Ongay

Date: October 15, 2019

EXHIBIT A

Application for the Search Warrant and Authorization

Commonwealth of Pennsylvania

COUNTY OF Franklin

APPLICATION FOR SEARCH WARRANT AND AUTHORIZATION

Docket Number (Issuing Authority):	Police Incident Number: PA19-228739	Warrant Control Number:

Tpr. Steven NESBIT	Pennsylvania State Police	717-317-5097	02/22/19
AFFIANT NAME	AGENCY	PHONE NUMBER	DATE OF APPLICATION

IDENTIFY ITEMS TO BE SEARCHED FOR AND SEIZED (Be as specific as possible):
Controlled substances, as defined by the Pa. Controlled Substance, Drug, Device and Cosmetic Act of 1972, as amended, specifically, but not limited to cocaine, a schedule II controlled substance. Also, any assets, paraphernalia or other materials related to the use or sales of same. Additionally, any documents showing occupancy of the residence to be searched. The attached affidavit of probable cause and attachment "A" are incorporated by reference in their entirety.

SPECIFIC DESCRIPTION OF PREMISES AND/OR PERSON TO BE SEARCHED (Street and No., Apt. No., Vehicle, Safe Deposit Box, etc.):
35 Redwood St. Chambersburg Boro. Franklin County. The address is a 2 story townhome marked with the numerical numbers "35" The residence is red in color with a covered front porch, black shutters, and attached one car garage.

NAME OF OWNER, OCCUPANT OR POSSESSOR OF SAID PREMISES TO BE SEARCHED (If proper name is unknown, give alias and/or description):
Adam Neftalie-SANTANA

VIOLATION OF (Describe conduct or specify statute):	DATE(S) OF VIOLATION:
Controlled Substance, Drug Device & Cosmetic, Title 35.	02/22/19

☐ ***Warrant Application Approved by District Attorney – DA File No.:*** _____
(If DA approval required per Pa.R.Crim.P. 202A with assigned File No. per Pa.R.Crim.P. 507)

☐ ***Additional Pages Attached (Other than Affidavit of Probable Cause)***

☐ ***Probable Cause Affidavit(s) MUST be attached (unless sealed Below). Total number of pages:*** _____

TOTAL NUMBER OF PAGES IS SUM OF ALL APPLICATION, PROBABLE CAUSE AND CONTINUATION PAGES EVEN IF ANY OF THE PAGES ARE SEALED

The below named Affiant, being duly sworn (or affirmed) before the Issuing Authority according to law, deposes and says that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at the particular premises or in the possession of the particular person as described above.

Signature of Affiant	Pennsylvania State Police Agency or Address if private Affiant	10233 Badge Number

Sworn to and subscribed before me this 22nd day of FEBRUARY 20 19 Mag. Dist. No.: 39

Signature of Issuing Authority — 157 LINE E, CHAMBERSBURG, PA 17201 (Office Address) — (SEAL)

SEARCH WARRANT
TO LAW ENFORCEMENT OFFICER:

WHEREAS, facts have been sworn to or affirmed before me by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the premises or person described, and to seize, secure, inventory and make return according to the Pennsylvania Rules of Criminal Procedure.

☒ This Warrant shall be served as soon as practicable and shall be served only between the hours of 6AM to 10PM but in no event later than:*

☐ This Warrant shall be served as soon as practicable and may be served any time during the day or night but in no event later than: **

10:58 A. M. o'clock, Feb. 24 20 19

☐ This Warrant shall be returned to judicial officer _____

* The issuing authority should specify a date not later than two (2) days after issuance. Pa.R.Crim.P. 206(4).
** If the issuing authority finds reasonable cause for issuing a nighttime warrant on the basis of additional reasonable cause set forth in the accompanying affidavit(s) and wishes to issue a nighttime warrant, then this block shall be checked. Pa.R.Crim.P. 206(7).

Issued under my hand this 22nd day of FEB. 20 19 at 10:58 A. M. o'clock.

Signature of Issuing Authority — Mag. Dist. or Judicial Dist. No. 39 — Date Commission Expires: 6/31/2023 — (SEAL)

Title of Issuing Authority: ☐ District Justice ☒ Common Pleas Judge ☐ _____

☐ ***For good cause stated in the affidavits(s) the Search Warrant Affidavit(s) are sealed for*** _____ ***days by my certification and signature. (Pa.R.Crim.P. 211)***

_____ (Date) (SEAL)
Signature of Issuing Authority (Judge of the Court of Common Pleas or Appellate Court Justice or Judge)

TO BE COMPLETED BY THE ISSUING AUTHORITY

AOPC 4/10A-10

Commonwealth of Pennsylvania

COUNTY OF Franklin

APPLICATION FOR SEARCH WARRANT
CONTINUATION PAGES

Docket Number (Issuing Authority): | Police Incident Number: PA19-228739 | Warrant Control Number:

Continuation of:
XX Items to be searched and seized ____ Description of premises/person(s) to be searched ____ Owner/ Occupant ____ Violations

ATTACHMENT "A"

1.) Any and all controlled substances. Any non-controlled substances packaged to represent a controlled substance. Any agent that can/could be used as a cutting or processing agent. Any item/material that can/could be used to package controlled substances for distribution. Any item used as paraphernalia in the processing, packaging, preparing, compounding, storing, concealing, injecting, ingesting or inhaling a controlled substance.

2.) Financial proceeds derived from the illegal distribution of controlled/non-controlled substances, namely United States currency. Any and all documentation relating to financial activity, including bank statements, account records, receipts, money drafts, letters of credit, money orders and receipts, ledgers, safe deposit keys, as well as any device that shows/evidences the secreting of, or expenditure of monies gained through illegal narcotics trafficking. This would include vehicle titles and registrations, property deeds, leases and any other legal document showing the ownership/interest in property and articles, or businesses where a financial relationship exists.

3.) Firearms, ammunition and weapons, including but not limited to: handguns, pistols, revolvers, rifles, shotguns and any other weapon, including any record, receipt pertaining to firearm ownership and possession, to include weapons permits.

4.) Records of occupancy for the aforementioned address to include utility and telephone bills, tax records, pay stubs, deeds, lease/rental agreements and owing evidence of any and all individuals residing there.

5.) Cellular and digital mobile phones, pagers and electronic devices that may be used to communicate and monitor in furtherance of violations of the Controlled Substance, Drug Device and cosmetic Act, Act. 64.

6.) Photographs, negatives, videotapes, film, developed and undeveloped, audio tapes and recordings that does or may document conspirators, assets and activities involved in the distribution of controlled substances.

7.) Books, records, notes, receipts, ledgers, computer, computer discs and files or any other form of record documenting the: ordering, purchasing, distribution, processing and transportation of controlled substances, or otherwise documenting the names, phone numbers, pager numbers, contact points, locations of suppliers, conspirators, clientele, businesses and any other individual involved in narcotics trafficking.

8.) Papers, tickets, notes, receipts, rental agreements and any other item relating/documenting domestic and international travel by any conveyance.

9.) Any and all persons found in said residence during the course of the search, as well as those arriving at the residence, to prevent the destruction of evidence as well as the protection of all the officers involved.

10.) Any and all other items identified in the Affidavit of Probable Cause relating to the trafficking of Controlled Substances and the proceeds derived from trafficking in Controlled Substances

SW # 10255

Commonwealth of Pennsylvania

COUNTY OF Franklin

AFFIDAVIT OF PROBABLE CAUSE

Docket Number (Issuing Authority):	Police Incident Number: PA19-228739	Warrant Control Number:

PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

Your Affiant is Tpr. Steven NESBIT of the Pennsylvania State Police. I am currently assigned to the Drug Law Enforcement Division, Central Interdiction Unit. I have been employed by the PA State Police for over 13 years. During my employment, I have conducted numerous investigation and attended numerous trainings that pertain to the "Controlled Substances, Drug, Devices, and Cosmetic Act" of 1972. Many of these investigations involved covert surveillance, controlled delivers of narcotics, intercepting narcotics during transportation, drug interdiction, and the execution of search warrants.

In addition, I am currently cross designated with the U.S. Homeland Security Investigations for Customs Investigations to conduct joint investigations. I have attended numerous schools related to drug trafficking and identification conducted by the Drug Enforcement Administration (DEA), Homeland Security Investigations (HSI), Pennsylvania State Police (PSP), and the Northeast Counterdrug School.

I am also Class "A" certified (A-4506) by the Pennsylvania State Police and the Pennsylvania Attorney General's Office to conduct Wiretap and Electronic Surveillance in criminal investigations.

Through a combination of training and experience, your affiant has become familiar with the manner and methods of operation of persons involved in the distribution and use of controlled substances. Based upon that training and experience your affiant believes that residents of 35 Redwood St. are involved in a drug vending operation and that:

Drug traffickers and their accomplices commonly have in their possession, within their residence, within outbuildings and structures or within their vehicles, controlled substances, drug related paraphernalia, weapons and other equipment or items used in the furtherance of their illegal narcotics trafficking activities.

That those involved in drug trafficking maintain books, records, ledgers, notes, receipts and or other documentation pertaining to and relating information concerning the telephone numbers, addresses of others involved, as well as the procurement, processing, transportation, sale and distribution of controlled substances. The aforementioned items are maintained where these individuals have ready access to them.

That those persons involved in the purchasing, sales and distribution of controlled substances will maintain on hand quantities of United States currency in order to finance and facilitate their on-going drug activities, as narcotics dealings are namely a cash transaction. Additionally, they are more than likely to possess or have within a close proximity, weapons to protect themselves as well as their money and narcotics.

That those involved in narcotics trafficking use, will take or cause to be taken photographs, video and audio recordings of themselves, their associates, activities and their controlled substances. These items will then be maintained in their possession.

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Affiant Signature	Date	Issuing Authority Signature	Date	(SEAL)
	08/22/19		8/22/2019	

AOPC 410B-10

Commonwealth of Pennsylvania

COUNTY OF Franklin

AFFIDAVIT OF PROBABLE CAUSE

Docket Number (Issuing Authority):

Police Incident Number: PA19-228739

Warrant Control Number:

PROBABLE CAUSE BELIEF IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

On 02/22/19, The United States Postal Inspector(s) intercepted a parcel. The parcel is described as a United States Postal Service (USPS) Express mail parcel bearing tracking # 9505511017439050016488 addressed to Carman DIAZ, 35 Redwood St. Chambersburg, PA 17201 measuring approximately 12 1/4" x 12 1/4" x 6" and weighing approximately 8 pounds 8 ounces. The return address listed on the parcel is Juan RIVERA PO BOX 2819 Juncos, PR 00777. Through further investigation a Federal search warrant was applied for and granted by a US Federal Judge. Upon executing the search warrant the parcel was found to contain a multicolored bag. Inside the bag two kilograms of cocaine were located. The bricks weighs approximately 2,088 grams. Tpr. David LONG tested the suspected cocaine using a TruNarc analyzer. The TruNarc provided a positive test result for cocaine HCL.

On 02/22/19, a check through available data bases indicated a Carman DIAZ was a name not associated with the address of 35 Redwood St ST. It is typical for drug traffickers to utilize fictitious names to deny culpability of their crimes. The listed names for the address are Adam SANTANA and Ana Flores LOPEZ.

On 02/22/19, Members of the PA State Police, Franklin County Drug Task Force, and The United States Postal Inspectors, intend to perform a controlled delivery of the aforementioned parcel to 35 Redwood ST. Chambersburg Boro, Franklin County.

The execution of this search warrant shall be contingent upon the delivery and acceptance of the aforementioned parcel and the parcel being taken inside of the residence listed as 35 Redwood St. Chambersburg, PA. In the event the delivery and acceptance of the aforementioned parcel does not occur, then and in that event, this search warrant will become null and void, will not be executed and will be returned to the issuing authority unserved. In the event the parcel is accepted by an individual and taken inside 35 Redwood ST., this search warrant will be executed. This officer believes that additional narcotics, as well as other supporting evidence may be inside the residence due to the fact that the amount of the controlled substances being shipped is indicative of sales and distribution of narcotics. Along with the sale and distribution of cocaine there is certain possibility that there will be cash proceeds also at this location. This officer is requesting that the search warrant include any and all persons inside the residence due to the fact that narcotics may be hidden on their persons and include all curtilage, outbuildings and vehicles which are within the boundaries of the residence. It has been this officer's experience that at times narcotics traffickers hide drugs and monies in vehicles and sheds on their property in addition to the residence itself.

Based upon the above information I respectfully request that a search warrant be granted for 35 Redwood ST. Chambersburg Boro, Franklin County, upon the delivery and acceptance of the aforementioned parcel.

I, THE AFFIANT, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

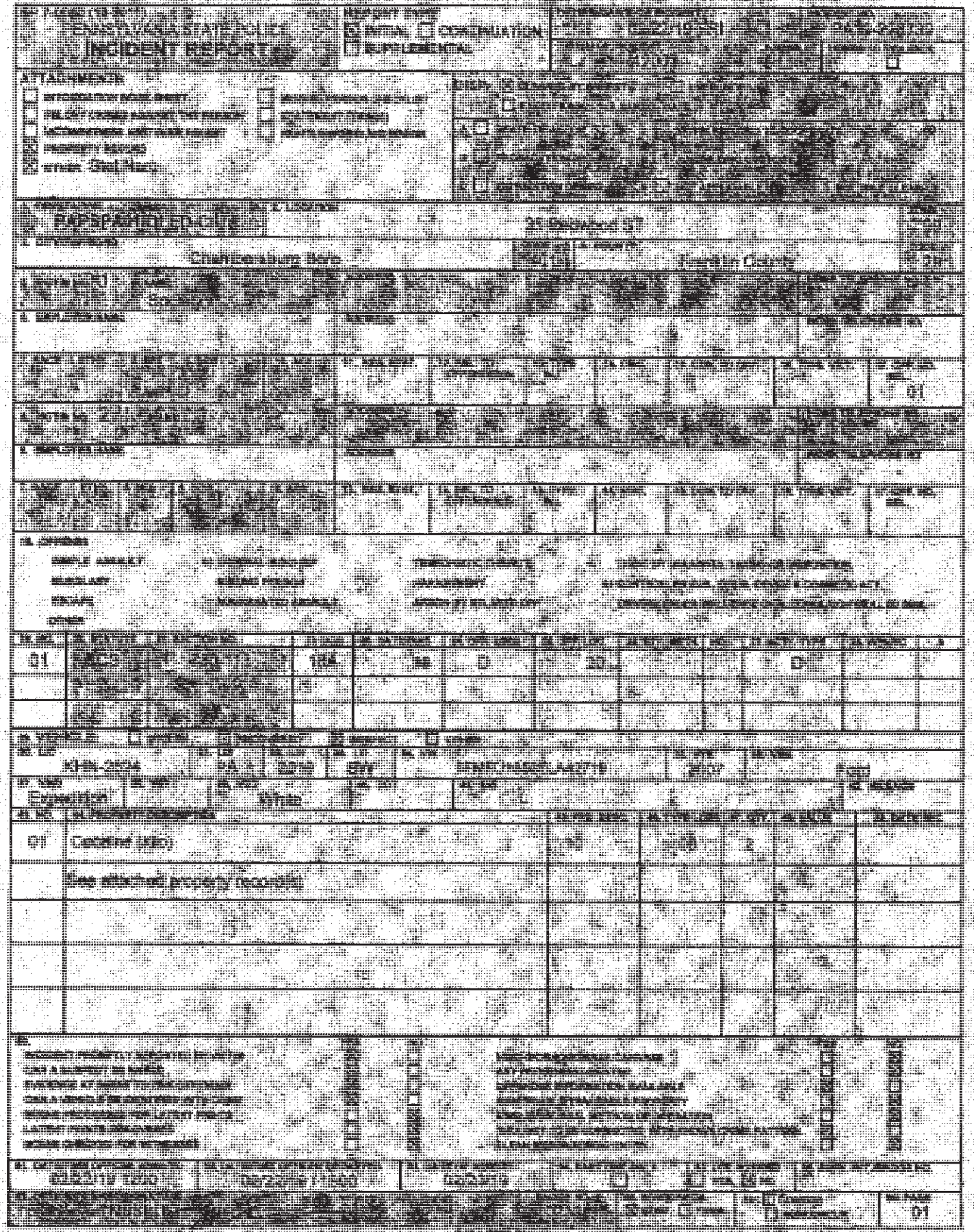
Affiant Signature	Date	Issuing Authority Signature	Date
	02/22/19		2/22/2019 (SEAL)

Page 1 of Pages

AOPC 410B-10

EXHIBIT B

Pennsylvania State Police Incident Report



INCIDENT REPORT

PAPSPARTICIPACTIVE

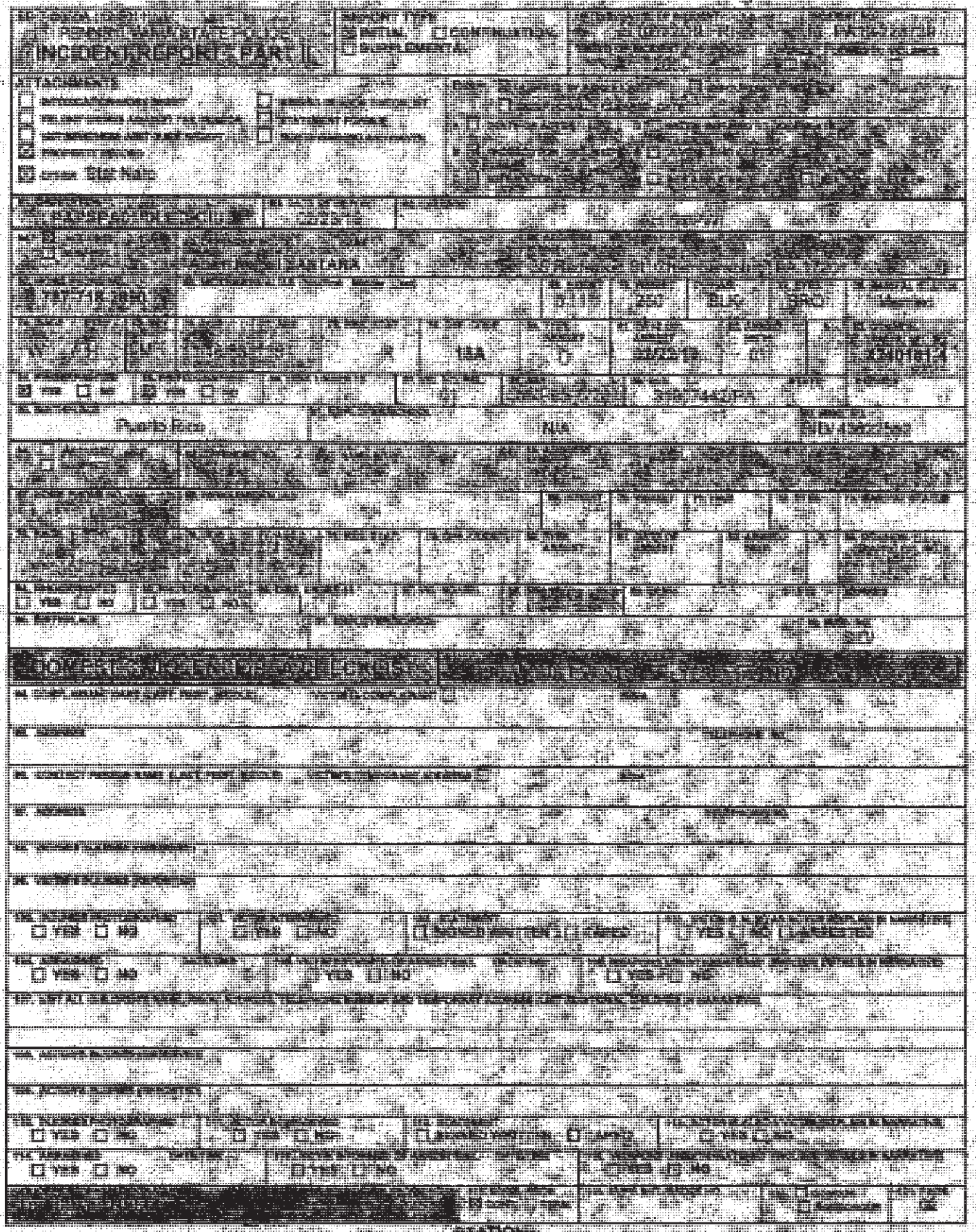
Chambersburg Boro

Franklin County

25 Cleveland ST

STATION

INCIDENCE REPORT - PART II



REPORT TYPE

ATTACHMENTS

Investigative Details:

On 02/22/19, The United States Postal Inspector(s) intercepted two parcels. The parcels are described as a United States Postal Service (USPS) Express mail parcels. One parcel is bearing tracking # 9505511017429295113[illegible]sent from JUAN RIVERA PO BOX [illegible] Juncos, PR 00777, and sent to, Carmen DIAZ 35 Redwood St. Chambersburg, PA 17201. The parcel measured approximately 12 1/4" x 12 1/4" x 6" and weighed approximately 8 pounds 8 ounces. The parcel was mailed on 02/19/19.

The second parcel is bearing tracking # 9505511017429295113[illegible]5 sent from Juan RIVERA PO Box 2819 Juncos, PR 00777, and sent to, Carmen DIAZ 35 Redwood St. Chambersburg, PA 17201. The parcel measured approximately 12 ¼ x 12 ¼ x 6 and weighed approximately 8 pounds 11 ounces. The parcel was mailed on 2/20/19.

Through further investigation it was determined a Federal search warrant would be completed on USPS Express mail parcel bearing tracking # 9505511017429295113[illegible]. A search warrant of the parcel bearing tracking number 9505511017429295113[illegible] would be requested the later date. The search warrant for parcel # 9505511017429295113[illegible] was signed by a U.S. Federal Judge. Upon executing the search warrant the parcel was found to contain two multicolored bricks. Each brick contained a whitish brick of cocaine. The two bricks weigh approximately 2,088 grams. TFC Davis (CNI) tested the suspected cocaine using a TruNarc analyzer. The TruNarc provided a positive test result for cocaine HCL.

On 02/25/19, at 1017 hours, Members of the PA State Police, Franklin County Drug Task Force and The United States Postal Inspectors performed a controlled delivery of the aforementioned parcel to 35 Redwood St. Chambersburg Boro, Franklin County. Prior to the controlled delivery, the allegations of criminal wrongdoing were presented and explained to the aforementioned PSP search warrant affiant. Upon further investigation PSP affiant was a CPO member duly sworn inside the parcel. A subsequent search order was prepared, which provided an anticipatory search warrant for the residence of 35 Redwood ST. The court ordered search warrant was prepared by Franklin County Assistant District Attorney Jonathan Fisk, Esq. The Court Order and Search Warrant were then reviewed and signed by Franklin County Judge, Jeremiah Zook. The CPO tracker light source was then placed inside the parcel. Upon delivery of the parcel, by a US Postal Inspector, it was placed on the front porch and/or front of the entry door to the residence.

PSP Aviation was also requested for this investigation. PSP aviation conducted aerial surveillance of 35 Redwood ST. The aerial surveillance was further recorded.

CONTINUED

Investigation Details Continued:

At approximately 1324 hours, Sgt. A. WAGAMAN, #2 West Queen St. Chambersburg, PA (PSP ID N. 263431042, of Valley Community Housing Corporation, was observed exiting into 55 Redwood St. WAGAMAN is a maintenance mechanic. He was operating a Valley Community Housing Corporation vehicle. Upon exiting into the driveway he met James DeVAL, another maintenance employee, exited the vehicle and approached the front door. WAGAMAN proceeded to pick up the parcel and enter the residence.

The parcel was placed inside and WAGAMAN proceeded to open the garage door of the residence. At this time, I made contact with an employee at the Community Center at Redwood Park. I spoke with the employee and asked that WAGAMAN be contacted for him to return to the office. She agreed and WAGAMAN proceeded to the center.

Upon speaking with WAGAMAN it was learned he was at the residence to complete several maintenance tasks. New flooring was installed in the first floor of the residence. He was there to put the stove, refrigerator, toilet, and several other items into the proper place. When asked, he advised he did observe a parcel at the front door. He advised it is common practice for him to pick up parcels left at the residence. He advised he will then leave a note on the door that advises the homeowner that he was there, and he put the parcel inside the home. I advised him we were conducting an active investigation on the residence. He was advised some of the details of this investigation and requested for safety reasons not to enter the home. It should be noted WAGAMAN was not acting under any law enforcement direction when he picked up the parcel and took it inside the residence.

As I spoke with WAGAMAN near the community center, additional investigators observed SANTANA pulled into the driveway. He was operating a white Ford Expedition. Upon his arrival, he walked to the residence with a female, later identified as his 10 YOA daughter Adamaris SANTANA. At 1345 hours the UPS package indicated the parcel had arrived. At 1347 hours, the Ogo device was activated. The suspicious package was opened and the Kilogram containing the Ogo tracker/light source was exposed to light.

Upon receiving this information, PSP, Franklin County Drug Task Force, and The Federal Impostors converged on the residence to execute the search warrant. PSP members involved uniform apparel and presence. With no answer to the front door, force was used to enter the front door. Upon entering the front door, PSP members secured the rear doors to the residence. As they approached the rear doors, SANTANA opened the rear garage door. He was holding the two sheet kilograms. As PSP members made contact with SANTANA, the kilograms were thrown away from him. He was taken into custody. The residence was secured, and the residence was fully photographed. Photographs were taken by myself and Cpl. Scott HOLZER. The photographs were later downloaded from the digital camera onto a department computer. The photographs of the residence and all items seized during the search warrant were reviewed. The photographs accurately represented the residence and items seized. They were subsequently downloaded, burned onto a non-rewritable CD-R. The CD-R was later placed into evidence at PSP Chambersburg.

CONTINUED

STATION

Investigative Details Continued:

During the search several items were seized. A Glock 19 Serial #EYS049 was located in the center bedroom. Several Glock magazines, 9mm ammunition, and a digital scale were located inside the bedroom. The pistol was located inside the closet. It was cleared out, and the investigator tag that had counted the item, 5 fingers was located near the pistol. The pistol was found inside of a Dunkin' Donuts paper bag inside the closet. Postal Inspector KNOX directed inside the seat of the Sentra interior. She located 2 keys similar in size and shape to the ones that the 5 kilograms were contained in. The keys would indicate SANTANA has received similar parcels that contained large sums of currency. After he used on the Postal service and black address. Another item of note was a bottle of Dichlorobenzene Glycol found in a kitchen cabinet. For a full list of items seized, the location seized, and the law enforcement member booking the item seized, refer to the postal receipt of inventory.

During the execution of the search warrant, I, Postal Inspector Russell CONTRERAS, and other OIG conducted and interview with SANTANA, who was in custody and was immediately warned he was not under arrest. With the information I contained Cpt. Kevin [illegible] Corporal PEREZ was able to speak with SANTANA. SANTANA was provided his Miranda Rights. He acknowledged those rights and Cpt. KAEGEL spoke with SANTANA for several minutes. It was related SANTANA knew [illegible] and could possibly [illegible] an attorney. Questioning was subsequently stopped. SANTANA was then transported to the PSP Clearbrook Barracks.

At 1423 hours, I spoke to Joseph PEREZ at 29 Rachel Dr. Chambersburg PA. 787-290-[illegible]. PEREZ is Adam SANTANA'S mother and Adampaa's grandmother. She responded to my residence to pick up Adampaa SANTANA. When asked, she stated she had no idea Adam was actively involved in trafficking cocaine. She advised he only stays at 29 Rachael ST and is not known to have large sums of money. She was released at Attempts.

All evidence was released and entered into evidence at PSP Clearbrook under PSP property number HDS 26762.

SANTANA was fully processed, and a criminal complaint was prepared. He was taken to the Franklin County Prison and released into their custody. The complaint was provided to Franklin County Correctional Officers for arraignment.

PACIC was notified
A STAT NARC was completed

Investigation Details:

On 02/21/19, a Federal Search Warrant was [illegible] and authorized by the [illegible] Judge. The search warrant was for the [illegible] investigative parcel bearing [illegible]. The search warrant was issued by and granted by a US Federal Judge. Upon executing the search warrant, [illegible] was found to contain [illegible]. Each bag contained a compound [illegible] substance. The [illegible] weighed approximately 2.0 [illegible] grams. The [illegible] tested for the presence of cocaine using a TruNarc Analyzer. The TruNarc provided a positive test result for cocaine HCL.

It was determined the U.S Postal Inspector's jurisdiction for a Federal [illegible] in SANTANA, Asst. Special Agent (SA) Michael [illegible] retained the two kilograms [illegible] of cocaine. On [illegible] I removed items # 9, 10, and 15 of [illegible] property receipt [illegible] for safekeeping. The items [illegible] seized kilograms [illegible] and a sample [illegible] to SA [illegible].

On [illegible], I also downloaded the recorded interview with SANTANA into a PSP Department computer. I reviewed the interview and it accurately represented the [illegible]. I downloaded the interview onto [illegible] non-overwritable CD-R. The CD-R was placed into evidence under PSP property # [illegible] a copy of was made as a working copy.

The search warrant, inventory and return was returned to the Franklin County Clerk of Courts.

An ETRACE form was completed at the Department Regulations.

SP 7 - 907

PENNSYLVANIA STATE POLICE
PROPERTY RECORD

4. STATUS: [X] EVIDENCE [ ] FOUND [ ] RECOVERED [ ] RECEIPT [ ] OTHER

5. OFFENSE: ACT 64

6. STATION/DISTRICT OFFICE: CHAMBERSBURG/2130

1. PROPERTY RECORD CONTINUATION

7. SUBMITTING OFFICER: TPR DOMN A REID — BADGE NO.: 10361

8. RECEIVING OFFICER — BADGE NO. — 9. DATE — TIME

10. INVESTIGATING OFFICER: TPR STEVEN P NESBIT — BADGE NO.: 10233

11. SIGNATURE OF RECEIVING OFFICER

12. FOUND OR RECOVERED FROM: 35 REDWOOD ST — ADDRESS: PA — TELEPHONE NO.: N/A — LOCATION: CHAMBERSBURG BOROUGH — 13. DATE: 2/22/2019 — TIME: 1349

2. CASE/CASE NO.: PA 2019-228739

14. CODE — STORAGE AREA: 1. PROPERTY ROOM; 2. SAFETY DEPOSIT BOX; 3. EXPLOSIVE MAGAZINE; 4. NON-DEPARTMENT; 5. IMPOUND LOT; 6. OTHER DEPT. FACILITY; 7. NOT APPLICABLE

DISPOSITION: 1. DESTROYED; 2. EDUCATED; 3. EXPENDED IN LABORATORY; 4. RELEASED TO OWNER/FINDER; 5. DONATED; 6. FORFEITURE; 7. OTHER; 8. CONVERTED TO DEPT. USE; 9. TRANSFERRED; 10. FWD TO CHO; 11. FWD TO FSU

REMOVAL CODE: 1. CUSTODY; 2. COURT; 3. LABORATORY; 4. OTHER; 5. ESCHEATABLE; 6. COMPUTER CRIME OFFICE; 7. FINAL DISPOSITION; 8. INVESTIGATION; 9. REPACKAGE; 10. FSU

16.	ITEMS - (ONE ITEM PER LINE)	16. TYPE PROP	17. CODE	18. QTY	19. VALUE	20. STORAGE AREA CODE	21. DISP. CODE
1	GLOCK 19 SER#SYR948	13	6	1	350.00		
2	9MM MAGAZINES	59	6	3	50.00		
3	BAG OF 9MM AMMUNITION (78 ROUNDS)	59	6	1	30.00		
4	BOX OF WINCHESTER 9MM AMMUNITION	59	6	1	20.00		
5	DIGITAL SCALE WITH PAPERWORK	11	6	1	10.00		

22. PROPERTY IN	22. PROPERTY OUT	23. DATE & TIME	24. ITEM NO.(S)	25. OFFICER'S SIGNATURE/BADGE NO.	26. CUSTODIAL OFFICER'S I.D./BADGE NO.	27. REMOVAL CODE, LOCATION & REMARKS	28. ESTIMATED DATE OF RETURN	29. COMPUTER ENTRY

30. I HEREBY CERTIFY THAT I AM THE OWNER OF PROPERTY OR AUTHORIZED AGENT TO RECEIVE ITEM(S) NO.

31. CLAIMANT'S NAME — OWNER'S NAME — ADDRESS — TELEPHONE NO.

32. CLAIMANT'S SIGNATURE — OWNER'S SIGNATURE — DATE

33. PICS APPROVAL NO. — 34. INACTIVE [ ]

3. EVIDENCE/PROPERTY NO.: H03-2782

0000046

Case 1:19-cr-00251-JPW Document 21-2 Filed 10/15/19 Page 6 of 11

1. PROP. REC. CON.	2. CAD/CASE NO. PA 2019-228739	3. INVENTORY NO. H03-25782

	ITEMS - (ONE ITEM PER LINE)	TYPE PROP	CODE	QTY	VALUE	STORAGE AREA CODE	DISP. CODE
6	BOTTLE OF DRUG CUTTING AGENT-POLYETHYLENE GLYCOL	11	0	1	0.00		
7	BLACK SMALL BAG CONTAINING (2) GUN BOXES	60	6	1	1.00		
8	MAKEUP BAGS WITH PACKAGING	25	6	5	20.00		
9	USPS PRIORITY MAIL BOX CONTAINING MAKEUP BAG	25	6	1	0.00		
10	BRICKS OF COCAINE	10	6	2	0.00		
11	GRAY LG SMART PHONE	75	6	1	20.00		
12	BLACK ALCATEL SMART PHONE	75	6	1	20.00		
13	GRAY ALCATEL SMART PHONE	75	6	1	20.00		
14	BLACK GALAXY S7 SMART PHONE	75	6	1	20.00		
15	BLACK I-PHONE	75	6	1	20.00		
16	CD CONTAINING PHOTOGRAPHS	77	6	1	0.00		

SP 7 - 007

PENNSYLVANIA STATE POLICE
PROPERTY RECORD

4. STATUS: ☒ EVIDENCE ☐ FOUND ☐ RECOVERED ☐ RECEIPT ☐ OTHER	5. OFFENSE: ACT 64	6. STATION/DISTRICT OFFICE: CHAMBERSBURG/2130
7. SUBMITTING OFFICER: TPR STEVEN P NESBIT — BADGE NO.: 10233	8. RECEIVING OFFICER — BADGE NO.	9. DATE: 8/15/2019 — TIME: 1410
10. INVESTIGATING OFFICER: TPR STEVEN P NESBIT — BADGE NO.: 10233	11. SIGNATURE OF RECEIVING OFFICER	
12. FOUND OR RECOVERED FROM: PSP DEPARTMENTAL-COMPUTER — ADDRESS: 679 FRANKLIN FARM LN., CHAMBERSBURG, PA. N/A 17202 — TELEPHONE NO. — LOCATION: PSP CHAMBERSBURG		13. DATE: 8/15/2019 — TIME: 1358

1. PROPERTY RECORD CONTINUATION

2. CASE/INCIDENT NO.: PA 2019-228739

3. INVENTORY NO.: H03-25782A

14. CODES — STORAGE AREA: 1. PROPERTY ROOM; 2. SAFETY DEPOSIT BOX; 3. EXPLOSIVE MAGAZINE; 4. NON-DEPARTMENT; 5. IMPOUND LOT; 6. OTHER DEPT. FACILITY; 7. NOT APPLICABLE — DISPOSITION: 1. DESTROYED; 2. ESCHEATED; 3. EXPENDED IN LABORATORY; 4. RELEASED TO OWNER/FINDER; 5. DONATED; 6. FORFEITURE; 7. OTHER; 8. CONVERTED TO DEPT. USE; 9. TRANSFERRED; 10. FWD TO DHQ; 11. FWD TO FSU — REMOVAL CODE: 1. CUSTODY; 2. COURT; 3. LABORATORY; 4. OTHER; A. ESCHEATABLE; B. COMPUTER CRIME OFFICE; F. FINAL DISPOSITION; 5. INVESTIGATION; 9. REPACKAGE; 10. FSU

15. ITEMS - (ONE ITEM PER LINE)	16. TYPE PROP.	17. CODE	18. QTY	19. VALUE	20. STORAGE AREA CODE	21. DISP. CODE
1 CD-R CONTAINING RECORDED INTERVIEW	7	6	1	0.00		
2						
3						
4						
5						

22. PROPERTY IN	22. PROPERTY OUT	23. DATE & TIME	24. ITEM NO.(S)	25. OFFICER'S SIGNATURE/BADGE NO.	26. CUSTODIAL OFFICER'S INIT/BADGE NO.	27. REMOVAL CODE, LOCATION & REMARKS	28. ESTIMATED DATE OF RETURN	29. COMPUTER ENTRY

30. I HEREBY CERTIFY THAT I AM THE OWNER OF PROPERTY OR AUTHORIZED AGENT TO RECEIVE ITEM(S) NO.

31. CLAIMANT'S NAME:	OWNER'S NAME:	ADDRESS:	TELEPHONE NO.:
32. CLAIMANT'S SIGNATURE	OWNER'S SIGNATURE		DATE
33. PIDE APPROVAL NO.	34. INACTIVE ☐		

0000048

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SP 7 - 007

PENNSYLVANIA STATE POLICE
PROPERTY RECORD

4. STATUS: ☐ EVIDENCE ☐ FOUND ☐ RECOVERED ☒ RECEIPT ☐ OTHER

5. OFFENSE:

6. STATION/DISTRICT OFFICE: CHAMBERSBURG/2130

7. SUBMITTING OFFICER: BADGE NO.:

8. RECEIVING OFFICER: BADGE NO.:

9. DATE: TIME:

10. INVESTIGATING OFFICER: BADGE NO.:

11. SIGNATURE OF RECEIVING OFFICER:

12. FOUND OR RECOVERED FROM/LOCATION: ADDRESS: TELEPHONE NO.: LOCATION:

13. DATE: TIME:

1. PROPERTY RECORD CONTINUATION

2. CAD/CASE NO.: PA 2018-228739

14. CODES

STORAGE AREA: 1. PROPERTY ROOM 2. SAFETY DEPOSIT BOX 3. EXPLOSIVE MAGAZINE 4. NON - DEPARTMENT 5. IMPOUND LOT 6. OTHER DEPT. FACILITY 7. NOT APPLICABLE

DISPOSITION: 1. DESTROYED 2. ESCHEATED 3. EXPENDED IN LABORATORY 4. RELEASED TO OWNER/FINDER 5. DONATED 6. FORFEITURE 7. OTHER 8. CONVERTED TO DEPT. USE 9. TRANSFERRED TO PHQ 10. PHQ to DHQ 11. PHQ TO PSU

REMOVAL CODE: 1. CUSTODY 2. COURT 3. LABORATORY 4. OTHER 5. ESCHEATABLE 6. COMPUTER CRIME OFFICE 7. FINAL DISPOSITION 8. INVESTIGATION 9. REPORAGE 10. FBI/L

15. ITEMS - (ONE ITEM PER LINE)	16. TYPE PROP.	17. CODE	18. QTY	19. VALUE	20. STORAGE AREA CODE	21. DISP. CODE
9 USPS PRIORITY MAIL BOX CONTAINING MAKEUP BAG	25	6	1			
10 BRICKS OF COCAINE	10	6	2			
11 BLACK I PHONE	75	6	1			

3. INVENTORY NO.: H03-25782

22. PROPERTY IN	22. PROPERTY OUT	23. DATE & TIME	24. ITEM NO.(S)	25. OFFICER'S SIGNATURE/BADGE NO.	26. CUSTODIAL OFFICER'S INIT/BADGE NO.	27. REMOVAL CODE, LOCATION & REMARKS	28. ESTIMATED DATE OF RETURN	29. COMPUTER ENTRY

30. I HEREBY CERTIFY THAT I AM THE OWNER OF PROPERTY OR AUTHORIZED AGENT TO RECEIVE ITEM NO.(S)

31. CLAIMANT'S NAME: [illegible] T. Corriotti 45423 | OWNER'S NAME: | ADDRESS: | TELEPHONE NO.:

32. CLAIMANT'S SIGNATURE: [signature] 2-27-2019 1408 hrs | OWNER'S SIGNATURE: | DATE:

33. PIGB APPROVAL NO.: | 34. INACTIVE: ☐

000049

Case 1:19-cr-00251-JPW Document 21-2 Filed 10/15/19 Page 11 of 11

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	No. 1:19-CR-251
v.	:	(Judge Rambo)
ADAM NEFTALI-SANTANA,	:	(Electronically Filed)
Defendant.	:	

GOVERNMENT'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS EVIDENCE

I. INTRODUCTION

On February 22, 2019, a search warrant was executed on the home of Adam Neftali-Santana (the "Defendant") after a controlled delivery. During the search, law enforcement discovered multiple items of relevance, including a Glock 19 pistol, several Glock magazines, 9mm ammunition, the parcel that was left on the front porch as part of a controlled delivery, the multi-colored bag that contained fake "sham" cocaine that agents had substituted when the real cocaine was seized, five bags in a similar shape and size to the multi-colored bag, a black iPhone, and a bottle of Polyethylene Glycol, commonly used as a cutting agent for cocaine.

The Defendant has moved to suppress all evidence on the grounds that the issuing judge lacked probable cause to issue an anticipatory search warrant and that the search was warrantless because contingent conditions did not occur to permit the execution of the warrant. For the reasons that follow, the United States submits that the Defendant's arguments in favor of suppression are without merit and the motion should be denied.

II. BACKGROUND

On or about February 22, 2019, Postal Inspectors identified a Priority mail package (the "Parcel") weighing approximately 8.5 pounds and addressed to "Carmen Diaz" of 35 Redwood St., Chambersburg, PA 17201 as suspicious. Gov. Exh. 1 at 2. Subsequent investigation revealed that no one by the name of "Carmen Diaz" was associated with this address; the address was only associated with Defendant and Ana Flores Lopez. Rec. Doc. No. 21-1. However, law enforcement noted that it is common for drug traffickers to utilize fictitious names to deny culpability for their crimes. *Id.* The return address on the Parcel was to a "Juan Rivera" at P.O. Box 2819 in Juncos, Puerto Rico 00777. Gov.

Exh. 1 at 2. The Parcel was exposed to a drug detection canine who indicated that the parcel contained suspected narcotics. *Id.*

Based on the canine's alert, a federal search warrant (1:19-MC-113) was obtained and executed. *Id.* Within the Parcel, Postal Inspectors found two cosmetic bags each containing one kilogram of cocaine, approximately two kilograms in total. *Id.* Each kilogram of cocaine was vacuum sealed and wrapped in multiple layers of dryer sheets, plastic wrap, and a distinctive carbon paper. *Id.* The suspected cocaine was field tested using a TruNarc system and positively identified as cocaine hydrochloride. *Id.*

Prior to executing a controlled delivery of the Parcel, Pennsylvania State Police Trooper Steven Nesbit ("Trooper Nesbit") applied for an anticipatory search warrant (the "Warrant") and authorization to place a light and motion sensor within the Parcel. *Id.*; Rec. Doc. No. 21-1. Trooper Nesbit included the above information in his Affiant of Probable Cause. Rec. Doc. No. 21-1. Franklin County Judge Jeremiah Zook reviewed and approved the Warrant, which included the condition that the Parcel be delivered, accepted, and taken inside the home at 35 Redwood St. before the Warrant could be executed. *Id.*

Before the delivery, the actual cocaine was removed and replaced with two black "bricks" in a similar size, weight, and appearance to the actual cocaine. Gov. Exh. 1 at 2.

On February 22, 2019, law enforcement delivered the Parcel to the residence at 35 Redwood St., Chambersburg, PA 17201. Rec. Doc. No. 21-2. Shortly after, law enforcement observed Eric Wagman ("Wagman"), a maintenance man, pull into the driveway of the residence and take the Parcel inside. *Id.* Law enforcement made contact with Wagman, who advised them that he was at the residence to install several new appliances. *Id.* According to Wagman, it was common practice for him to pick up packages on customers' porches and leave a note for the homeowner indicating that he moved their deliveries indoors. *Id.* Law enforcement advised Wagman that an active investigation was underway, and he left the property, leaving the Parcel inside. *Id.*

After Wagman left the property, law enforcement observed Defendant arrive at his residence with his ten-year old daughter. *Id.* Shortly after, the GPS sensor on the Parcel indicated that the Parcel was being moved, and the light sensor indicated that the Parcel had

been opened. *Id.* Since the conditions of the Warrant were satisfied, law enforcement entered the residence. *Id.* Upon law enforcement's entrance, Defendant fled the residence through the rear garage door with the two black "bricks" in his hands, leaving his ten-year old daughter alone in the home. *Id.* As law enforcement made contact, Defendant frantically threw the "bricks" away from him and he was subsequently detained. *Id.*

While searching the residence, law enforcement discovered a Glock pistol, multiple Glock 9mm magazines, 9mm ammunition, a digital scale, the Parcel, which had been opened and cut up, and a bottle of Polyethylene Glycol, a common cutting agent for narcotics. Rec. Doc. No. 21-3. Additionally, law enforcement discovered five cosmetic bags similar to those found in the Parcel, indicating that Defendant previously received numerous other deliveries of cocaine through the mail. Rec. Doc. No. 21-2; 21-3. Finally, hidden underneath the seat of a Suzuki scooter, officers found a black iPhone and a large piece of carbon paper identical to the carbon paper wrapped around the cocaine in the Parcel. Gov. Exh. 1 at 3. As officers retrieved the fake cocaine "bricks" that Defendant attempted to flee the residence with, they noted that

the bricks had been cut into, indicating that Defendant had attempted to sample the cocaine he believed was being delivered. Gov. Exh. 1 at 6.

Law enforcement arrested Defendant on state charges. On August 28, 2019, a Federal Grand Jury returned an Indictment against Defendant. The three count indictment charges the defendant with: (1) Conspiracy to Distribute 5 Kilograms or More of Cocaine Hydrochloride in violation of 21 U.S.C. § 846; (2) Attempted Possession with Intent to Distribute 500 Grams and More of Cocaine Hydrochloride in violation of 21 U.S.C. § 846; and (3) Possession of a Firearm in Furtherance of Drug Trafficking in violation of 18 U.S.C. § 924(c).

Presently, the Defendant seeks to suppress all physical evidence, the Defendant's statements, and "everything that transpired" during the execution of the Warrant. Def.'s Mot. at 12.

III. ARGUMENT

The Defendant's motion to suppress all of the Government's evidence rests upon two arguments regarding the Warrant. First, Defendant asserts that Judge Zook should not have approved the Warrant because Trooper Nesbit did not provide enough facts to support probable cause that the items to be searched and seized would

be located in the residence. On the contrary, the Government asserts that Trooper Nesbit provided Judge Zook with more than enough facts to establish a fair probability that evidence of a crime would be found within the residence.

Second, Defendant argues that the conditions for the execution of the Warrant were not met. According to the Defendant, the Parcel was not delivered or accepted as required by the Warrant, and as such, the Defendant concludes that the subsequent search by law enforcement was warrantless. This argument ignores the clear facts contained within law enforcement reports, and the Government asserts that the conditions to execute the Warrant were properly met. Therefore, the Government respectfully requests that the Court deny Defendant's motion to suppress evidence.

A. The Issuing Judge was Provided with Enough Facts to Determine that there was Probable Cause to Issue the Warrant.

The Fourth Amendment to the United States Constitution protects the public from "unreasonable searches and seizures." U.S. Const. amend. IV; *United States v. Lewis*, 672 F.3d 232, 237 (3d Cir. 2012). In general, for a seizure to be reasonable under the Fourth

Amendment, it must be "effectuated with a warrant based upon probable cause." *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). Probable cause exists when there is a "fair probability" that contraband or evidence of a crime will be found in a particular place. *United States v. Grubbs*, 547 U.S. 90, 95 (2006). For anticipatory search warrants in particular, the affidavit supporting the warrant must provide the magistrate with sufficient information to evaluate both (1) whether there is a fair probability that contraband or evidence of a crime will be found in a particular place and (2) whether there is probable cause to believe that the triggering condition will occur. *Id.* at 96. Defendant argues that the first evaluation above was not proper.

The Defendant argues that the affidavit contained "no facts" to support a fair probability that evidence of a crime or contraband would be found in the residence.[1] Def. Mot. at 7. To the contrary, the affidavit

[1] Defendant also argues that because law enforcement removed the real cocaine from the parcel, there was not a fair probability that cocaine would be at the residence. This argument fails. The requirement is not that there is a fair probability that one particular substance would be at the residence, but any contraband or evidence of a crime. *See United States v. Golson*, 743 F.3d 44, 53 (3rd Cir. 2014) (holding that even though officers replaced marijuana with a fake representative sample and trace amounts, there was still a fair probability that evidence of other crimes or contraband).

contains many facts to support probable cause. Trooper Nesbit included in the affidavit that: 1) Postal Inspectors intercepted a parcel in destination to a residence located at 35 Redwood St., Chambersburg, PA 17201; 2) The parcel was addressed to a "Carmen Diaz"; 3) No one by the name of Carmen Diaz was known to be associated with that particular residence; 4) Through Trooper Nesbit's years of experience, he knew that it was common for drug traffickers to utilize fictitious names to attempt to escape liability for their crimes; 5) The only names associated with that particular residence were that of the Defendant and Ana Flores Lopez; 6) the parcel contained approximately two kilograms of cocaine. Rec. Doc. No. 21-1.

The above facts represented more than a fair probability; they were clear and logical steps to one conclusion: there were narcotics being trafficked through the residence at 35 Redwood Street. As such, the affidavit provided sufficient facts to give rise to the fair probability that contraband or evidence of a crime would be found at the residence. Therefore, the issuing judge was provided with enough facts to determine that there was probable cause to issue the Warrant.

B. The Required Conditions Were Met to Execute the Warrant. The Search was Not Warrantless.

As part of the Warrant, the following conditions had to occur before law enforcement were able to execute the search: 1) the delivery and acceptance of the Parcel; and 2) the Parcel being taken inside the residence. The Defendant cites no authority to support his argument, but instead makes a series of inferences and asserts that neither of the two conditions were met, and the search was therefore warrantless. This argument is also without merit.

The first condition was met as soon as the Defendant came into possession of the Parcel. The Defendant argues that Wagman, the maintenance man, nullified the entire Warrant by touching the Parcel before the Defendant arrived.[2] It is first worth stating that the Warrant was not specifically targeted at the Defendant; there was probable cause to believe that there was evidence of a crime or contraband at the *residence*. Even though Wagman moved the Parcel inside the residence, as was his common practice, the GPS sensor within the Parcel indicated

[2] *See United States v. Grubbs*, 547 U.S. 90, 93 (2006) (finding that a controlled delivery satisfied the conditions of an anticipatory search warrant even though the suspect's wife, and not the suspect himself, signed for and accepted the package).

that just after the Defendant arrived home, the Parcel was moved into the garage and was opened.[3] The act of moving the Parcel to another location and opening the Parcel surely constitutes acceptance and delivery.

The second condition (the parcel being taken inside the house) was also met, despite the presence of Wagman. Though Wagman originally placed the Parcel inside the residence, it was the Defendant that entered the residence, saw the Parcel, moved the Parcel to the garage, and opened the Parcel to remove the two bricks he believed to be cocaine. These actions, clearly detected by law enforcement through the sensors within the Parcel, were more than enough to satisfy the conditions of the Warrant.

IV. CONCLUSION

For all of the foregoing reasons, the United States respectfully submits that the Defendant's motion to suppress should be denied.

[3] The garage the Defendant moved the Parcel to was also found to contain numerous other cosmetic bags similar to those holding the cocaine in the Parcel, suggesting that the Defendant typically brought his packages to the garage to remove and process the cocaine within.

Based upon the claim in the motion to suppress, it does not appear a hearing is necessary.

Respectfully submitted,

DAVID J. FREED
UNITED STATES ATTORNEY

Dated: November 12, 2019 By: /s/ Daryl F. Bloom

DARYL F. BLOOM
Assistant United States Attorney
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PA73820

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717-221-4493 (f)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	No. 1:19-CR-251
	:	
v.	:	(Judge Rambo)
	:	
ADAM NEFTALI-SANTANA,	:	(Electronically Filed)
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

On this 12th day of November, 2019, she served a copy of the foregoing document by electronic means by sending a copy to the e-mail address stated below:

Jose Luis Ongay, Esquire
jlolaw@live.com

s/ Carol A. Manies
CAROL A. MANIES
Legal Assistant

EXHIBIT 1

UNITED STATES POSTAL INSPECTION SERVICE

PHILADELPHIA DIVISION

August 14, 2019

SUBJECT: Statement of facts re: Adam Neftali-Santana.

United States Attorney's Office
Middle District of Pennsylvania
Attention: Assistant U.S. Attorney Daryl F. Bloom
228 Walnut Street (Suite 220)
Harrisburg, PA 17101-1714

Dear Mr. Bloom:

The following is provided to assist in the federal prosecution of *Adam Neftali-Santana* for the listed criminal offenses:

NO RULE 6(e) MATERIAL INCLUDED

NAME OF OFFENDER	:	Adam Neftali-Santana.
DATE OF BIRTH	:	November 16, 1983
FBI #	:	KN1PVPPA3
ADDRESS	:	35 Redwood Street Chambersburg, PA 17201
PLACE OF OFFENSE	:	Chambersburg, Pennsylvania
DATE OF OFFENSE	:	On or about February 22, 2019
NATURE OF OFFENSE	:	Violations of Title 21 U.S.C. § 841(a)(1) & Title 18, U.S.C. § 924(c)

On or about February 12, 2019, U.S. Postal Inspectors based in Puerto Rico identified a suspicious outbound Priority mail parcel bearing tracking number 9505511017429042175608. This parcel weighed approximately 4.62 pounds and was addressed to "*Madelinee Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Carmen Rivera*" at PO Box 2618 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was temporarily detained and forwarded to Harrisburg based Postal Inspectors for follow up investigation.

PO BOX 60035
HARRISBURG PA 17106-0035
TELEPHONE: 717-257-5581
FAX: 717-257-2328

EXHIBIT 1

This suspect parcel was received on February 13, 2019 and exposed to a Pennsylvania State Police (PSP) drug detection canine. The canine did not alert on the parcel and it was returned to the mail stream for delivery.

On February 14, 2019, Postal Inspectors conducted surveillance on 35 Redwood St. Chambersburg, PA. At approx. 12:31 PM, a postal service employee delivered the above mentioned parcel to the residence. Specifically, he left the box on a bench or chair by the front door.

On February 14, 2019 at approx. 1:06 pm, a heavy set Hispanic male, later identified as Adam Santana, arrived at the residence. He picked up the box, looked around the neighborhood and then appeared to use a cell phone. He then took the box into the residence. At approx. 1:34 pm, the same individual exited the residence carrying what appeared to be a similar white box and bag of trash. He walked to the side of the residence where a trash receptacle was located and then returned to the front with his hands empty. He went back into the residence and then departed again at approximately 1:38 pm in a silver/gray sedan bearing Pennsylvania license KNY-1001 (*This vehicle was later determined to be registered to Santana*).

On or about February 22, 2019, Postal Inspectors identified a Priority mail parcel bearing tracking number 9505511017439050164884. This parcel weighed approximately 8.5 pounds and was addressed to "*Carmen Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Juan Rivera*" at a PO Box 2819 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was exposed to a PSP drug detection canine who alerted on the parcel as containing suspected narcotics.

Based on the alert, a federal search warrant was obtained (*1:19-MC-113*) within the Middle District of Pennsylvania. This warrant was executed on February 22, 2019 and located inside the parcel were two cosmetic bags each containing a kilogram of cocaine. The kilograms had been heat and vacuum sealed along with multiple layers of plastic wrap, dryer sheets, and carbon paper. These items were field tested using a TruNarc ® system and identified as cocaine hydrochloride.

On February 22, 2019, Postal Inspectors, PSP troopers, and local law enforcement officers executed a controlled delivery of the above identified parcel (*9505511017439050164884*) to 35 Redwood St. Chambersburg, PA.

Prior to executing the delivery, PSP Trooper Steven Nesbit obtained a Commonwealth anticipatory search warrant for the residence as well as authorization for installing a light and motion sensor in the parcel. The actual cocaine was removed and replaced with two black "bricks" that appeared similar in size and weight to the actual cocaine. The bricks were wrapped in black tape.

The box was then delivered to the residence and placed on the porch. A short while later, an individual identified as a maintenance worker picked up the box and brought it into the residence. After being contacted by law enforcement, this worker explained he was assigned to perform maintenance inside the residence. It was normal for them to bring in parcels from the porch if they noticed them as they were entering. The maintenance worker was directed to leave the residence and not touch the box again.

At approximately 1:45 pm, SANTANA arrived at the residence with a young female later identified as his minor daughter. After entering the residence, the tracking device inside

the parcel showed it was moving and then the light sensor activated indicated the parcel had been opened. Upon receiving the sensor alert, law enforcement converged on the residence to execute the search warrant. Santana tried to run from the rear garage door and upon being confronted by PSP Trooper Donn Reid, he threw the two fake kilograms. He was taken into custody without further incident and the residence was secured.

Upon executing the search warrant, investigators discovered the delivered parcel in the garage. This is the same location Santana was observed running from. The parcel had been opened and the address label cut off.

Contained under the seat of the scooter where the parcel was found was a piece of black carbon paper similar to the pieces found when the cocaine was first discovered.

Four additional cosmetic bags, similar to those found during the initial search of the parcel were located in the same area.

When the fake kilograms were recovered and examined, it was noted they had been cut into along the side.

Additionally, a digital scale, a Glock® 9mm pistol (Serial SYK946), numerous pistol magazines and ammunition were located in the master bedroom. A pistol magazine for a Sig Sauer® 9mm was located in the kitchen along with a bottle of Polyethylene Glycol. (*Note: Polyethylene Glycol is a laxative but is commonly used as a "cutting" agent for cocaine to provide more bulk weight.*)

On or about February 22, 2019, Postal Inspectors identified a Priority mail parcel bearing tracking number 9505511017429051176795. This parcel weighed approximately eight pounds eleven ounces and was addressed to "*Carmen Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Juan Rivera*" at a PO Box 2819 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was exposed to a PSP drug detection canine who alerted on the parcel as containing suspected narcotics.

Based on the alert, a federal search warrant was obtained (*1:19-MC-118*) within the Middle District of Pennsylvania. This warrant was executed on February 25, 2019 and located inside the parcel were two cosmetic bags each containing a kilogram of cocaine. The kilograms had been heat and vacuum sealed along with multiple layers of plastic wrap, dryer sheets, and carbon paper.

On or about February 13, 2019, U.S. Postal Inspectors identified suspicious parcels from Puerto Rico to 35 Redwood Street, Chambersburg, PA. A review of postal records revealed at least five prior parcels, weighing in excess of four pounds or greater, being delivered to the residence in various names. Additional records searched disclosed none of the names identified were known to reside or receive mail there. Known prior mailings to 35 Redwood Street included:

Postal Tracking Number: 9505514362468303196905
Weight: 3.62 lbs
Delivered date: 11/2/2018
From: Las Piedras, PR 00771
Addressed to: 35 Redwood St. Chambersburg, PA
(***Name unknown and not available***)

Postal Tracking Number: 9505511017429002168510
Weight: 5.25 lbs
Delivered date: 1/7/2019
From: Juncos, PR 00777
Addressed to: "**Damariz Rivera**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505514362489016215486
Weight: 6.25 lbs
Delivered date: 1/19/2019
From: Las Piedras, PR 00771
Addressed to: "**Damariz Rivera**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505514362489022216750
Weight: 8.88 lbs
Delivered date: 1/25/2019
From: Las Piedras, PR 00771
Addressed to: "**Carmen Diaz**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505511017429036174068
Weight: 4.88 lbs
Delivered date: 2/8/2019
From: Juncos, PR 00777
Addressed to: "**Carmen Diaz**" 35 Redwood St. Chambersburg, PA

Upon being taken into custody on February, 22, 2019, Inspector Corricelli and Trooper Nesbit attempted to interview SANTANA however, he claimed he was not fluent in English. Trooper Nesbit elicited the assistance of PSP Corporal Kent Ramirez who attempted a telephonic interview of SANTANA. SANTANA was provided his *Miranda* rights and acknowledged understanding. After several minutes, SANTANA requested an attorney and the conversation was terminated.

Adam Neftali-SANTANA is a 36 year old Hispanic male. He has one prior misdemeanor arrest for DUI in which he received a deferred prosecution/Accelerated Rehabilitation Disposition in Franklin County (2016). A review of employment history shows minimal work with a temporary agency. At the time of his arrest for this offense, SANTANA had a valid permit to carry a concealed firearm (28-00019149) issued in Franklin County (PA) on 5/11/2017 .

On or about February 21, 2019, Postal Service representatives responsible for mail delivery to 35 Redwood St. Chambersburg advised Adam SANTANA receives mail at the residence. They did not recognize the last name "Diaz" as receiving mail there but did believe last names of "Flores" and "Perez" might receive mail there as well.

Following completion of the search warrant on February 22, 2019, Adam Neftali-SANTANA was arrested and booked on state charges for Manufacture, Delivery, or Possession with intent to Deliver a controlled substance. He was denied bail and remains in custody at the Franklin County (PA) Prison. He is scheduled for trial n or about 10/24/2019. The state docket number is CP-28-CR-0001077-2019.

A review of the pending state docket shows SANTANA is being represented by Attorney Jose L. Ongay of Plymouth Meeting, PA with contact number (484) 681-1117.

On or about March 1, 2019, Inspectors applied for and received a federal search warrant for SANATANA's cell phone recovered during the search warrant on his residence. The phone was submitted to the PSP Computer Crime Laboratory on or about March 4, 2019. The phone was returned from the lab on or about March 8, 2019. A subsequent review of the data obtained from the phone disclosed nothing relevant to this investigation.

On or about April 3, 2019, the four kilograms of suspected cocaine received from the two parcels (*9505511017439050164884* & *9505511017429051176795*) were submitted to the PSP Harrisburg Regional Laboratory for analysis. On or about April 12, 2019, the laboratory provided a report confirming all four bricks were cocaine with a combined weight of 4,005 grams (+/- 9grams).

PSP Trooper Nesbit requested origin information on the firearm recovered during the search of Santana's residence (Glock #SYK946). Results will be reported under separate cover.

WITNESSES:

1. Postal Inspector M.J. Corricelli, USPIS (717-257-5581)
    - Can testify to all aspects of this investigation
2. Trooper Steven Nesbit, PSP (717-317-5096)
    - Can testify to all aspects of this investigation
3. Corporal Scott Fidler, PSP (717-317-5000)
    - Can testify to all aspects of this investigation
4. Postal Inspector S.L. Knoll, USPIS (717-257-2333)
    - Can testify to the parcel and house warrants

- Other investigators present for the delivery and residence warrant will be provided upon request.

I can best be reached at (717) 257-5581 or via email micorricelli@uspis.gov for any questions or concerns regarding this matter.

Respectfully,

M.J. Corricelli
U.S. Postal Inspector

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

UNITED STATES OF AMERICA	:	
	:	Docket Number
v.	:	
	:	19-cr-00251
ADAM N. SANTANA,	:	
Defendant.	:	

DEFENDANT'S REPLY TO THE GOVERNMENT'S
RESPONSE TO THE DEFENDANT'S MOTION TO SUPPRESS

Now Comes the Defendant and in Reply to the Government's Response to the Defendant's Motion to Suppress states the following:

The Government obtained an anticipatory search warrant in this case. The Affidavit of Probable Cause required two events to take place before the search warrant could be executed: 1) the parcel had to be delivered and accepted; 2) the parcel had to be taken inside of the residence listed as 35 Redwood St. Chambersburg, PA.[1]

Anticipatory Search Warrants are so named because they require the occurrence of some future events before they become effective. *United States v. Loy*, 191 F. 3d 360, 364. (3d Cir. 1999). *See also*, *United States v. Grubbs*, 547 U.S. 90 (2006) (an anticipatory warrant only becomes effective upon the happening of some

[1] The exact language in the Affidavit of Probable Cause reads as follow: "the execution of this search warrant shall be contingent upon the delivery and acceptance of the aforementioned parcel and the parcel being taken inside of the residence listed as 35 Redwood St. Chambersburg, PA."

future event – a "triggering condition" – which establishes probable cause for the search). The triggering events or conditions or contingencies must be listed in the warrant in an explicit, clear, and narrow manner. *United States v. Bingham*, 270 F. Supp. 2d 665, 670 (W.D. of PA 2003) *citing United States v. Garcia*, 882 F.2d 699, 704 (2d Cir. 1989). Generally, the triggering events must also be stated in the warrant, and if not listed in the warrant, they must be in the Affidavit of Probable Cause, and the Affidavit must be attached to the warrant and incorporated by reference. Also, the officers executing the warrant must carry both documents when executing the warrant.

The warrant's identification of the triggering events is not merely efficient or preferable; it is indeed the only way to safeguard effectively against unreasonable and unbounded searches. *United States v. Hodal*, 143 F3d 1223, 1227 (9th Cir. 1998). As a general matter, failure to comply with the anticipatory warrant's triggering event "voids" the warrant. *United States v. Perkins*, 887 F.3d 272, 275 (6th Cir. 2018) *citing United States v. Rey*, 923 F.2d 1217, 1221 (6th Cir. 1991) and *United States v. Grubbs*, 547 U.S. 90, 100-101 (2006) ([I]f an officer makes the ostensibly authorized search before the condition has been met, the search will be held unreasonable). In fact in this case, the very language of the warrant states that "[i]n the event the delivery and acceptance of the aforementioned parcel does not occur, then and in that event, this search warrant will become null and void, will not be

executed and will be returned to the issuing authority unserved." In determining whether a triggering event has been satisfied, warrants and their supporting documents are to be read in a commonsense fashion." *United States v. Perkins*, 887 F.3d 272, 275 (6th Cir. 2018) *citing United States v. Miggins*, 302 F.3d 384, 395 (6th Cir. 2002) and *United States v. Gendron*, 18 F.3d 955, 966 (1st Cir. 1994).

On February 22, 2019, armed with the Anticipatory Search Warrant, the Agents went to 35 Redwood St. Chambersburg, PA., to make a controlled delivery to an occupant of the property in order to execute the search warrant. The Agents did not dress as letter carriers. The Agents did not knock on the door and attempt to deliver the parcel to an adult occupant. The Agents also did not take any measures to make sure that the recipient of the parcel knew that the parcel was addressed to Carmen Diaz. Instead, the Agents placed the parcel by the front door of the property and left. The occupants of 35 Redwood St. did not pick up the parcel and brought it into their home. Instead, Eric A. Wagaman, an employee of Valley Community Housing, arrived at 35 Redwood St. to complete repairs to the residence, saw the parcel by the front door, picked it up, and brought it inside. He stayed inside working. An Agent contacted the Community Center, and after a short conversation, the employee left the apartment and spoke to the Agent. During this discussion, the Defendant arrived with his daughter, parked in front of 35 Redwood St. and entered the property. A few minutes later, the GPS alerted the Agents that the parcel was

moved. A few minutes later the GPS alerted the Agents that the parcel was opened. The Agents then entered the property and executed the search warrant.

Again, the Anticipatory Search Warrant stated, "the execution of this search warrant shall be contingent upon the delivery and acceptance of the aforementioned parcel and the parcel being taken inside of the residence listed as 35 Redwood St. Chambersburg, PA." The words "delivery and acceptance of the aforementioned parcel" mean that the parcel had to be delivered to a person. Only a person can accept the parcel. Thus, leaving the parcel by the front door did not satisfy this triggering event. Further, it is logical for the Court to have placed this requirement because since the parcel was not addressed to either of the two adult residents of the property, to prove acceptance, either of the adult residents had to have personally received the parcel knowing that it was not addressed to either of them. The Government's assertion in its Response that the parcel was delivered and accepted as soon as the defendant came into possession of the package does not satisfy the delivery and acceptance requirement. No one delivered the package to the defendant. The Defendant did not have a hand in the package being inside the residence. Also, the Government's assertion that *United States v. Grubbs* supports its position is incorrect. The facts here are distinguishable from the facts in *Grubbs*. In *Grubbs*, the delivery of the package was made to the wife of the suspect. The Agents did not deliver the parcel to the Defendant's wife. Leaving the parcel by the front door is

not the equivalent of delivering the parcel to the Defendant's wife. Here, the parcel was not delivered to anyone. If the Defendant's wife had accepted the package, it would have been different. In sum, the commonsense meaning of delivery and acceptance of the parcel requires the parcel to be personally delivered to a person, not left by the front door.

The words "and the parcel being taken inside of the residence" mean that the person that accepts the parcel brings the parcel into the residence. This triggering event also did not occur. The parcel was not brought into the property by either of the two adult residents. The parcel was brought into the property by a third-party doing work on the property. On this point, the Government argues that the Defendant brought the parcel into the property when he found the parcel inside his home and moved it to the garage. This is also incorrect. The commonsense meaning is not that at some point the Defendant exercised control over the parcel once the parcel was inside the residence, but that he or his wife, after accepting the parcel, brought the parcel into the residence. Again, the triggering event was for the person that accepted the parcel to bring it into the residence. This did not happen. The above shows that the Agents did not follow the requirements of the two triggering events. It is impossible to conclude that leaving the parcel by the front door where a maintenance person brings in the parcel without the defendant's permission constitutes delivery and acceptance of the parcel by one of the two adult residents of the property. It is

also impossible to conclude that a parcel brought into the property by a third party that does not reside in the property satisfied the requirement that the parcel be taken inside the premises.

Thus, the triggering events did not occur, and the warrant was null and void. The Government had the time, the ability, and the resources to make a perfect controlled delivery. The Government had Letter Carriers or Postal Inspectors that could have made the necessary delivery attempts to deliver the parcel to an adult associated with the property. Because this was an Express Mail parcel, it would have been normal if it were personally delivered to the occupants of the property. Once the Agents saw Mr. Wagaman pick up the parcel and bring the parcel into the property, they should have immediately moved to retrieve the parcel and should have directed Mr. Wagaman to leave the area. The Agents then could have left with the parcel and arranged for a Letter Carrier to deliver the parcel. Instead, the Government abandoned the parcel on the front porch.

Respectfully,

/s/ José Luis Ongay

José Luis Ongay

Date: November 26, 2019

CERTIFICATE OF SERVICE

I certify that on this date, a copy of this Reply was served via email upon AUSA Daryl S. Bloom at daryl.bloom@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: November 26, 2019

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

UNITED STATES OF AMERICA	:	**Crim. No. 1:19-cr-251**
	:	
	:	
v.	:	
	:	
ADAM SANTANA	:	**Judge Sylvia H. Rambo**

ORDER

Before the court is Defendant's Corrected Motion to Suppress the Evidence Obtained Pursuant to the Contingency Warrant (Doc. 22), filed by Defendant Adam Santana ("Santana" or "Defendant"). For the reasons outlined in the accompanying memorandum, it is **HEREBY ORDERED** that the motion is **DENIED**.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Date: March 5, 2020

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

UNITED STATES OF AMERICA	:	**Crim. No. 1:19-cr-251**
	:	
	:	
v.	:	
	:	
ADAM SANTANA	:	**Judge Sylvia H. Rambo**

MEMORANDUM

Before the court is Defendant's Corrected Motion to Suppress the Evidence Obtained Pursuant to the Contingency Warrant (Doc. 22), filed by Defendant Adam Santana ("Santana" or "Defendant"). For the reasons outlined below, the court shall deny the motion.

1. BACKGROUND[1]

On February 22, 2019, a United States Postal Inspector examined a package addressed to a "Carmen Diaz"[2] at 35 Redwood Street, Chambersburg, PA 17201. It had a sender name of "Juan Rivera" and a return address of PO Box 2819, Juncos, PR 00777. During his investigation, the inspector discovered that no person named

[1] The court relies upon a letter sent to United States Attorney Daryl Bloom from a United States Postal Inspector. The court is skeptical as to whether the letter alone—which is hearsay, contains information that does not appear to be in the personal knowledge of the signer, and which has not been filed with an affidavit or declaration authenticating it—is properly before the court. *See* FED. R. EV. 602, 802, 901. Defendant's failure to raise any evidentiary objections, however, render them waived. *See, e.g., Finjan, Inc. v. Symantec Corp.*, No. 10-cv-593, 2013 WL 5302560, at *6 (D. Del. Sept. 19, 2013) ("Finjan waived this argument because it did not object to DX-4348 on hearsay or authentication grounds.").

[2] The parties dispute whether the package was addressed to a "Carmen" or "Carman."

"Juan Rivera" was associated with the PO Box and that no one named "Carmen Diaz" was associated with the Redwood address. He thus had a drug dog sniff the package. The dog's reaction signified that the package contained illicit drugs. After obtaining a warrant to open the package, it was revealed the package contained approximately two kilograms of cocaine hydrochloride.

Based on this finding, Pennsylvania State Police Trooper Steven Nesbit applied for a warrant authorizing the police to, *inter alia*: (a) remove the cocaine and replace it with fake drugs; (b) deliver the package to Defendant's residence; and (c) search the residence for a host of items. The search, however, was only authorized:

> upon the delivery and acceptance of the aforementioned parcel and the parcel being taken inside of the residence listed as 35 Redwood St. Chambersburg, PA. In the event the delivery and acceptance of the aforementioned parcel does not occur, then and in that event, this search warrant will become null and void, will not be executed and will be returned to the issuing authority unserved. In the event the parcel is accepted by an individual and taken inside 35 Redwood ST., this search warrant will be executed.

On February 25, 2019, the police delivered the box full of fake cocaine—having placed a GPS locator and light detection device within it, to assess when the box is moved and opened—to the Redwood address.[3] Before Santana arrived home,

[3] The court notes that the warrant does not authorize the placing of a GPS locator in the package. It is not clear whether there was an earlier "tracking warrant" issued by a magistrate authorizing the installment of a locator. *See United States v. Golson*, 743 F.3d 44, 48 & n.2 (3d Cir. 2014). Nonetheless, because Defendant does not raise an issue with the GPS tracker, the court will not address whether it was permissibly inserted into the package.

a maintenance man unlocked the front door of the Redwood address, picked up the package, and brought it inside. Upon exiting the apartment, the police apprehended and questioned the maintenance man. He explained that he regularly picks up residents' packages and brings them in. While the police were questioning the maintenance man, Santana and his daughter arrived by car, parked, and walked inside the apartment.[4]

Shortly after entering his apartment, the GPS tracker detected movement of the box, suggesting someone picked up the package and moved it to a different area in the home. Shortly thereafter, the light detector was activated, signifying someone had opened the box.[5] These occurrences led the police to believe that the triggering events within the warrant had occurred and that they were free to enter and search the residence. Upon doing so, the police discovered and seized: (1) a pistol and ammunition; (2) a digital scale; (3) the parcel containing the sham cocaine (which had been cut and opened); (4) five multi-colored bags;[6] (5) a black iPhone; and (6) Polyethylene Glycol (a laxative that the police claim is frequently used as a cocaine cutter).

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[4] The police did not retrieve the package to place it back outside or directly deliver it to Santana.

[5] Importantly, someone moving and opening the package—despite it being addressed to a person who did not live within the apartment—added reasonable apprehension to the officers' assessment of the situation.

[6] The multicolored bags located in Santana's home appeared identical to the multicolored bag the police found the cocaine stored within in the package.

On October 15, 2019, Defendant filed a motion to suppress all evidence obtained during the February 25 search of his house. (Doc. 22.) On November 12, 2019, the United States filed its opposition. (Doc. 27.) On November 26, 2019, Defendant filed his reply brief in support of his motion. (Doc. 30.) This matter is fully briefed and thus ripe for review.

II. STANDARD OF REVIEW

The Fourth Amendment to the United States Constitution grants individuals the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." As the United States Supreme Court has repeatedly held, "[t]he touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). "Generally for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause." *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002) (citing *Katz v. United States*, 389 U.S. 347, 356-57 (1967)).

An officer properly acquires a warrant by submitting an affidavit to a magistrate judge providing a sufficient factual basis from which the magistrate judge can reasonably infer that "there is a fair probability that evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). Probable cause is something less than a prima facie showing, but requires, at least, "a substantial basis for concluding that a search would uncover evidence of

wrongdoing." *Id.* at 235, 237 (internal quotations, ellipses, and brackets omitted). In evaluating the magistrate judge's finding of probable cause, the district court should defer to the magistrate judge's judgment. *Id.* at 236. In addition to traditional warrants, there exist anticipatory or contingent warrants, which contain a "triggering event" that must occur before the warrant authorizes the police to conduct a search or seizure. *See United States v. Grubbs*, 547 U.S. 90, 94-95 (2006).

III. DISCUSSION

The gravamen of Defendant's motion is that the phrase "delivery and acceptance of the aforementioned parcel and the parcel being taken inside of the residence" required the police to directly hand the package to him—an event the parties agree did not happen.[7] Neither Defendant nor the government offer the court any authority or dictionary definitions to support their interpretations of the phrase.

[7] Defendant also argues—without citing any authority—that the facts in the affidavit were insufficient to establish probable cause for any search or seizure, specifically arguing, *inter alia*, that the replacement of the cocaine with fake drugs neutralizes the warrant. In response, the government points out that the facts in this case align closely with the facts in *United States v. Golson*, 743 F.3d 44 (3d Cir. 2014). The *Golson* court found the replacement of fake drugs did not neutralize probable cause. *See id.* at 53-55. Defendant does not attempt to distinguish this case in his reply brief. While he is correct that the warrant authorizes a surprisingly broad amount of items to be searched for, the police only took drugs, drug paraphernalia, a gun, and a cell phone from his home—all of which there was probable cause for based on the facts submitted by the police. *See United States v. Yusuf*, 461 F.3d 374, 393 n.19 (3d Cir. 2006) ("[A]n overly broad warrant can be redacted to strike out those portions of the warrant that are invalid for lack of probably cause . . . In contrast, the only remedy for a general warrant is to suppress all evidence obtained thereby."). Thus, Defendant has failed to identify any other evidence that need be excluded.

Based on its own reading, the court concludes the triggering events did in fact occur here.[8]

Here, the warrant contains three triggering events: (1) delivery of the package at issue; (2) acceptance of the package; and (3) the package being brought inside. The word "delivery" means the "formal act of voluntarily transferring something; esp., the act of bringing goods, letter, etc. to a particular person ***or place***." BLACK'S LAW DICTIONARY 541 (11th ed. 2019) (emphasis supplied). The word "acceptance" means "the act of accepting." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 11 (3d ed. 1993). To accept is "to receive with consent []something given or offered," to "assent to the receipt of," or "to take without protest." *Id.* at 10 (quoting three different definitions of "accept"); *accord* THE COMPLETE OXFORD ENGLISH DICTIONARY 70 (2d ed. 1989) (defining acceptance as the "act or fact of accepting, or taking what is offered, whether as a pleasure, a satisfaction of claim, or a duty").

Of note, the sentence containing the triggering events here is written in the passive voice. It thus does not specify who the package must be delivered to, who must accept the package, or who must bring the package inside; it only requires that those events occur. *Contrast United States v. Perkins*, 258 F. Supp. 3d 868, 875

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[8] The parties have no material, factual dispute regarding how the search occurred or whether the facts the government listed in its affidavit were false. Thus, the dispute here is a purely legal one making no evidentiary hearing necessary. *See United States v. Jackson*, 363 F. App'x 208, 210 (3d Cir. 2010) ("Thus, to warrant an evidentiary hearing, a defendant's motion [to suppress] must contain 'issues of fact material to the resolution of the defendant's constitutional claim.'") (quoting *United States v. Voigt*, 89 F.3d 1050, 1067 (3d Cir. 1993)).

(E.D. Tenn. 2017) (holding a warrant which explicitly stated that the package must be delivered to the defendant was not satisfied by delivery to another person), *with*, *United States v. Grubbs*, 547 U.S. 90, 93-94 (2006) (holding a triggering event which did not state whom the package needed to be received by was satisfied when the package was acccpted by the defendant's wife). The warrant also later specified that the package must simply be taken inside "by an individual," further showing that the triggering events did not require any particular person to cause the specified events to unfold.

In *Davidson*, the Middle District of Tennessee held that the defendant's act of "picking up [a] package and taking it inside his shop was enough to constitute accepting delivery" of contraband. *Davidson v. Lindamood*, No. 1:14-cv-161, 2018 WL 1566823, at *17 (M.D. Tenn. Mar. 30, 2018), *report and recommendation adopted*, 2018 WL 2192110 (M.D. Tenn. May 14, 2018), *aff'd*, 2018 WL 6431035, at *2 (6th Cir. Dec. 3, 2018) (specifically affirming the district court's discussion of the satisfaction of the anticipatory warrant). The *Davidson* court explained that, when considering anticipatory waivers, "'delivery and acceptance' as a triggering event may be broadly construed." *Id.*[9]

[9] *But see Perkins*, 258 F. Supp. 3d at 875 ("The triggering event, however, must be explicit, clear, and narrowly drawn."). The court, however, chooses not to follow the *Perkins* decision because it did not explain how its rule was consistent with the Supreme Court's holding in *Grubbs* that the Fourth Amendment contains no requirement that the triggering events of anticipatory warrants be written with any degree of particularity. *Grubbs*, 547 U.S. at 94.

Applying these definitions to the triggering events, reading the paragraph containing them on the whole, and reviewing the facts, the court finds the triggering events here occurred. The package was adequately delivered when it was dropped off at Santana's address, even if it was not directly given to him. The package was brought inside when Santana's maintenance man did so. Finally, by moving the package inside his home and opening it up—despite it being addressed to a different person—Santana consented to receiving the package and its contents, taking it as something offered to him. In other words, he accepted the package.

If the law required a strict construction of these phrases in favor of the accused, the court might construe it differently. But because the Supreme Court has held there is no particularity requirement for triggering events, and another district court has held the triggering event of "delivery and acceptance" can be broadly construed, the court does so here. The triggering events having occurred, the police were authorized to enter Santana's residence and seize the contraband they located.

IV. CONCLUSION

For the reasons outlined above, the court shall deny Defendant's motion to suppress. An appropriate order shall follow.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Date: March 5, 2020

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

UNITED STATES OF AMERICA,	:	Docket Number
	:	
vs.	:	
	:	19-CR-251 (SHR)
	:	
ADAM N. SANTANA,	:	
Defendant.	:	

MOTION TO SUPPRESS EVIDENCE PRODUCED BY THE SEARCH OF THE PARCEL BEARING TRACKING NUMBER # 9505511017429051176795

TO THE HONORABLE JUDGE OF THE SAID COURT:

The Defendant, Adam N. Santana, by and through his attorney, José Luis Ongay, Esquire, requests the Court to suppress the evidence produced by the execution of the Search Warrant on parcel bearing tracking number 9505511017429051176795, and in support thereof states the following:

1. On February 22, 2019, the Government intercepted a parcel to be delivered to 35 Redwood Street, Chambersburg, PA. The parcel had tracking number 9505511017429051176795. The parcel was sent by Juan Rivera from P.O. Box 2819, Juncos, P.R. 00777 and addressed to Carmen Diaz at 35

Redwood Street, Chambersburg, PA.[1] The Government applied for a Search and Seizure Warrant on February 25, 2020. The Search Warrant documents however did not have the correct information.[2]

2. On the caption of the Search and Seizure Warrant, the parcel was described as "Priority Mail Parcel # 9505511017439050164884 addressed to Carmen Diaz 35 Redwood Street, Chambersburg, PA 17201." This parcel (9505511017439050164884) was the Parcel that was intercepted by the authorities and then subject to a controlled delivery and followed by an executory search of 35 Redwood Street, Chambersburg, PA, on February 22, 2019. *See* pages 2 through 6 of *Exhibit* "A."

3. The correct caption should have read Priority Mail Parcel # 9505511017429051176795 addressed to Carmen Diaz 35 Redwood Street, Chambersburg, PA 17201.

---

[1] Attached hereto as *Exhibit* "A" is the report prepared by U.S. Postal Inspector Michael J. Corricelli. This report contains the correct information of the parcel number 9505511017429051176795. *See* page 7 of *Exhibit* "A."

[2] A copy of the Search Warrant documents provided by the Government as part of the initial discovery package are attached hereto as *Exhibit* "B."

4. Further review of the Warrant application documents reveals that Form AO 93, the return of the warrant, listed the correct parcel. That is Priority Mail Parcel # 9505511017429051176795. However, the return of the Warrant was not presented to the Court when the Warrant was approved. The Warrant was approved by the Court on 2/25/19 at Noon and the Return of Warrant appears to have been completed on 2/25/19 at 14:14 hours, or 2:14 P.M.

5. On the caption of the Application for the Search Warrant again the parcel is incorrectly described as "Priority Mail Parcel # 9505511017439050164884 addressed to Carmen Diaz 35 Redwood Street, Chambersburg, PA 17201."

6. On Attachment A to the Application for the Search Warrant, the Parcel provides yet another completely different description. That is, "United States Priority Mail Parcel bearing tracking number 9505510977439053358378 addressed to Edwin Martinez 20 S. 15th Street Harrisburg, PA 17104." The return address is also different. That is, "Rita

Martinez Calle Frey Marchena 712 Urb[anizacion] Fairview[,] San Juan, P.R. 00926."

7. There is a photo attached to Attachment A labeled Attachment A-1 that contains a photo of the front of the parcel (9505510977439053358378) that shows the sender and the recipient's name and address as listed on Attachment A.

8. On the Affidavit, in paragraph 3, the recipient is Carmen Diaz with the address of 35 Redwood Street, Chambersburg, PA bearing tracking number 9505511017439050164884. Again, this is the wrong parcel.

9. On the Affidavit, in paragraph 5, it states again that the tracking number for the parcel is 9505511017439050164884.

10. Thereafter, there is another copy of Attachment A and Attachment A-1 as described above, that contains the same erroneous information. Also, the captions of the Order, the Motion to Seal, and the Declaration in Support of the Motion to Seal contain the same mistake in the caption, i.e., "A Parcel bearing Priority Mail # 9505511017439050164884 Addressed to Carmen Diaz, 35 Redwood Street, Chambersburg, PA17201."

11. These mistakes are important because the Search Warrant authorized the search of a different parcel. Also, the Warrant contained no information that would have directed an officer to the correct parcel. As such, the search of the parcel bearing tracking # 9505511017429051176795, was not according to a valid Search and Seizure Warrant.

12. The Fourth Amendment requires a Warrant to state with particularity the place and items to be searched and or seized. Specifically, the Fourth Amendment states that ". . . no Warrants shall issue, but upon probable cause, . . . and [the warrant] particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. I; *see also, Groh v. Ramirez*, 550 U.S. 551, 557 (2004). In *United States v. Moss*, the First Circuit stated that the manifest purpose of this constitutional rule, known as the particularity requirement, "is to prevent wide-ranging general searches by the police." *United States v. Bonner*, 808 F.2d 864, 866 (1st Cir. 1986). "The test for determining the adequacy of the description [in a warrant] of the location to be searched is whether the description is sufficient to enable the executing officer to locate and identify the premises

with reasonable effort and whether there is any reasonable probability that another premise might be mistakenly searched." *Id.* The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents." *Id.*

13. Here the Search Warrant in question listed another parcel to be searched and seized. Specifically, the Warrant in question was for the search and seizure of the parcel bearing tracking 9505511017439050164884 instead of the parcel bearing tracking number 9505511017429051176795. As such, the Search Warrant violated the Fourth Amendment of the U.S. Constitution by failing to describe with particularity the items to be searched and seized.

14. In *United States v. Noyes*, 2010 U.S. Dist. LEXIS 130041, the District Court for the Western District of Pennsylvania confronted a similar issue and stated:

> We also recall that the "particularity requirement" of the Fourth Amendment is designed to achieve three things:
>
> First, it memorializes precisely what search or seizure the issuing magistrate intended to permit. Second, it confines the discretion of the officers who are executing the warrant. *Marron v. United States*, 275 U.S. 192, 196, 48 S. Ct. 74, 72 L. Ed. 231, Treas. Dec.

> 42528 (1927). Third, it "inform[s] the subject of the search what can be seized." *Bartholomew [v. Commonwealth of Pa.]*, 221 F.3d [425, 429 (3d Cir. 2000)]. For these reasons, although a warrant should be interpreted practically, it must be sufficiently definite and clear so that the magistrate, police, and search subjects can objectively ascertain its scope. See *Groh [v. Ramirez]*, 540 U.S. [551, 556-57], 124 S. Ct. at 1289, 2004 WL 330057.

Noyes, 2010 U.S. Dist. LEXIS 130041, *citing Doe v. Groody*, 361 F.3d 232, 239 (3d Cir. 2004). Here, the mistakes in the Search Warrant are severe. They do not provide any guidance about the correct parcel to be searched. It is impossible to conclude that the Court had authorized the search for parcel bearing tracking number 9505511017429051176795. The Warrant documents did not identify the correct parcel once. The Warrant documents discussed two parcels in its documents: parcel bearing tracking number 9505511017439050164884 and parcel bearing tracking number 9505510977439053358378. Parcel bearing tracking number 9505511017429051176795, is not mentioned at all in the Warrant papers. It is only mentioned, after the search, on Form AO 93, the return of the warrant form. The Warrant memorialized the authority to search the wrong parcel, i.e., the parcel bearing tracking number 9505511017439050164884. The

Warrant confined the officers' discretion to search the wrong parcel, i.e., parcel bearing tracking number 9505511017439050164884. Last, the Warrant informed the subject of the warrant that it can only search the wrong parcel, i.e., parcel bearing 9505511017439050164884. Read practically and in a non-technical manner, the Warrant in question did not authorize the search of, and the seizure of, the parcel bearing tracking number 9505511017429051176795.

15. Last, the mistakes contained in the Warrant are so significant that a simple reading of the Warrant would have revealed the magnitude of the problems. As such, the Government cannot argue good faith reliance on the warrant. An Officer cannot claim good faith reliance when the Warrant, the Application for the Warrant, and the Affidavit in Support of the Application for the Warrant all described a different parcel.

WHEREFORE, Counsel respectfully requests that this Court grant the Defendant's motion to suppress.

Respectfully Submitted,

/s/José Luis Ongay

José Luis Ongay, Esquire

Date: July 23, 2020

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the Motion to Extend Time to File Pretrial Motions upon the assigned AUSA Daryl F. Bloom via the ECF system and at daryl.bloom@usdoj.gov.

/s/José Luis Ongay

José Luis Ongay, Esquire

Date: July 23, 2020

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

UNITED STATES OF AMERICA,	:	Docket Number
	:	
vs.	:	
	:	19-CR-251 (SHR)
	:	
ADAM N. SANTANA,	:	
Defendant.	:	

ORDER

Now this ___ day _____ 2020, the Court Grants the Defendant's Motion to Suppress. The Government cannot introduce into evidence during the trial or sentencing found inside parcel bearing tracking number 9505511017429051176795.

BY THE COURT:

_____
J.

EXHIBIT A

UNITED STATES POSTAL INSPECTION SERVICE

PHILADELPHIA DIVISION

August 14, 2019

SUBJECT: Receipt of cocaine in excess of five kilograms and possession of a firearm in connection with a drug trafficking crime by Adam Neftali-Santana.

United States Attorney's Office
Middle District of Pennsylvania
Attention: Assistant U.S. Attorney Daryl F. Bloom
228 Walnut Street (Suite 220)
Harrisburg, PA 17101-1714

Dear Mr. Bloom:

The following is provided to assist in the federal prosecution of *Adam Neftali-Santana* for the listed criminal offenses:

NO RULE 6(e) MATERIAL INCLUDED

NAME OF OFFENDER	:	Adam Neftali-Santana.
DATE OF BIRTH	:	November 16, 1983
FBI #	:	KN1PVPPA3
ADDRESS	:	35 Redwood Street Chambersburg, PA 17201
PLACE OF OFFENSE	:	Chambersburg, Pennsylvania
DATE OF OFFENSE	:	On or about February 22, 2019
NATURE OF OFFENSE	:	Violations of Title 21 U.S.C. § 841(a)(1) & Title 18, U.S.C. § 924(c)

SYNOPSIS:

In February 2019, U.S. Postal Inspectors identified a suspect parcel from Puerto Rico to an address in Chambersburg, PA. Following alert by a Pennsylvania State Police (PSP) drug detection canine, a federal warrant was executed on the parcel which revealed two kilograms of cocaine secreted inside cosmetic cases. A controlled delivery was executed and Adam Neftali Santana was stopped as he tried to flee out the rear of the residence. Located inside the residence was the parcel delivered as well as evidence of several prior suspect mailings. A Glock 19 pistol, ammunition, and a digital scale were located inside Santana's bedroom. The following day, another parcel for the same address was identified and following execution of a federal warrant, was also found to contain two

PO BOX 60035
HARRISBURG PA 17106-0035
TELEPHONE: 717-257-5581
FAX: 717-257-2328

kilograms of cocaine. This cocaine was also found secreted in similar cosmetic cases. A comprehensive review of postal records disclosed approximately ten prior mailings that appear consistent with the suspect parcels.

INVESTIGATION:

On or about February 12, 2019, U.S. Postal Inspectors based in Puerto Rico identified a suspicious outbound Priority mail parcel bearing tracking number 9505511017429042175608. This parcel weighed approximately 4.62 pounds and was addressed to "*Madelinee Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Carmen Rivera*" at PO Box 2618 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was temporarily detained and forwarded to Harrisburg based Postal Inspectors for follow up investigation.

This suspect parcel was received on February 13, 2019 and exposed to a Pennsylvania State Police (PSP) drug detection canine. The canine did not alert on the parcel and it was returned to the mail stream for delivery.

On February 14, 2019, Postal Inspectors conducted surveillance on 35 Redwood St. Chambersburg, PA. At approx. 12:31 PM, a postal service employee delivered the above mentioned parcel to the residence. Specifically, he left the box on a bench or chair by the front door.

On February 14, 2019 at approx. 1:06 pm, a heavy set Hispanic male, later identified as Adam Santana, arrived at the residence. He picked up the box, looked around the neighborhood and then appeared to use a cell phone. He then took the box into the residence. At approx. 1:34 pm, the same individual exited the residence carrying what appeared to be a similar white box and bag of trash. He walked to the side of the residence where a trash receptacle was located and then returned to the front with his hands empty. He went back into the residence and then departed again at approximately 1:38 pm in a silver/gray sedan bearing Pennsylvania license KNY-1001 (*This vehicle was later determined to be registered to Santana*).

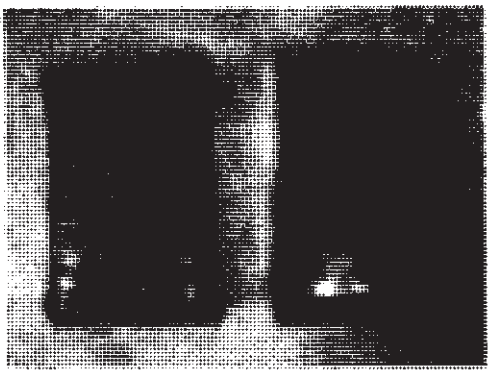
On or about February 22, 2019, Postal Inspectors identified a Priority mail parcel bearing tracking number 9505511017439050164884. This parcel weighed approximately 8.5 pounds and was addressed to "*Carmen Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Juan Rivera*" at a PO Box 2819 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was exposed to a PSP drug detection canine who alerted on the parcel as containing suspected narcotics.

Based on the alert, a federal search warrant was obtained (*1:19-MC-113*) within the Middle District of Pennsylvania (**Exhibit 1**). This warrant was executed on February 22, 2019 and located inside the parcel were two cosmetic bags each containing a kilogram of cocaine. The kilograms had been heat and vacuum sealed along with multiple layers of plastic wrap, dryer sheets, and carbon paper. These items were field tested using a TruNarc ® system and identified as cocaine hydrochloride. Images of the parcel opening have been appended as **Exhibit 2**.

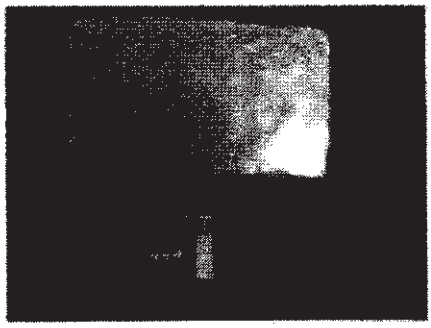


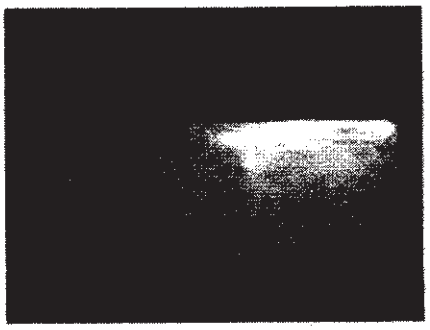
Suspect parcel bearing 9505511017439050164884





Cosmetic bags





CONTROLLED DELIVERY

On February 22, 2019, Postal Inspectors, PSP troopers, and local law enforcement officers executed a controlled delivery of the above identified parcel (*9505511017439050164884*) to 35 Redwood St. Chambersburg, PA.

Prior to executing the delivery, PSP Trooper Steven Nesbit obtained a Commonwealth anticipatory search warrant for the residence (**Exhibit 3**) as well as authorization for

installing a light and motion sensor in the parcel (**Exhibit 4**). The actual cocaine was removed and replaced with two black "bricks" that appeared similar in size and weight to the actual cocaine. The bricks were wrapped in black tape.

The box was then delivered to the residence and placed on the porch. A short while later, an individual identified as a maintenance worker picked up the box and brought it into the residence. After being contacted by law enforcement, this worker explained he was assigned to perform maintenance inside the residence. It was normal for them to bring in parcels from the porch if they noticed them as they were entering. The maintenance worker was directed to leave the residence and not touch the box again.

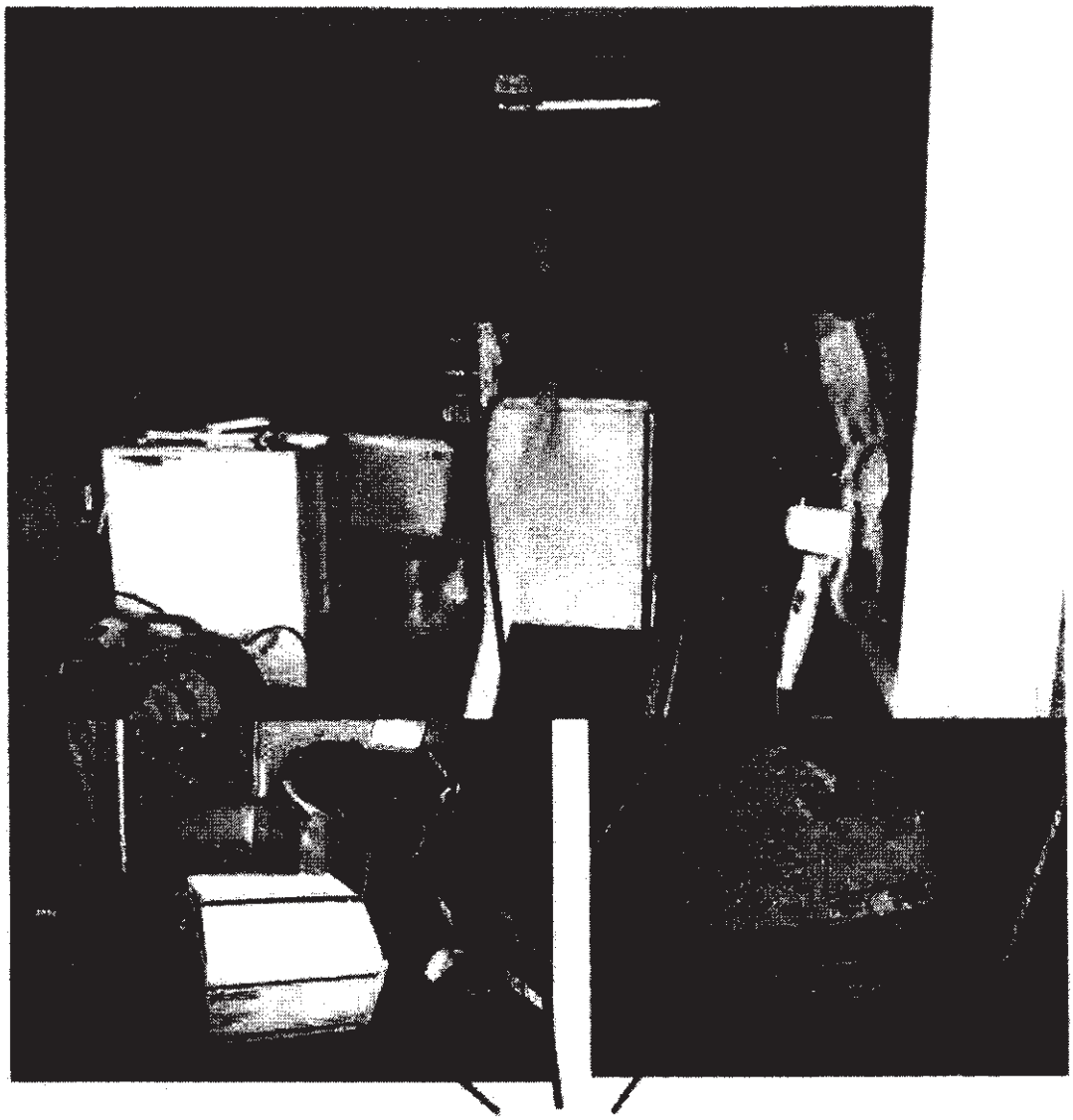
At approximately 1:45 pm, SANTANA arrived at the residence with a young female later identified as his minor daughter. After entering the residence, the tracking device inside the parcel showed it was moving and then the light sensor activated indicated the parcel had been opened. Upon receiving the sensor alert, law enforcement converged on the residence to execute the search warrant. Santana tried to run from the rear garage door and upon being confronted by PSP Trooper Donn Reid, he threw the two fake kilograms. He was taken into custody without further incident and the residence was secured. A copy of Trooper Reid's supplemental report is appended as **Exhibit 5** . (*NOTE: Santana attempting to run and throwing the fake kilos was captured on surveillance video by supporting aircraft* ***Exhibit 6***).



Two fake kilograms discarded by Santana

SEARCH WARRANT

Upon executing the search warrant, investigators discovered the delivered parcel in the garage. This is the same location Santana was observed running from. The parcel had been opened and the address label cut off.



Suspect parcel in garage

Contained under the seat of the scooter where the parcel was found was a piece of black carbon paper similar to the pieces found when the cocaine was first discovered.

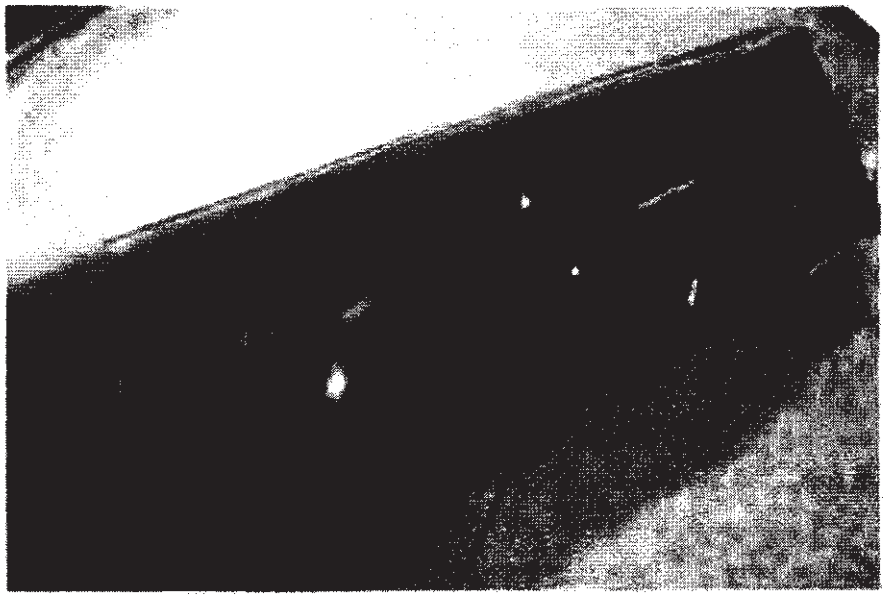


Four additional cosmetic bags, similar to those found during the initial search of the parcel were located in the same area.



Additional cosmetic bags in garage

When the fake kilograms were recovered and examined, it was noted they had been cut into along the side.



Fake kilogram cut into

Additionally, a digital scale, a Glock® 9mm pistol (Serial SYK946), numerous pistol magazines and ammunition were located in the master bedroom. A pistol magazine for a Sig Sauer® 9mm was located in the kitchen along with a bottle of Polyethylene Glycol. PSP completed an inventory receipt which has been appended as **Exhibit 7**. (*Note: Polyethylene Glycol is a laxative but is commonly used as a "cutting" agent for cocaine to provide more bulk weight.*)

A copy of the search warrant photos have been appended as **Exhibit 8.**

SECOND PARCEL:

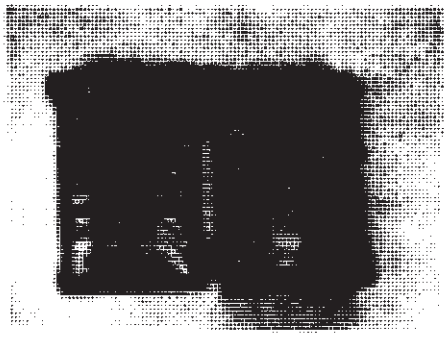
On or about February 22, 2019, Postal Inspectors identified a Priority mail parcel bearing tracking number 9505511017429051176795. This parcel weighed approximately eight pounds eleven ounces and was addressed to "*Carmen Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Juan Rivera*" at a PO Box 2819 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was exposed to a PSP drug detection canine who alerted on the parcel as containing suspected narcotics.

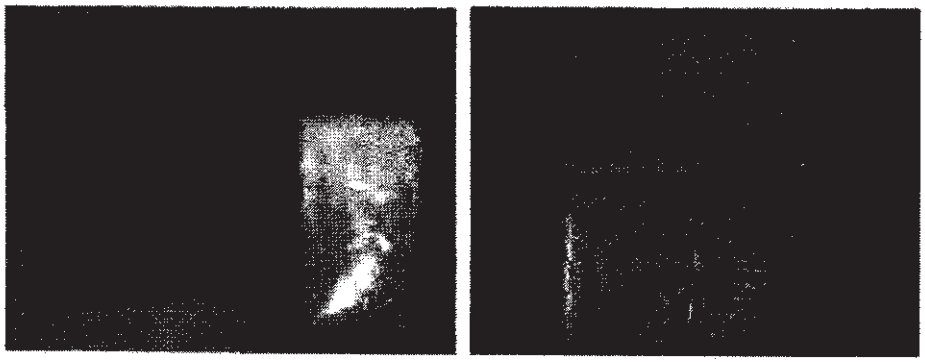
Based on the alert, a federal search warrant was obtained (*1:19-MC-118*) within the Middle District of Pennsylvania (**Exhibit 9**). This warrant was executed on February 25, 2019 and located inside the parcel were two cosmetic bags each containing a kilogram of cocaine. The kilograms had been heat and vacuum sealed along with multiple layers of plastic wrap, dryer sheets, and carbon paper. Images of the parcel opening have been appended as **Exhibit 10**.



Suspect parcel bearing 9505511017429051176795







PRIOR MAILINGS:

On or about February 13, 2019, U.S. Postal Inspectors identified suspicious parcels from Puerto Rico to 35 Redwood Street, Chambersburg, PA. A review of postal records revealed at least five prior parcels, weighing in excess of four pounds or greater, being delivered to the residence in various names. Additional records searched disclosed none of the names identified were known to reside or receive mail there. Known prior mailings to 35 Redwood Street included:

Postal Tracking Number: 9505514362468303196905
Weight: 3.62 lbs
Delivered date: 11/2/2018
From: Las Piedras, PR 00771
Addressed to: 35 Redwood St. Chambersburg, PA
(***Name unknown and not available***)

Postal Tracking Number: 9505511017429002168510
Weight: 5.25 lbs
Delivered date: 1/7/2019
From: Juncos, PR 00777
Addressed to: "**Damariz Rivera**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505514362489016215486
Weight: 6.25 lbs
Delivered date: 1/19/2019
From: Las Piedras, PR 00771
Addressed to: "**Damariz Rivera**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505514362489022216750
Weight: 8.88 lbs
Delivered date: 1/25/2019
From: Las Piedras, PR 00771
Addressed to: "**Carmen Diaz**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505511017429036174068
Weight: 4.88 lbs
Delivered date: 2/8/2019
From: Juncos, PR 00777
Addressed to: "**Carmen Diaz**" 35 Redwood St. Chambersburg, PA

INTERVIEWS:

Upon being taken into custody on February, 22, 2019, Inspector Corricelli and Trooper Nesbit attempted to interview SANTANA however, he claimed he was not fluent in English. Trooper Nesbit elicited the assistance of PSP Corporal Kent Ramirez who attempted a telephonic interview of SANTANA. SANTANA was provided his *Miranda* rights and acknowledged understanding. After several minutes, SANTANA requested an attorney and the conversation was terminated. A copy of the recorded conversation is appended as **Exhibit 11**.

OFFENDER DETAILS:

Adam Neftali-SANTANA is a 36 year old Hispanic male. He has one prior misdemeanor arrest for DUI in which he received a deferred prosecution/Accelerated Rehabilitation Disposition in Franklin County (2016). A review of employment history shows minimal work with a temporary agency. At the time of his arrest for this offense, SANTANA had a valid permit to carry a concealed firearm (28-00019149) issued in Franklin County (PA) on 5/11/2017 .

OTHER:

On or about February 21, 2019, Postal Service representatives responsible for mail delivery to 35 Redwood St. Chambersburg advised Adam SANTANA receives mail at the residence. They did not recognize the last name "Diaz" as receiving mail there but did believe last names of "Flores" and "Perez" might receive mail there as well.

Following completion of the search warrant on February 22, 2019, Adam Neftali-SANTANA was arrested and booked on state charges for Manufacture, Delivery, or Possession with intent to Deliver a controlled substance. He was denied bail and remains in custody at the Franklin County (PA) Prison. He is scheduled for trial n or about 10/24/2019. The state docket number is CP-28-CR-0001077-2019.

A review of the pending state docket shows SANTANA is being represented by Attorney Jose L. Ongay of Plymouth Meeting, PA with contact number (484) 681-1117.

On or about March 1, 2019, Inspectors applied for and received a federal search warrant for SANATANA's cell phone recovered during the search warrant on his residence (**Exhibit 12**). The phone was submitted to the PSP Computer Crime Laboratory on or about March 4, 2019. The phone was returned from the lab on or about March 8, 2019. A subsequent review of the data obtained from the phone disclosed nothing relevant to this investigation.

On or about April 3, 2019, the four kilograms of suspected cocaine received from the two parcels (*9505511017439050164884* & *9505511017429051176795*) were submitted to the PSP Harrisburg Regional Laboratory for analysis. On or about April 12, 2019, the laboratory provided a report confirming all four bricks were cocaine with a combined weight of 4,005 grams (+/- 9grams). A copy of their report has been appended as **Exhibit 13**.

PSP Trooper Nesbit requested origin information on the firearm recovered during the search of Santana's residence (Glock #SYK946). Results will be reported under separate cover.

A copy of PSP Trooper Nesbit's report has been appended as **Exhibit 14**.

WITNESSES:

1. Postal Inspector M.J. Corricelli, USPIS (717-257-5581)
   - Can testify to all aspects of this investigation
2. Trooper Steven Nesbit, PSP (717-317-5096)
   - Can testify to all aspects of this investigation
3. Corporal Scott Fidler, PSP (717-317-5000)
   - Can testify to all aspects of this investigation
4. Postal Inspector S.L. Knoll, USPIS (717-257-2333)
   - Can testify to the parcel and house warrants

- Other investigators present for the delivery and residence warrant will be provided upon request.

EXHIBITS: Provided electronically on attached disk.

1. Federal Search warrant and affidavit, RE: parcel 9505511017439050164884
2. Copy of digital images from opening parcel 9505511017439050164884
3. PA search warrant and application for Santana's residence
4. PA Application and order authorizing mobile tracking device
5. PSP Trooper Reid supplemental report dated 2/26/2019
6. Copy of video surveillance from support aircraft, dated 2/22/2019
7. Search warrant inventory for Santana's residence, dated 2/22/2019
8. Copy of search warrant photographs of Santana's residence, dated 2/22/2019
9. Federal Search warrant and affidavit, RE: parcel 9505511017429051176795
10. Copy of digital images from opening parcel 9505511017429051176795
11. Copy of recorded Santana interview, dated 2/22/2019
12. Federal Search warrant and affidavit, RE: Santana cell phone
13. PSP Forensic laboratory report RE: four kilogram analysis
14. PSP Trooper S. Nesbit incident report.

I can best be reached at (717) 257-5581 or via email mjcorricelli@uspis.gov for any questions or concerns regarding this matter.

Respectfully,

M.J. Corricelli
U.S. Postal Inspector

CC: Trooper Steven Nesbit, Pennsylvania State Police | Bureau of Criminal Investigation

EXHIBIT B

AO 93 (Rev. 12/09) Search and Seizure Warrant

ORIGINAL

UNITED STATES DISTRICT COURT

for the

Middle District of Pennsylvania

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)*	)
Priority mail parcel # 9505511017439050164884 addressed to Carmen Diaz 35 Redwood St. Chambersburg, PA 17201	) Case No. 1:19-MC-0115

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Middle District of Pennsylvania *(identify the person or describe the property to be searched and give its location)*:

See Attachment A

The person or property to be searched, described above, is believed to conceal *(identify the person or describe the property to be seized)*:

controlled substances, narcotic proceeds, and/or evidence of controlled substances.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before March 11, 2019 *(not to exceed 14 days)*

☑ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge Martin C. Carlson *(name)*

☑ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)* ☑ for 30 days *(not to exceed 30)*

☐ until, the facts justifying, the later specific date of

Date and time issued: 2-25-19 12:00 PM

Martin C. Carlson
Judge's signature

City and state: Harrisburg, PA

Martin C. Carlson, U.S. Magistrate Judge
Printed name and title

AO 93 (Rev. 12/09) Search and Seizure Warrant (Page 2)

Return

Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
1:19-MC-0118	2/25/2019 @ 1414 hrs	USPIS

Inventory made in the presence of:
PI S. Knoll - USPIS

Inventory of the property taken and name of any person(s) seized:

Priority Mail Parcel 9505 5110 1742 9051 1767 95 Containing two bricks of compressed white powder that appears consistent with cocaine and weighs a total of 2,054 grams; Two make-up style bags and associated wrapping materials; two children's toys.

Last Item

MJC

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: 2/25/2019

Michael J. Corricelli
Executing officer's signature

Michael J. Corricelli, Postal Inspector
Printed name and title

AO 106 (Rev. 04/10) Application for a Search Warrant

UNITED STATES DISTRICT COURT

for the

Middle District of Pennsylvania

FILED
HARRISBURG, PA
FEB 25 2019
PER
DEPUTY CLERK

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

Priority mail parcel # 9505511017439050164884
addressed to Carmen Diaz
35 Redwood St. Chambersburg, PA 17201

Case No. 1:19-MC-0118

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location):*

See Attachment A

located in the Middle District of Pennsylvania, there is now concealed *(identify the person or describe the property to be seized):*
controlled substances, narcotic proceeds, and/or evidence of controlled substances.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more):*

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
Title 21 U.S.C. § 841(a)(1)	Manufacture, distribute, or dispense a controlled substance
Title 21 U.S.C. § 843(b)	Use of a communication facility (U.S. Mail)

The application is based on these facts:
1. I, Michael J. Corricelli, am a United States Postal Inspector with the United States Postal Inspection Service (USPIS) and have been so employed since March 2001.

- ☑ Continued on the attached sheet.
- ☑ Delayed notice of 30 days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Michael J. Corricelli
Applicant's signature

Michael J. Corricelli, U.S. Postal Inspector
Printed name and title

Sworn to before me and signed in my presence.

Date: 2-25-19

Martin C. Carlson
Judge's signature

City and state: Harrisburg, PA

Martin C. Carlson, U.S. Magistrate Judge
Printed name and title

ATTACHMENT A

United States Postal Service Priority Mail parcel bearing tracking #9505510977439053358378 addressed to Edwin Martinez 20 S 15th St Apt 2 Harrisburg, PA 17104 measuring approximately 12" x 3.5" x 14.125" and weighing approximately 6 pounds and 13.3 ounces. The return address listed on the parcel is Rita Martinez Calle Fray Marchena 712 Urb Fairview San Juan, PR 00926. The parcel is currently located at the U.S. Postal Inspection Service Harrisburg Office. A photo is attached hereto as Attachment A-1.

ATTACHMENT A-1



AFFIDAVIT

I am currently assigned to the Philadelphia Division and domiciled in Harrisburg, Pennsylvania. As part of my duties, I investigate criminal violations relating to controlled substances transported via the United States mails. I investigate the use of the United States mails to illegally send and receive controlled substances, the proceeds of drug trafficking, as well as other instrumentalities associated with drug trafficking, in violation of Title 21, United States Code, Sections 841(a)(1) (distribution and possession with intent to distribute controlled substances), and 843(b) (unlawful use of a communication facility, including the United States mails, to facilitate the distribution of controlled substances). My training and experience includes identifying parcels with characteristics indicative of criminal activity. During the course of my employment with the USPIS, I have participated in dozens of criminal investigations involving suspicious parcels and controlled substances.

2. Based on my experience with the USPIS and the experience of other agents, I have become familiar with the mechanics of the parcel delivery services and have developed a good understanding of the

appeal these services have for those who choose them for the illegal transportation of controlled substances, as well as United States currency generated from the distribution of controlled substances, either as payment or proceeds. Parcel delivery services offer rapid and dependable service for most metropolitan areas. Parcels are guaranteed for delivery in the number of specified days, with a refund if the parcel does not meet the service standards. To the smuggler, the refund is a minor consideration, but parcels delayed beyond the normal delivery time serve to alert the recipient the authorities may have discovered the controlled substances or proceeds. Additionally, the sender is given a time of shipment, plus the weight of the parcel.

3. On or about February 22, 2019, the USPIS identified a suspicious parcel bearing Priority mail tracking # 9505511017439050164884 (the "Subject Parcel") addressed to "Carmen Diaz" 35 Redwood St. Chambersburg, PA 17201. This parcel exhibited characteristics consistent with a narcotics or narcotics proceeds parcel.

4. A review of the suspect parcel disclosed the return address is valid but the name listed "Juan Rivera" cannot be associated to the address. The delivery address is also valid but the name "Carmen Diaz"

cannot be associated through available resources. It should be noted that narcotics smugglers often use a fictitious return address when sending illicit items to reduce the chance of detection by law enforcement.

5. The physical characteristics of the subject parcel are as follows:

Parcel Description	Tracking# # 9505511017439050164884 12.25" x 12.25" x 6" Approx. eight pounds eight ounces
Return Address	Juan Rivera PO Box 2819 Junco, PR 00777
Delivery Address	Carmen Diaz 35 Redwood St. Chambersburg, PA 17201

6. On February 22, 2019, the Subject Parcel was exposed to drug detection canine named "Zigi." K-9 Zigi is handled by Trooper (Tpr.) Jon Mearkle of the Pennsylvania State Police, K9 Unit, Carlisle Barracks. Tpr. Mearkle, badge #8481, has been employed by the Pennsylvania State Police since 1999. He has been assigned to the canine unit since 2013. Tpr. Mearkle and K-9 Zigi have undergone more than ten weeks of training for K-9 patrol and more than 50 hours

of training for narcotics detection. K-9 Zigi is trained to locate the following odors: marijuana, cocaine hydrochloride, cocaine base, methamphetamine and heroin. In addition to initial training, the team undergoes in-service maintenance training two to three days every month consisting of narcotics detection where they are evaluated by members of the Pennsylvania State Police K-9 Unit Training Staff. Tpr. Mearkle and K-9 Zigi were certified in October 2018.

7. On February 22, 2019, Tpr. Mearkle and K-9 Zigi conducted package lineups at the USPIS office. First, a lineup was constructed of five (5) boxes taken from offices. K-9 Zigi was run on these boxes with no alerts or indications being noted. One (1) of the five (5) boxes was removed and the Subject Parcel was placed into the lineup individually. K-9 Zigi was then run again on the lineup. Tpr. Mearkle advised Postal Inspectors that Zigi alerted positive to the presence of illegal narcotics inside the Subject Parcel.

8. The Subject Parcel is presently located at the USPIS Office within the Middle District of Pennsylvania.

9. Based on the above information which I believe to be true and correct, I believe that the Subject Parcel contains controlled

substances and/or narcotic proceeds sent from Puerto Rico to Pennsylvania via United States mail delivery services, and that the use of the United States mail delivery services will facilitate the delivery of the controlled substances and/or narcotic proceeds.

10. Wherefore I respectfully request the Court to find probable cause and issue a search warrant authorizing the opening and search of the Subject Parcel which is believed to contain controlled substances and/or narcotic proceeds in violation of Title 21, United States Code, Sections 841(a)(1) and 843(b).

11. Upon issuance of the requested warrant, in order to further the investigation into what is believed to be a significant drug trafficking operation, your affiant, with the approval of the United States Attorney for the Middle District of Pennsylvania, intends to open the subject parcel to confirm its contents and then seize the parcel for further investigation into this drug trafficking organization. Your affiant submits that notice as required by Federal Rule of Criminal Procedure 41(f)(C) would jeopardize the success of the investigation into the drug trafficking operation being investigated in this case (an adverse result under 18 U.S.C. § 3103(b)(1)). Therefore, your affiant

requests authorization under 18 U.S.C. § 3103(b)(1) to delay for thirty (30) days any notice otherwise required by Federal Rule of Criminal Procedure 41(f)(C).

Michael J. Corricelli
U.S. Postal Inspector
U.S. Postal Inspection Service

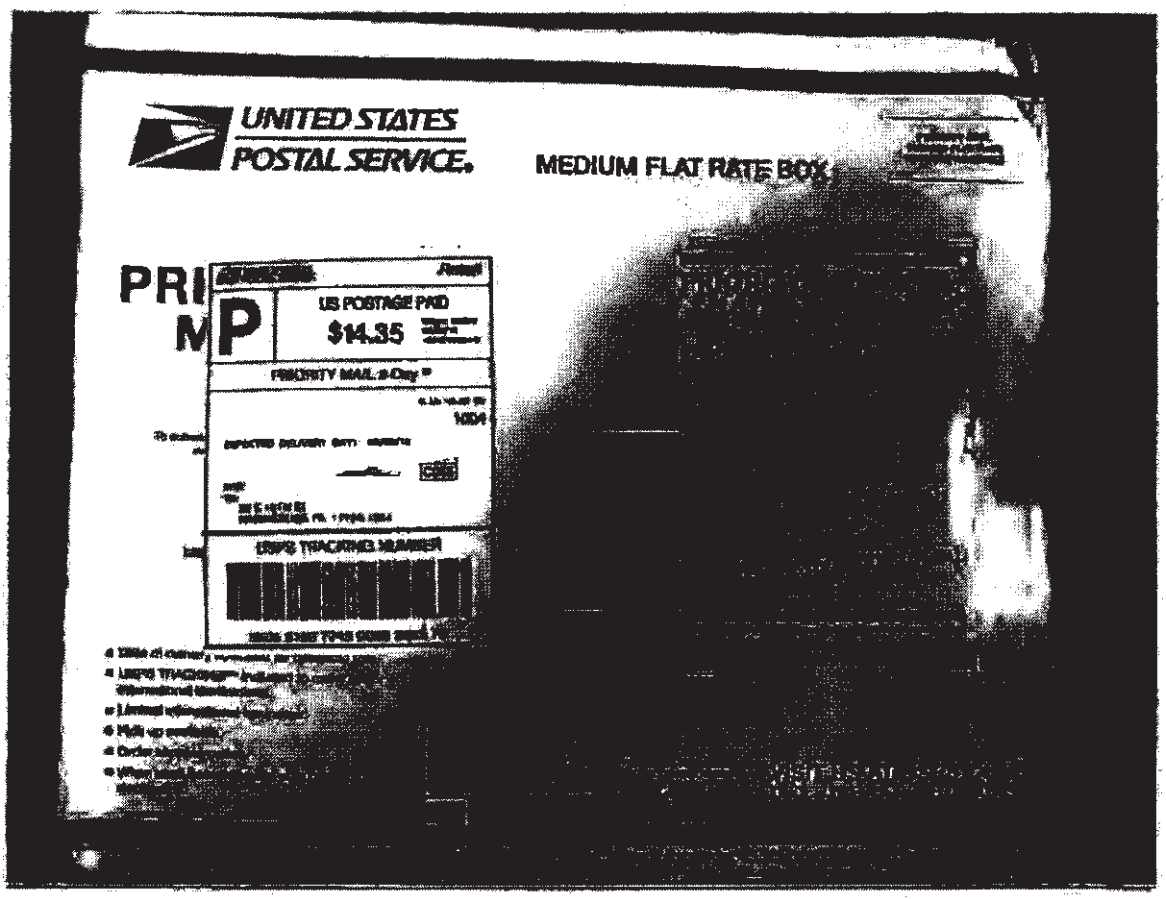
Sworn to and subscribed before me
this 25th day of February, 2019.

Martin C. Carlson
U.S. Magistrate Judge

ATTACHMENT A

United States Postal Service Priority Mail parcel bearing tracking #9505510977439053358378 addressed to Edwin Martinez 20 S 15th St Apt 2 Harrisburg, PA 17104 measuring approximately 12" x 3.5" x 14.125" and weighing approximately 6 pounds and 13.3 ounces. The return address listed on the parcel is Rita Martinez Calle Fray Marchena 712 Urb Fairview San Juan, PR 00926. The parcel is currently located at the U.S. Postal Inspection Service Harrisburg Office. A photo is attached hereto as Attachment A-1.

ATTACHMENT A-1



FILED
HARRISBURG, PA
FEB 25 2019
PER
DEPUTY CLERK

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

IN RE:	:	No. 1:19-MC-0118
A PARCEL BEARING PRIORITY MAIL #9505511017439050164884 ADDRESSED TO CARMEN DIAZ, 35 REDWOOD ST. CHAMBERSBURG, PA 17201	:	(Magistrate Judge Carlson)

ORDER

IT IS ORDERED that the Clerk of Court provide the United States Attorney's Office with two (2) certified copies of the accompanying documents and thereafter keep these documents from public view until the Clerk has made appropriate docket entries.

IT IS FURTHER ORDERED that these documents only be opened by appropriate Court personnel of the Middle District of Pennsylvania in due course of performing the business of the Clerk's Office, after which the Clerk is ordered to seal this Order and all accompanying documents until:

[X] Notified in writing by the United States Attorney's Office that there is no longer any reason for the documents to remain sealed; or

[ ] Further Order of the Court.

Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

DATE: 2-25-19

FILED
HARRISBURG, PA
FEB 26 2019
PER
DEPUTY CLERK

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

IN RE:	:	No. 1:19-MC-0118
	:	
A PARCEL BEARING PRIORITY MAIL #9505511017439050164884 ADDRESSED TO CARMEN DIAZ, 35 REDWOOD ST. CHAMBERSBURG, PA 17201	:	(Magistrate Judge Carlson)

MOTION TO SEAL

AND NOW, the United States of America, by its undersigned counsel, moves pursuant to Rule 6 of the Federal Rules of Criminal Procedure to file the documents accompanying this Motion under seal for the reasons set forth in the accompanying sealed declaration in support of the government's motion to seal.

WHEREFORE, for the foregoing reasons, the United States moves to seal this Motion and the above-referenced pleadings. For the convenience of the Court, a proposed form of Order is attached.

Respectfully submitted,

DAVID J. FREED
UNITED STATES ATTORNEY

/s/ Eric Pfisterer
Eric Pfisterer
Assistant U.S. Attorney
228 Walnut Street, P.O. Box 11754
Harrisburg, PA 17108
717/221-4482 (Office) 717/221-2246 (Fax)
eric.pfisterer@usdoj.gov
Bar No. PA-38492

FILED
HARRISBURG, PA
FEB 25 2019
PER
DEPUTY CLERK

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

IN RE:	:	No. 1:19-MC-0118
A PARCEL BEARING PRIORITY MAIL #9505511017439050164884 ADDRESSED TO CARMEN DIAZ, 35 REDWOOD ST. CHAMBERSBURG, PA 17201	:	(Magistrate Judge Carlson)

DECLARATION IN SUPPORT OF MOTION TO SEAL

AND NOW, the United States of America, by its undersigned counsel, submits the following Declaration in Support of the Government's Motion to Seal, pursuant to Rule 6 of the Federal Rules of Criminal Procedure.

1. Your declarant states that, in the view of your declarant, this Declaration and the following documents should be filed under seal:

[ ] Indictment [ ] Complaint

[X] Application for Search Warrant, Search Warrant, Affidavit

2. The United States requests that the above-referenced documents, and this Motion, remain under seal pending:

[ ] Further Order of Court; or

[X] Written notification by the United States that these pleadings no longer need to remain filed under seal; or

[ ] _____

3. In support of this Motion, the United States alleges that filing these pleadings under seal is necessary in order to:

[X] Preserve the integrity of this ongoing case;

[X] Ensure the safety of investigative personnel;

[X] Protect the identity of potential witnesses;

[X] Allow for the seizure of evidence;

[X] Permit the arrest of those charged with violations of criminal laws;

[ ] Allow this defendant to complete the cooperation aspects of the plea agreement;

[ ] Avoid unfair prejudice to the defendants

WHEREFORE, for the foregoing reasons, the United States moves to seal this Declaration and the above-referenced pleadings. For the convenience of the Court, a proposed form of Order is attached.

Respectfully submitted,

DAVID J. FREED
UNITED STATES ATTORNEY

/s/ Eric Pfisterer
Eric Pfisterer
Assistant U.S. Attorney
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717/221-4482 (Office) 717/221-2246 (Fax)
eric.pfisterer@usdoj.gov
Bar No. PA-38492

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	No. 1:19-CR-251
v.	:	(Judge Rambo)
ADAM NEFTALI-SANTANA,	:	(Electronically Filed)
Defendant.	:	

GOVERNMENT'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS EVIDENCE PRODUCED BY THE SEARCH OF THE PARCEL BEARING TRACKING NUMBER 9505511017429051176795

I. INTRODUCTION

On Friday, February 22, 2019, a parcel search warrant request was submitted to this Court. The parcel was addressed to the same recipient and address associated with Adam Neftali-Santana (the "Defendant") as used on a previous parcel containing approximately two kilograms of cocaine hydrochloride. A search warrant was issued and executed (1:19-MC-118) leading to the discovery of two kilogram sized bricks of cocaine. The Defendant has moved to suppress the evidence under this warrant on the grounds that mistakes on the forms submitted with the warrant request rendered the warrant invalid. For the reasons that follow, the motion should be denied.

II. BACKGROUND

On or about February 12, 2019, U.S. Postal Inspectors identified suspicious parcels being sent from Puerto Rico to 35 Redwood Street, Chambersburg, PA. Subsequent review identified five prior parcels of note. Ex. 1, p. 8 "Prior Mailings."

On or about Thursday, February 21, 2019 the USPIS identified parcel 9505511017439050164884 weighing eight pounds, eight ounces. The package was addressed to "Carmen Diaz" at 35 Redwood Street, Chambersburg, PA, an address associated with the Defendant. Ex. 2. The package was sent by "Juan Rivera," from P.O. Box 2819, Juncos, P.R. 00777. On Friday, February 22, the USPIS obtained a search warrant for this parcel (1:19-MC-113) and recovered approximately two kilograms of cocaine. Subsequently, this parcel was used for a controlled delivery that also occurred on February 22, 2019. A search warrant (Rec. Doc. No. 21-1, Exhibits 3 and 4) was executed on the home of the Defendant immediately following the controlled delivery and multiple drug related items were recovered. Exhibit 2. The Defendant attempted to flee but was detained.

On that same day, February 22, USPIS identified a second parcel with the same address and also addressed to "Carmen Diaz" weighing the same number of pounds (eight pounds) and eleven ounces with the tracking number 9505511017429051176795. It was sent under the same name, "Juan Rivera," and from the same address. PI Corricelli submitted the necessary four documents to the United States Attorney's Office for a parcel warrant: the application, affidavit, attachments with the image of the suspect parcel, and warrant. Each document included the correct tracking number (9505511017429051176795) and the affidavit referenced the previous parcel and the new parcel with a different weight. Ex. 3. The USAO approved the documents and support staff forwarded them to Magistrate Judge Carlson for review and approval.

Magistrate Judge Carlson approved the warrant application and at 12:00 p.m. on February 25, 2019, PI Corricelli swore the warrant out. Ex. 4. Unbeknownst to PI Corricelli, the warrant application he signed (1:19-MC-118) listed the previous package's tracking number (9505511017439050164884) but the correct address. In addition, the supporting documents also had the previous tracking number and the

attachments (A and A-1) were images of a third parcel associated with a separate warrant (1:19-MC-0119) being handled by his partner, Inspector Knoll on the same day. Ex. 4. For unknown reasons, the documents associated with warrant 1:19-MC-113 (the original parcel search), 1:19-MC-118 (the second parcel search), and 1:19-MC-0119 (an unrelated parcel search) were confused.

After receiving the warrant from the Magistrate Judge, PI Corricelli submitted the documents to the clerk's office for processing. Back at his office, PI Corricelli executed the warrant at approximately 2:14 p.m. and discovered two kilogram sized bricks of cocaine. PI Corricelli recorded the correct parcel number (9505511017429051176795) on the USPIS parcel opening worksheet, the same parcel number he noted on the return of warrant he filed with the clerk's office. Exs. 1 and 4, p.2.

III. ARGUMENT

The Defendant's motion to suppress the evidence produced by the execution of the Search Warrant on parcel 9505511017429051176795 rests upon two arguments. First, Defendant asserts that mistakes in the various warrant application documents and warrant made the

warrant invalid. In response, the Government asserts that there was sufficient description guiding the officer with reasonable probability to the correct parcel. Thus, the warrant is not facially invalid.

Second, Defendant suggests that the government cannot argue good-faith reliance on the warrant because a "simple reading of the Warrant would have revealed the magnitude of the problems" Def. Mot. at 8. On the contrary, by the execution of a warrant in reasonable reliance on the authority of a magistrate judge, the officer demonstrated that he was acting in good faith. It is well settled that an officer's good-faith reliance on a warrant authorized by a neutral and detached judicial officer is an exception to the exclusionary rule *even if* the warrant is found to be facially invalid. Indeed, the fact that an officer executes a search pursuant to a warrant is prima facie evidence that the officer acted in good faith. *United States v. Hodge*, 246 F.3d 301, 308 (3d Cir. 2001).

A. The Search Warrant Contained Sufficient Detail to Ensure the Reasonable Probability of Leading the Officer to the Correct Parcel

A permissible search and seizure under the Fourth Amendment is based on probable cause and with a "fair probability" that evidence will

be found in a particular place. *United States v. Robertson,* 305 F. 3d 164, 167 (3d Cir. 2002); *United States v. Grubbs*, 547 U.S. 90, 95 (2006). Errors in a search warrant alone do not invalidate a warrant. As the Third Circuit held in *United States v. Carter*, "[a] mere technical error does not automatically invalidate the warrant." 756 F.2d 310, 313 (3d Cir. 1985). In *United States v. Bonner*, a case cited by the Defendant, the court held that "[t]he test for determining the adequacy of the description ... is whether the description is sufficient to enable the executing officer to locate and identify with reasonable effort." 808 F.2d 864, 866 (1st Cir. 1986). Addressing similar facts involving an incorrect parcel number on a warrant, the Eastern District Court of Pennsylvania found that "looking at the affidavit for the ... parcel in its totality," an erroneous tracking number did not nullify the warrant. *United States v. Simmons*, 2015 WL 13358206, at *10 (E.D. Pa. Oct. 1, 2015) *(citing United States v. Lora-Solano*, 330 F.3d 1288, 1293-94 (10th Cir. 2003) and *United States v. Valentine*, 984 F.2d 906, 909 (8th Cir. 1993)).

The Defendant argues that search warrant 1:19-MC-0118 lacked the necessary particularity regarding the parcel being searched. On the

contrary, PI Corricelli completed the required documents and forwarded them to the USAO, each with the correct information including name, address, and parcel number (9505511017429051176795). As far as it can be determined, the mix up occurred in forwarding documents from the USAO to the court and then in the photocopying of documents by the court, which occurred at the same time as another warrant application was being filed and processed. At the time of the filing, it was PI Corricelli's sincere belief that the warrant signed on February 25, 2019, was for parcel 9505511017429051176795. Later that day, PI Corricelli executed the warrant on the correct parcel, recorded the correct parcel number on USPIS log, and submitted a Search Warrant Return, again listing the correct parcel number (9505511017429051176795). Additionally, all of the information stated in the attached affidavit to the warrant was correct except for the tracking number and weight of the package. The package was identified as suspicious the same day. *See* Exs. 3 and 4. They were both addressed to Carmen Diaz. *Id.* They were both sent to the same address. *Id.* The parcels exhibited characteristics consistent with a narcotics or narcotics-proceeds parcel. *Id.* The sender on both packages

is Juan Rivera. *Id.* The return address is the same. *Id.* The package was exposed to a drug detection dog who positively alerted to the presence of illegal narcotics within the package. *Id.* The same dog (Zigi) and handler (Trooper Mearkle) were on both packages. *Id.* The same procedure was followed for each package lineup. *Id.*

The mixing of documents presented with an application for a search warrant did not in any way hamper the ability of the executing office to locate and identify the correct parcel. The name and address on the warrant and the parcel matched and the previous parcel had already been opened, so at that time there was only one such parcel with this addressee and addressor. If at any time PI Corricelli had been uncertain, a review of his files would have confirmed that he had the correct parcel. Because of the more than fair probability of the warrant leading to the correct search, and because the information on the warrant was objectively sufficient to lead the executing officer to the right parcel, it should not be considered invalid.

B. Exclusion is Improper in Cases of a Good Faith Search in Reasonable Reliance on a Warrant's Authority

Exclusion of evidence is intended to protect against deliberate, reckless, or grossly negligent conduct. *United States v. Katzin,* 769 F.3d

163, 171 (3d Cir. 2014); *Michigan v. Tucker,* 417 U.S. 433, 447 (1974) The Supreme Court said in *Herring v. United States* that "exclusion has always been our last result, not our first impulse," holding that even a clear Fourth Amendment violation "does not necessarily mean that the exclusionary rule applies." 555 U.S. 135, 140 (2009). Thus, when an officer "executes a search in reasonable reliance on a warrants authority" that evidence seized should not be suppressed. *United States v. Williams,* (3. F.3d 69 at 74 n.4).

The test for the reasonable reliance on a warrant exception is "whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." There are four situations where the reasonable reliance exception does not apply. The Third Circuit identified these reasons in *U.S. v. American Investors of Pittsburg, Inc* as when 1) the magistrate judge issues the warrant in reliance on a deliberately or recklessly false affidavit, 2) the magistrate judge abandoned his judicial role and failed to perform his neutral and detached function, 3) the warrant was based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," and 4) the warrant was so facially deficient that

it failed to particularize the place to be searched or the things to be seized. 879 F. 2d 1087, 1106-07 (3d Cir. 1989) (citations omitted).

Even if a warrant is deemed to fail the reasonable reliance test for one of the reasons above, the Court should not suppress the evidence "where the particular facts of a case indicate that law enforcement officers acted with an objectively reasonable good-faith belief that their conduct was lawful, or when their conduct involved only simple, isolated negligence." *Katzin,* 769 F.3d at 171; *U.S. v. Hodge*, 246 F.3d 301, 310 (3d Cir. 2001). The Supreme Court held in *United States v. Leon*, that "searches pursuant to a warrant will rarely require any deep inquiry into reasonableness, ... for a warrant issued by a magistrate normally suffices to establish that a law enforcement office has acted in good faith in conducting the search." 468 U.S. 897, 922 (1984) (citations omitted).

Contrary to the assertion of the Defendant, the officer in the instant case reasonably relied on the warrant in executing it. PI Corricelli submitted the proper forms related to the search warrant request on parcel 9505511017429051176795. Each form was accurate and properly completed on receipt by the USAO. He reasonably relied

on the documents submitted to the court and the issuance of warrant 1:19-MC-0118 by the magistrate. A review of the warrant showed the correct addressee name and address. He then performed the search on the correct parcel and submitted the return of warrant with the court, bearing the correct parcel number. Ex. 4, p. 2. The test is an objective one, and by that standard any PI would have also likely relied on the warrant.

The Defendant asserts that a "simple reading of the Warrant" would have alerted the Officer to its illegality (Def. Mot. at 8). On the contrary, given the identical address, addressee, similar packaging and very similar tracking numbers (16 of 22 digits were identical), a reasonable officer might easily miss the typographical error. In addition, after searching the correct parcel, PI Corricelli recorded the parcel search in the USPIS log using the correct parcel number and listed that number on the Warrant Return. Because the officer's reliance was reasonable, and plainly demonstrates that he was acting in good faith, the evidence should not be suppressed. Applying the rule of exclusion under the circumstances would do nothing to further the aim

of deterring reckless or intentional abuse, but would instead undermine a valid and important law enforcement interest.

Even if the Court were to find that PI Corricelli's reliance on a warrant issued by Magistrate Judge Carlson to have been unreasonable, the Court should nonetheless find that PI Corricelli executed the warrant in good faith. He believed that the warrant listed the correct parcel number and he plainly acted on that belief. The fact that he searched the proper parcel and completed the USPIS log and Warrant Return using the correct parcel number is evidence that there was no actual confusion as to what search had been authorized. Because a warrant issued by a magistrate judge itself is normally sufficient to establish good faith, and because the circumstances of this case indicate nothing more than isolated negligence, the evidence should not be suppressed.

IV. CONCLUSION

For all the foregoing reasons, the United States respectfully submits that the Defendant's motion to suppress should be denied.

Respectfully submitted,

DAVID J. FREED
United States Attorney

Dated: September 28, 2020

s/ Daryl F. Bloom
DARYL F. BLOOM
Assistant United States Attorney
Daryl.Bloom@USDOJ.gov
PA 73820

228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, Pennsylvania 17108
(717) 221-4482
(717) 221-2246, *facsimile*

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

UNITED STATES OF AMERICA	:	No. 1:19-CR-00251
	:	
v.	:	(Judge Rambo)
	:	
ADAM NEFTALI SANTANA,	:	(Electronically Filed)
Defendant.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers. That this Monday, September 28, 2020, he served a copy of the attached

GOVERNMENT'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS EVIDENCE PRODUCED BY THE SEARCH OF THE PARCEL BEARING TRACKING NUMBER 9505511017429051176795

by electronic means to the address stated below:

Jose Luis Ongay
jlolaw@live.com

September 28, 2020

s/ Daryl F. Bloom
Daryl F. Bloom
Assistant United States Attorney

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

UNITED STATES OF AMERICA	:	**Crim. No. 1:19-CR-00251**
	:	
v.	:	
	:	
ADAM N. SANTANA	:	**Judge Sylvia H. Rambo**

ORDER

AND NOW, upon consideration of Defendant Adam N. Santana's Motion to Suppress Evidence Produced by the Search of the Parcel Bearing Tracking Number # 9505511017429051176795, (Doc. 46), **IT IS HEREBY ORDERED THAT** the Defendant's motion is **DENIED** for the reasons set forth in the Court's accompanying memorandum.

SO ORDERED.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: December 14, 2020

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

UNITED STATES OF AMERICA	:	**Crim. No. 1:19-CR-00251**
	:	
v.	:	
	:	
ADAM N. SANTANA	:	**Judge Sylvia H. Rambo**

MEMORANDUM

Presently before the court is Defendant Adam N. Santana's Motion to Suppress Evidence. (Doc. 46). In his motion, Defendant seeks to suppress all evidence seized from the search of a parcel bearing tracking number 9505511017429051176795 (the "'6795 Parcel"). Having been fully briefed, this matter is now ripe for disposition.

I. BACKGROUND

On or about February 21, 2019, U.S. Postal inspectors identified and intercepted a suspicious parcel addressed to "Carmen Diaz" at 35 Redwood Street, Chambersburg, PA. (Doc. 49, at 4). This parcel, which had been sent to a mailing address associated with Defendant, weighed approximately 8 pounds 8 ounces and bore the tracking number 9505511017439050164884 (the "'4884 Parcel"). (*Id.*) The return address also indicated that "Juan Rivera" had sent the '4884 Parcel from P.O. Box 2819, Juncos, P.R. 00777. (*Id.*). After a drug detection canine alerted on the parcel, the Government applied for and obtained a search warrant of the '4884 Parcel

(1:19-MC-113) and discovered approximately two kilograms of cocaine therein. (*Id.*)

The next day, on or about February 22, 2019, U.S. Postal inspectors identified a second suspicious parcel (the '6795 Parcel) addressed to "Carmen Diaz" at 35 Redwood Street, Chambersburg, PA. (*Id.* at 9). The '6795 Parcel also identified the same return sender and address as the '4884 Parcel and weighed approximately 8 pounds 11 ounces. (*Id.*) Additionally, like the '4884 Parcel, the same drug detection canine alerted on the '6795 Parcel as containing suspected narcotics. (*Id.*) Based on the alert, Postal Inspector Corricelli ("PI Corricelli") applied for a search warrant of the '6795 Parcel. (*Id.*)

PI Corricelli submitted an application, a supporting affidavit, attachments with images of the '6795 Parcel, and a warrant to the United States Attorney's Office ("USAO") for processing. (*Id.* at 32-42). Each of these required documents contained references to the correct tracking number for the '6795 Parcel. (*Id.*) A United States Magistrate Judge approved the warrant application (1:19-MC-118) on February 25, 2019 (the "Search Warrant"), and PI Corricelli executed the Search Warrant on the same day. (*Id.* at 44-54).

PI Corricelli did not realize, however, that the caption of the Search Warrant listed the '4884 Parcel instead of the '6795 Parcel. (Doc. 47, at 3). The supporting application documents also mistakenly appended an entirely unrelated parcel

description that involved a separate warrant application from the same day (the "'8378 Parcel"). (*Id.*) According to the Government, the documents associated with the Search Warrant of the '6795 Parcel (the intended parcel search), the search warrant of the '4884 Parcel (the original parcel search), and the search warrant of the '8378 Parcel (the unrelated parcel search) were inadvertently confused with the correct application documents that PI Corricelli submitted for processing. (*Id.* at 4). Nonetheless, upon executing the warrant and discovering approximately two bricks of cocaine, PI Corricelli identified the correct tracking number associated with the '6795 Parcel in the return of warrant form that he filed with the clerk's office. (Doc. 59, at 45).

Defendant filed the instant Motion to Suppress Evidence Produced by the Search of the '6795 Parcel on September 14, 2020. (Doc. 46). The Government filed a brief in opposition on September 28, 2020, (Doc. 47), bringing this case to its present procedural posture.

II. STANDARD OF REVIEW

The Fourth Amendment to the United States Constitution grants individuals the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." As the United States Supreme Court has repeatedly held, "[t]he touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). "Generally for a

seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause." *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002) (citing *Katz v. United States*, 389 U.S. 347, 356-57 (1967)).

"The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978) (citing *Simmons v. United States*, 390 U.S. 377, 389–390 (1968)). The government, however, "bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable." *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005). "The applicable burden of proof is by a preponderance of the evidence." *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974).

III. DISCUSSION

In his motion, Defendant argues that all evidence seized from the '6795 Parcel should be suppressed. In support, Defendant asserts that the Search Warrant fails for lack of particularity and that the good faith exception to the warrant requirement does not apply. The Court will address each argument in turn.

1. The Search Warrant is Not Invalid for Lack of Particularity

As mentioned *supra*, the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. The Warrant Clause of the Fourth Amendment additionally prohibits "the issuance of any warrant

except one 'particularly describing the place to be searched and the persons or things to be seized.'" *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). Evidence obtained pursuant to a warrant that lacks particularity may be suppressed under the exclusionary rule. *United States v. Leon*, 468 U.S. 897, 906 (1984).

To comport with the Fourth Amendment's particularity requirement, a search warrant's description of the place to be searched must "be such that the officer . . . can with reasonable effort ascertain and identify the place intended." *Garrison*, 480 U.S. at 91 (*quoting Steele v. United States,* 267 U.S. 498, 503 (1925)). The purpose of this requirement is to prevent general and wide-ranging exploratory searches. *Id.* "Ultimately, the particularity requirement intends that 'nothing is left to the discretion of the officer executing the warrant.'" *United States v. Perez*, 712 F. App'x 136, 139 (3d Cir. 2017) (quoting *Marron v. United States*, 275 U.S. 192, 196 (1927)). A warrant need not be technically perfect, however, as "[t]he standard . . . is one of practical accuracy rather than technical nicety." *United States v. Bedford*, 519 F.2d 650, 655 (3d Cir. 1975).

Defendant claims that the Search Warrant failed to comport with the particularity requirement, as it listed the '4884 Parcel as the item to be searched instead of the '6795 Parcel. (Doc. 46, at 5-8). Defendant also argues that the supporting Search Warrant documents failed to properly describe the '6795 Parcel, as they only referred to the '4884 Parcel and the '8378 Parcel and did not otherwise

include any identifying information that would have directed an officer to the correct package. (*Id.* at 7). Given the mistakes in the Search Warrant and related documents, Defendant asserts that the Government conducted an unauthorized search of the '6795 Parcel. (*Id.* at 7-8).

The Government responds that the Search Warrant was sufficiently descriptive to guide an executing officer with reasonable probability to the '6795 Parcel. (Doc. 47, at 5). In support of this claim, the Government states that PI Corricelli correctly identified the '6795 Parcel in the required Search Warrant application documents that he submitted to the United States Attorney's Office for processing. (Doc. 47, at 3; Doc. 49, at 32-42). The Government acknowledges, however, that these documents were somehow confused with the search warrant documents for the '4884 Parcel and the '8378 Parcel. (Doc. 47, at 4). As far as the Government can ascertain, "the mix up occurred in forwarding documents from the USAO to the court and then in the photocopying of documents by the court, which occurred at the same time as another warrant application was being filed and processed." (*Id.* at 7).

The Government further emphasizes that, apart from listing the incorrect tracking number and package weight, the affidavit to the Search Warrant contained correct information regarding the '6795 Parcel. (*Id.*) Specifically, both the intended '6795 Parcel and the listed '8664 Parcel: were addressed to the same recipient; had

the same mailing address; listed the same return sender; had the same return address; were identified as suspicious parcels on the same day; and were exposed to the same drug detection dog that alerted the same handler to the presence of illegal narcotics. (*Id.* at 7-8). Accordingly, despite the apparent mix up that occurred while assembling the documents for the Search Warrant, the Government contends that the Search Warrant meets the particularity requirement.

The Government cites to *United States v. Simmons*, 2015 WL 13358206, at *10 (E.D. Pa. Oct. 1, 2015) for the proposition that the inclusion of an erroneous tracking number does not necessarily invalidate a warrant for lack of particularity. (Doc. 47, at 6). *Simmons* involved a U.S. postal inspector who executed a valid parcel warrant, and, upon discovering that the parcel contained cocaine, subsequently obtained a tracker warrant for the package. 2015 WL 13358206, at *5. Unbeknownst to the postal inspector, the tracker warrant and supporting affidavit mistakenly referenced an erroneous tracking number for the parcel. *Id.* The *Simmons* court determined that this oversight did not nullify the tracker warrant, however, as the parcel was correctly identified "by tracking number and delivery address in other portions of the warrant," and the supporting affidavit, when considered in totality, sufficiently demonstrated that the postal inspector sought to insert (and ultimately did insert) the tracking device into the correct parcel. *Id.* at *10.

The Court also finds *United States v. Moss*, 936 F.3d 52 (1st Cir. 2019) to be instructive in this case. In *Moss*, the United States Court of Appeals for the First Circuit considered whether a parcel warrant met the particularity requirement when it contained two conflicting descriptions of an intended package; specifically, the caption of the search warrant correctly identified the tracking number for the parcel, whereas Attachment A, which the search warrant incorporated by reference, mistakenly described an entirely different parcel. 936 F.3d at 58. The *Moss* court reasoned that, although the affidavit lacked the detailed description that the executing officers had intended to include, the tracking number listed in the caption of the search warrant still provided it with "a high degree of particularity." *Id.* at 60. Upon considering the circumstances surrounding the issuance and execution of the search warrant, the *Moss* court further determined that "there was no reasonable probability of [the executing officer] searching another package." *Id.* at 61. The *Moss* court therefore concluded that the search warrant suffered from a mere technical error and did not invalidate it on particularity grounds. *Id.* at 60-61.

Here, like the tracker warrant in *Simmons* and the parcel warrant in *Moss*, the issued Search Warrant documents inadvertently referenced the '4884 Parcel and the '8378 Parcel instead of the '6795 Parcel. (Doc. 49, at 46-54). Although the Search Warrant listed the incorrect tracking number for the '6795 Parcel, its caption and attached application papers otherwise described the correct recipient and mailing

address for the package to be searched. (*Id.* at 46). However, unlike the warrants in *Simmons* and *Moss*, the issued Search Warrant and supporting documents were entirely devoid of any reference to the correct tracking number for the '6795 Parcel. (*Id.* at 46-54). Additionally, the correct identifying information in the Search Warrant equally applied to the incorrect '4884 Parcel. (*Id.*)

Nonetheless, without condoning the extent of the document confusion that occurred here, the Court is satisfied that the mistakes in the Search Warrant as issued amounted to "mere technical errors." *See Simmons*, 2015 WL 13358206, at *10; *Moss*, 936 F.3d at 60-61; *United States v. Bedford*, 519 F.2d 650, 655 (3d Cir. 1975). Indeed, the Search Warrant contained sufficient information for the executing officer (PI Corricelli) to identify the correct package and, having already executed the search warrant for the '4884 Parcel, there was no reasonable likelihood that the wrong item would be searched. Thus, as the Search Warrant is not invalid for lack of particularity, the Court will deny Defendant's motion.

2. <u>The Good Faith Exception to the Warrant Requirement Applies</u>

Even if the Court were to conclude that the Search Warrant failed on particularity grounds, the Court would not be inclined to suppress the evidence obtained from the search of the '6795 Parcel based on the application of the good faith exception to the warrant requirement. Under the good faith exception, first established in *United States v. Leon*, 468 U.S. 987 (1984), a court should not

suppress evidence obtained through an improper warrant where "police acted in objectively reasonable reliance on the subsequently invalidated search warrant." *Virgin Islands v. John*, 654 F.3d 412, 417-18 (3d Cir. 2011) (internal quotations omitted). In evaluating an officer's reliance on a warrant, a court must determine "whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization." *United States v. Loy*, 191 F.3d 360, 367 (3d Cir. 1999) (citations omitted). The Third Circuit has further explained that the good faith exception applies unless: (1) the affidavit supporting the warrant was deliberately or recklessly false; (2) the magistrate did not act in a neutral or detached fashion; (3) the affidavit supporting the warrant was also lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant was facially deficient and did not particularize the place to be searched or the thing to be seized. *United States v. Zimmerman*, 277 F.3d 426, 436-37 (3d Cir. 2002).

The Third Circuit has also recognized that "[w]hen law enforcement 'exhibits "deliberate," "reckless," or "grossly negligent" disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs.'" *United States v. Franz*, 772 F.3d 134, 144 (3d Cir. 2014) (quoting *Davis v. United States*, 564 U.S. 229, 258 (2011)) (internal brackets omitted). However, "when the police act with an objectively reasonable good-faith belief that their

conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot pay its way.'" *Id.* (quoting *Davis*, 564 U.S. at 238). The court must thus apply the exclusionary rule when doing so is "calculated to prevent" future constitutionally-invalid searches, "not to repair" the harm inflicted by one. *United States v. Wright*, 493 F. App'x 265, 271 (3d Cir. 2012) (quoting *Elkins v. United States*, 364 U.S. 206, 217 (1960)).

The Defendant argues that the good faith exception to the warrant requirement does not apply in this case, as the Search Warrant, Application for the Search Warrant, and the Affidavit in support of the Search Warrant each described an item other than the '6795 Parcel. (Doc. 46, at 8). The Government responds that, even if the Search Warrant failed on particularity grounds, PI Corricelli reasonably relied on the warrant upon executing it. (Doc. 47, at 10-12). In support of this contention, the Government points to the fact that PI Corricelli properly assembled the requisite Search Warrant forms for processing, reasonably believed that the Search Warrant issued by the magistrate judge (1:19-MC-0118) corresponded with the '6795 Parcel that he sought authorization to search, and recorded the correct parcel number on the return of warrant form. (*Id.*) The Government further contends that PI Corricelli executed the Search Warrant in good faith as "the circumstances of this case indicate nothing more than isolated negligence." (*Id.* at 12).

Assuming *arguendo* that the Search Warrant's erroneous tracking number rendered it facially invalid, the Court finds that the search of the '6795 Parcel was executed in good faith. *See Zimmerman*, 277 F.3d at 436-37. The Court agrees with the Government that PI Corricelli's oversight was not the type of "deliberate," "reckless," or "grossly negligent" conduct that the exclusionary rule aims to deter, but rather akin to an act of "simple, isolated negligence." *See Franz*, 772 F.3d at 144. Therefore, applying the exclusionary rule here would provide little deterrence in curtailing future Fourth Amendment violations. Accordingly, the Court alternatively denies Defendant's motion to suppress based on the application of the good faith exception to the warrant requirement.

IV. CONCLUSION

For the reasons set forth above, the Court will deny the Defendant's motion to suppress. (Doc. 46). An appropriate order shall follow.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: December 14, 2020

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

UNITED STATES OF AMERICA	:	
	:	Docket Number
v.	:	
	:	19-CR-00251
ADAM NEFTALI SANTANA,	:	
Defendant.	:	

ORDER

Now, this __ date of August 2021 it is ORDERED that Defendant's Motion to Dismiss the Indictment is GRANTED.

_____
J.

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

UNITED STATES OF AMERICA	:	
	:	Docket Number
v.	:	
	:	19-CR-00251
ADAM NEFTALI SANTANA,	:	
Defendant.	:	

DEFENDANT'S MOTION TO DISMISS THE INDICTMENT[1]

Now Comes the Defendant, and in Support of the Motion to Dismiss the Indictment, states the following:

On August 28, 2019, Postal Inspector Michael Corricelli testified before the Grand Jury about the February 22, 2019, controlled delivery of a U.S. Postal Service Parcel, as follows:

> And then one postal inspector puts on a uniform of a letter carrier. We delivered it to that address, 35 Redwood in Chambersburg.
>
> An individual later identified as Adam Santana took the box into the house.

USA v. Adam N. Santana, Grand Jury No. 18-351. Grand Jury Transcript, p. 5. A copy of the transcript is attached hereto as *Exhibit* "A."

This testimony is materially different from what took place. The correct events were as follow: The Government placed the parcel on the porch of 35 Redwood Street. The Government did not use an agent dressed as a letter carrier. Mr. Santana did not receive the parcel from anyone. Mr. Santana did not pick up the parcel from the porch. The parcel was picked up by a maintenance worker that was working at 35 Redwood Street. This worker then brought the parcel inside 35 Redwood Street. The Government called maintenance and directed the worker to leave 35 Redwood Street. The Government did not direct the worker to put the parcel back in front of the

[1] The Defense received the Grand Jury testimony on Tuesday, August 12, 2021, and discovered the inconsistency on Thursday, August 12, 2021, after 1:00 PM.

door on the porch. When Mr. Santana entered his home, the parcel was inside his home. These facts were retrieved from Postal Inspector Corricelli's report and from State Trooper Steven Nesbit's report. A copy of the reports are attached hereto as *Exhibits* "B"[2] and "C."[3]

Defendant submits that this was an intentional statement to significantly improve the quality of the controlled delivery. The version that the parcel was delivered to 35 Redwood by a letter carrier, picked up by Mr. Santana, and brought into the home by Mr. Santana, is much more persuasive than the real events and establishes a knowing and voluntary act by Mr. Santana. On the other hand, the real events, i.e., leaving the parcel on the porch unattended and the parcel being brought into the home by a maintenance worker, is significantly less persuasive and does not have the same impact on the issue of knowing and voluntary acceptance of the parcel by Mr. Santana.

The defense submits that this statement was an intentional misrepresentation. The defense submits that the Government knew about the misrepresentation because the testimony took place on August 28, 2019, and there were two reports dated August 14, 2019, and February 23, 2019, that contained the correct description of the controlled delivery. Finally, the defense submits that the grand jury testimony prejudiced Defendant. Postal Inspector Corricelli's grand jury version influenced the grand jury's decision to indict. If the Court does not agree, it is respectfully submitted that, at the very least, there is grave doubt that the decision to indict was free from a substantial influence from Postal Inspector Corricelli's grand jury version. *See, United States v. Soberon*, 929 F. 2d. 935, 939-940 (3rd Cir. 1991).

WHEREFORE, it is respectfully requested that this Honorable Court grant the Defendant's motion and dismisses the indictment with prejudice.

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[2] See page 4 of the report.
[3] See pages 3 and 4 of the report.

Respectfully,

/s/ José Luis Ongay

José Luis Ongay

Date: August 13, 2021

CERTIFICATE OF SERVICE

I certify that on this date, Counsel served a true and correct copy of this motion upon AUSA Scott R. Ford via the ECF filing system and via email at scott.r.ford@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: August 13, 2021

EXHIBIT A

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

IN RE: GRAND JURY NO. 18-351

IN THE MATTER OF THE UNITED STATES ATTORNEY'S OFFICE

WITNESS	:	MICHAEL CORRICELLI
LOCATION	:	FEDERAL BUILDING 228 WALNUT STREET, 7TH FLOOR HARRISBURG, PENNSYLVANIA
DATE	:	WEDNESDAY, AUGUST 28, 2019 10:30 P.M.
REPORTER	:	TRACY L. LLOYD REGISTERED PROFESSIONAL REPORTER GLFM REPORTING
COUNSEL	:	DARYL F. BLOOM, ESQUIRE ASSISTANT U.S. ATTORNEY

WARNING: This material remains the property of the GRAND JURY and under the supervision of the U.S. Attorney. Its secrecy must be maintained pursuant to Rule 6(e) Federal Rules of Criminal Procedure.

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MICHAEL CORRICELLI, called as a witness, being duly sworn by the Foreperson of the Grand Jury, testified as follows:

EXAMINATION

BY MR. BLOOM:

Q Would you state your name for the record spelling your last name?

A Good morning. My name is Postal Inspector Michael Corricelli. I spell that C-o-r-r-i-c-e-l-l-i.

Q And, Postal Inspector Corricelli, can you tell the Grand Jury essentially what you do as a postal inspector now? What's your current duty assignment?

A Yes, sir. I've been a federal agent for 25 years, the last 18 with the U.S. Postal Inspection Service. We're the federal law enforcement agency for the postal service. Our primary function is to investigate anytime the United States mail is used in connection with a federal offense.

My specific job for the last two years has been involved with trying to find, remove, and prosecute those that use the U.S. mail to traffic in narcotics.

Q Now, at some point did you become involved

in an investigation involving suspicious packages that were being sent to 35 Redwood Street in Chambersburg, Pennsylvania?

A Sir, I did.

Q And could you tell the Grand Jury how that came about, please?

A Sure. One of the things -- we use a number of tools to try to find narcotics in the mail. And the end of February, around February 22nd, we identified a package from Puerto Rico to that address in Chambersburg that met some of the criteria that we use to identify as potential drug trafficking.

It met some of these criteria that we use, so we intercepted this package. We brought it to our office. We ran it by -- we use -- the State Police lends us K-9s. I'm not a dog handler, so they lend us a dog. We it set up. The dog alerted to the presence of narcotics.

So based on that, we applied for a federal search warrant. We were granted a warrant. And upon opening the box, we found two kilos of cocaine.

Q Okay. So what did you do next in terms of the investigation?

A Yes, sir. In this particular case we took the actual cocaine out. We put fake cocaine in with

a tracking device. We also use sensors that tell us when the box is opened. And then one of the postal inspectors puts on a uniform of a letter carrier. We delivered it to that address, 35 Redwood in Chambersburg.

An individual later identified as Adam Santana took the box into the house, opened the box. And upon the box being opened, we executed a state search warrant for the residence. At that time Mr. Santana was trying to run out of the back door with the two fake kilos. And upon seeing law enforcement, he threw the kilos, tried to run, and was intercepted.

Q And in terms of those two fake kilos, were they recovered?

A Yes, sir, they were.

Q Were they in the same exact condition as they were when they were placed in the box for the controlled delivery?

A No, sir. They were -- they are sham material. They're fake material, but they're wrapped in a black tape to make it look like what was originally in there, and they had been sliced into the side of them.

So we knew that they had been opened. They

were the kilos that we put in there. We mark and designate them, and they had been sliced open.

Q Okay. And you may have mentioned a couple of these things, but I just want to go through and make sure we're clear. The individual Adam Santana, it's Adam Neftali-Santana, is that his full name?

A Yes, sir. That is correct.

Q So just so we're clear, Chambersburg, Pennsylvania is in Franklin County?

A That is correct, sir.

Q And the date --

A Middle District of Pennsylvania.

Q And the date of this controlled delivery was February 22, 2019?

A Yes, sir. That is correct.

Q Now, in terms of -- so you make this controlled delivery of what's purported to be two kilograms of cocaine hydrochloride?

A Yes, sir.

Q And what do you do next after -- so he's arrested, and what is the next step in the process of the investigation?

A So we tried to interview Mr. Santana, but he requested a lawyer, so we did not interview him. But we did do a search warrant of the residence in

particular where we found the original box that we delivered -- the cocaine that we intercepted earlier that morning was contained in these really unique like cosmetic bags, flowery looking cosmetic bags, two of them. We found a bunch more of those bags in the residence at the same location that he was opening up these boxes.

We also looked at address history, and we were able to determine that this individual had received a number of prior boxes all from Puerto Rico, all about the same weights, all with bad return addresses, and it was consistent with what we found inside the residence.

Based on that stuff, we -- also during the course of this search we found a handgun in his bedroom. It was a Glock 9 millimeter. There was a digital scale, and there was also chemicals found inside the house that we commonly associate with what we call cut.

Cut is when an individual who is trafficking in cocaine, in particular, receives a kilogram. What they'll do is they'll break that down, and they'll add other substances to it, so that when they repackage it and sell it, the one original kilogram is a now much heavier weight, so they make more

money.

We found the cut. We found the gun. We found digital scales in the residence as well as other of those cosmetic cases to show that it's more than just what we delivered.

Q And in terms of the evidence in this particular case, you indicated that there was indications that there were prior packages that were consistent with the package that was intercepted and found to contain two kilograms approximately of cocaine hydrochloride; correct?

A That is correct, sir.

Q And given those priors, do you have the date of the first delivery of the first package that would be suspicious and consistent with these other packages?

A There was a previous delivery on or about February 13th. And then if I may refer to my notes, November there was a package. January, January, January, about once a week it appears as if consistent packages were sent to that residence, and they were sent in various names that do not actually receive mail at that residence.

Q Okay. And the first package was delivered on November 2nd, 2018, is that correct?

A Yes, sir, on or about.

Q Okay. And in terms of all the information and your experience in law enforcement particularly in drug trafficking and packages, all of these were consistent in terms of how they were -- the drug weights, how they were addressed both return address as well as the send-to address, is that correct?

A That is correct, sir.

Q And you indicated that they were also in -- significantly there were these flowery and you refer to them as kind of like a cosmetic bag that was in the garage. How many prior bags were there, if you know?

A I don't have the -- I believe we found four additional cosmetic bags in the garage in addition to the two that were in the package that was delivered.

Q And so the package that you -- when you initially seized that package, inside each of those bags was approximately a kilogram --

A That is correct.

Q -- of cocaine. Now, in terms of you indicated that there was cut located in the home. There was also located in the home was a firearm.

Can I get you to talk about the role that firearms play in terms of drug trafficking and

individuals who store or receive drugs?

A Yes, sir. Obviously, drug trafficking is a high risk, high reward profession. When you're dealing in large quantities like kilogram quantities of coke, it's a high risk profession. People know where you live. They know you transport the drug. So it's not unusual for drug dealers to rip off other drug dealers.

So it's very, very common for people that are trafficking in narcotics, especially cocaine, but marijuana and heroin, as well, but it's very, very common for us to find firearms in the presence or in the vicinity of people that are trafficking in narcotics because they're trying to protect themselves, as well.

Q Now, in terms of the particular firearm that you located in the residence, can I get you to address the type, the model, the serial number of a firearm?

A Yes, sir. It was a Glock 9 millimeter. I believe it was a Glock 19. I don't have that handy, but it was a Glock 9 millimeter, and the serial number was SYK946. Sam, yankee, kilo, 946.

Q Now, as it relates to the particular individual that was arrested, so this individual Adam

Santana is ultimately arrested by law enforcement.

Is there any indication that someone else had mailed the packages from Puerto Rico to the United States to Adam Neftali-Santana as opposed to him going down there and mailing it to himself?

A Yes, sir. As part of our investigation, we developed evidence that other individuals who have yet to be identified were the ones that mailed the narcotics to this area to Mr. Santana.

Q Now, in terms -- I just want to be clear on this. So this takedown occurred on February 22nd, 2019; correct?

A That is correct, sir.

Q Now, after that, was there any information that you had received about any additional packages?

A Yes. Surprisingly enough, a second package arrived later that day from the same address and the same fictitious name. Based on those parameters, we the next day ran a dog. A PSP drug detection K-9 alerted again to the presence of narcotics.

We applied for and received a federal search warrant. We opened up that package, and we found more cosmetic cases, and two more kilos of cocaine hydrochloride.

Q Okay. So just so we're clear, you found --

you seized four -- approximately four kilograms of cocaine, and they were sent to the lab; correct?

A Yes, sir.

Q And they weighed just in excess of 4,000 grams. I think it was 4,005 grams, does that sound correct?

A It was approximately one kilo each.

Q And they were -- each of those kilograms was placed in the cosmetic bag before it was placed in the package that it was being sent in; correct?

A Yes, sir.

Q And this last package that was -- I think it was -- you had received approximately March of 2019. This package was consistent with all the other packages, both the earlier one that you seized as well as the earlier packages that you had information on, is that correct?

A Yes, sir, except it was February of 2019, not March.

Q Okay. I'm sorry. I guess -- well, let me ask you this. The last package, when was the last package opened?

A We opened it on the 22nd, I believe. I can give you the exact answer if you give me one moment. Correction. The second package was opened on the

25th of February.

Q Okay. So that just literally had been just a few days afterwards?

A Yes, sir.

Q Now, in terms of this particular individual, did this individual -- I believe you indicated that at the time of his arrest he was read his Miranda warnings?

A He was.

Q And did he make any statements at all?

A He indicated that he did not speak fluent English, so we obtained the support of a translator through a telephone. The translator is a State Police trooper.

And after speaking to Mr. Santana for approximately a minute, he didn't really make any admissions. He requested counsel, and we immediately terminated the interview.

Q Okay. Now, in terms of this particular individual and this address, did you determine whether or not he associates to that address? And what I mean by associates, was the apartment rented to him or did he own this home or was there any connection that he had with that residence?

A Yes, sir. He was currently renting that

house. It's a rental house in that property, and he lived there, and I believe his 10 or 11-year-old daughter resided with him because when we knocked on the door and announced ourselves as law enforcement, she's the one that he left at the front door as he ran out the back door.

MR. BLOOM: Okay. Are there any questions for Postal Inspector Corricelli? Okay. Seeing no questions, I'll ask that the witness be excused.

(Michael Corricelli left the Grand Jury Room at 10:44 a.m.)

(Michael Corricelli entered the Grand Jury Room at 10:47 a.m.)

BY MR. BLOOM:

Q One of the things that I neglected to ask you about given these weights, and I think it's kind of -- it seems self-explanatory, but in terms of 500 grams or more of cocaine hydrochloride, would you indicate that that's for a personal use or that's something beyond a personal use?

A That's definitely a trafficking weight. That is not a personal use amount of cocaine. Even the most prolific cocaine user is looking at small grams, you know, a half ounce, ounce at a time. 500

grams is a large amount of dope.

Q Okay.

A I mean you're talking about a kilogram is between $30,000 and $35,000 street value in Harrisburg area. So half of that you're talking about 17,5 roughly to 20 grand. That's not personal use, sir.

MR. BLOOM: Are there any questions based upon that? Okay. Seeing no questions, I'll ask that the witness --

MEMBER OF THE GRAND JURY: I do have a question about the gun. Was that legally purchased or was that a stolen weapon?

A We're still waiting on the E-trace on it, but it was not a stolen gun as best we can tell at this time. But, again, we're still waiting on the E-trace on it which is the electronic trace to figure out where it was purchased, who legally purchased it. So I don't have a good answer on that one.

MR. BLOOM: Any other questions based upon that?

(No response.)

MR. BLOOM: Okay. I'll ask the witness be excused.

A Have a nice day.

(Michael Corricelli's testimony concluded at 10:49 a.m.)

CERTIFICATE

This is to certify that the attached proceedings before the Federal Grand Jury 18-02 of the Middle District of Pennsylvania in the matter of:

Witness : MICHAEL CORRICELLI

Docket Number :

Place : Federal Building
229 Walnut Street, 7th Floor
Harrisburg, Pennsylvania

Date : August 28, 2019

were held as herein appears, and that this is the original transcript thereof.

Tracy L. Lloyd, RPR
Official Court Reporter

4-7-21
Date

EXHIBIT B

UNITED STATES POSTAL INSPECTION SERVICE

PHILADELPHIA DIVISION

August 14, 2019

SUBJECT: Receipt of cocaine in excess of five kilograms and possession of a firearm in connection with a drug trafficking crime by Adam Neftali-Santana.

United States Attorney's Office
Middle District of Pennsylvania
Attention: Assistant U.S. Attorney Daryl F. Bloom
228 Walnut Street (Suite 220)
Harrisburg, PA 17101-1714

Dear Mr. Bloom:

The following is provided to assist in the federal prosecution of *Adam Neftali-Santana* for the listed criminal offenses:

NO RULE 6(e) MATERIAL INCLUDED

NAME OF OFFENDER	:	Adam Neftali-Santana.
DATE OF BIRTH	:	November 16, 1983
FBI #	:	KN1PVPPA3
ADDRESS	:	35 Redwood Street Chambersburg, PA 17201
PLACE OF OFFENSE	:	Chambersburg, Pennsylvania
DATE OF OFFENSE	:	On or about February 22, 2019
NATURE OF OFFENSE	:	Violations of Title 21 U.S.C. § 841(a)(1) & Title 18, U.S.C. § 924(c)

SYNOPSIS:

In February 2019, U.S. Postal Inspectors identified a suspect parcel from Puerto Rico to an address in Chambersburg, PA. Following alert by a Pennsylvania State Police (PSP) drug detection canine, a federal warrant was executed on the parcel which revealed two kilograms of cocaine secreted inside cosmetic cases. A controlled delivery was executed and Adam Neftali Santana was stopped as he tried to flee out the rear of the residence. Located inside the residence was the parcel delivered as well as evidence of several prior suspect mailings. A Glock 19 pistol, ammunition, and a digital scale were located inside Santana's bedroom. The following day, another parcel for the same address was identified and following execution of a federal warrant, was also found to contain two

PO BOX 60035
HARRISBURG PA 17106-0035
TELEPHONE: 717-257-5581
FAX: 717-257-2328

kilograms of cocaine. This cocaine was also found secreted in similar cosmetic cases. A comprehensive review of postal records disclosed approximately ten prior mailings that appear consistent with the suspect parcels.

INVESTIGATION:

On or about February 12, 2019, U.S. Postal Inspectors based in Puerto Rico identified a suspicious outbound Priority mail parcel bearing tracking number 9505511017429042175608. This parcel weighed approximately 4.62 pounds and was addressed to "*Madelinee Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Carmen Rivera*" at PO Box 2618 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was temporarily detained and forwarded to Harrisburg based Postal Inspectors for follow up investigation.

This suspect parcel was received on February 13, 2019 and exposed to a Pennsylvania State Police (PSP) drug detection canine. The canine did not alert on the parcel and it was returned to the mail stream for delivery.

On February 14, 2019, Postal Inspectors conducted surveillance on 35 Redwood St. Chambersburg, PA. At approx. 12:31 PM, a postal service employee delivered the above mentioned parcel to the residence. Specifically, he left the box on a bench or chair by the front door.

On February 14, 2019 at approx. 1:06 pm, a heavy set Hispanic male, later identified as Adam Santana, arrived at the residence. He picked up the box, looked around the neighborhood and then appeared to use a cell phone. He then took the box into the residence. At approx. 1:34 pm, the same individual exited the residence carrying what appeared to be a similar white box and bag of trash. He walked to the side of the residence where a trash receptacle was located and then returned to the front with his hands empty. He went back into the residence and then departed again at approximately 1:38 pm in a silver/gray sedan bearing Pennsylvania license KNY-1001 (*This vehicle was later determined to be registered to Santana*).

On or about February 22, 2019, Postal Inspectors identified a Priority mail parcel bearing tracking number 9505511017439050164884. This parcel weighed approximately 8.5 pounds and was addressed to "*Carmen Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Juan Rivera*" at a PO Box 2819 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was exposed to a PSP drug detection canine who alerted on the parcel as containing suspected narcotics.

Based on the alert, a federal search warrant was obtained (*1:19-MC-113*) within the Middle District of Pennsylvania (**Exhibit 1**). This warrant was executed on February 22, 2019 and located inside the parcel were two cosmetic bags each containing a kilogram of cocaine. The kilograms had been heat and vacuum sealed along with multiple layers of plastic wrap, dryer sheets, and carbon paper. These items were field tested using a TruNarc ® system and identified as cocaine hydrochloride. Images of the parcel opening have been appended as **Exhibit 2**.

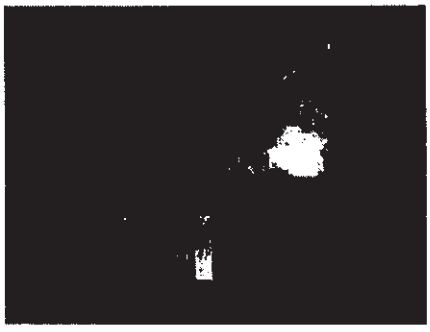


Suspect parcel bearing 9505511017439050164884





Cosmetic bags





CONTROLLED DELIVERY

On February 22, 2019, Postal Inspectors, PSP troopers, and local law enforcement officers executed a controlled delivery of the above identified parcel (*9505511017439050164884*) to 35 Redwood St. Chambersburg, PA.

Prior to executing the delivery, PSP Trooper Steven Nesbit obtained a Commonwealth anticipatory search warrant for the residence (**Exhibit 3**) as well as authorization for

installing a light and motion sensor in the parcel (**Exhibit 4**). The actual cocaine was removed and replaced with two black "bricks" that appeared similar in size and weight to the actual cocaine. The bricks were wrapped in black tape.

The box was then delivered to the residence and placed on the porch. A short while later, an individual identified as a maintenance worker picked up the box and brought it into the residence. After being contacted by law enforcement, this worker explained he was assigned to perform maintenance inside the residence. It was normal for them to bring in parcels from the porch if they noticed them as they were entering. The maintenance worker was directed to leave the residence and not touch the box again.

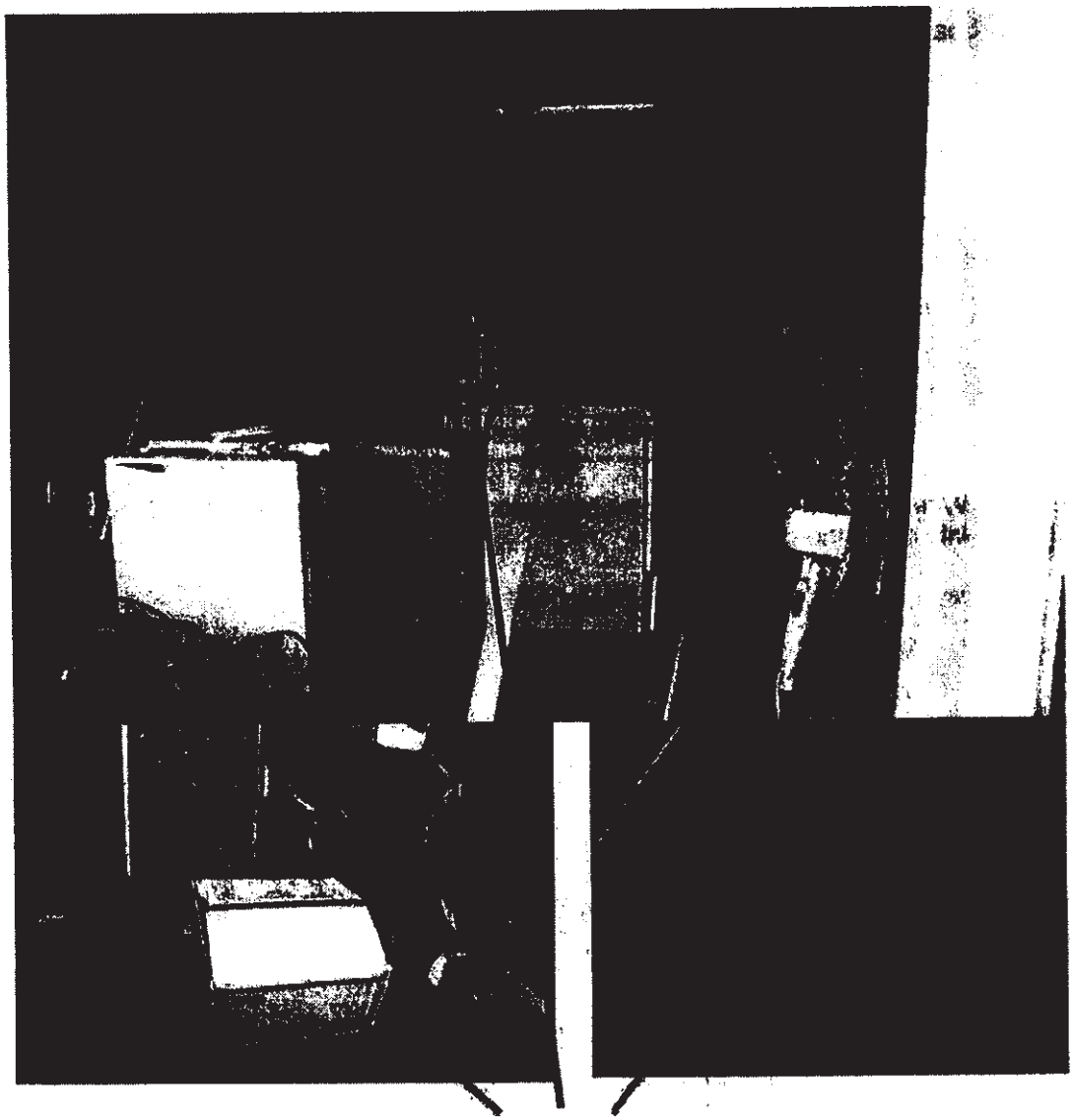
At approximately 1:45 pm, SANTANA arrived at the residence with a young female later identified as his minor daughter. After entering the residence, the tracking device inside the parcel showed it was moving and then the light sensor activated indicated the parcel had been opened. Upon receiving the sensor alert, law enforcement converged on the residence to execute the search warrant. Santana tried to run from the rear garage door and upon being confronted by PSP Trooper Donn Reid, he threw the two fake kilograms. He was taken into custody without further incident and the residence was secured. A copy of Trooper Reid's supplemental report is appended as **Exhibit 5** . (*NOTE: Santana attempting to run and throwing the fake kilos was captured on surveillance video by supporting aircraft* ***Exhibit 6***).



Two fake kilograms discarded by Santana

SEARCH WARRANT

Upon executing the search warrant, investigators discovered the delivered parcel in the garage. This is the same location Santana was observed running from. The parcel had been opened and the address label cut off.



Suspect parcel in garage

Contained under the seat of the scooter where the parcel was found was a piece of black carbon paper similar to the pieces found when the cocaine was first discovered.

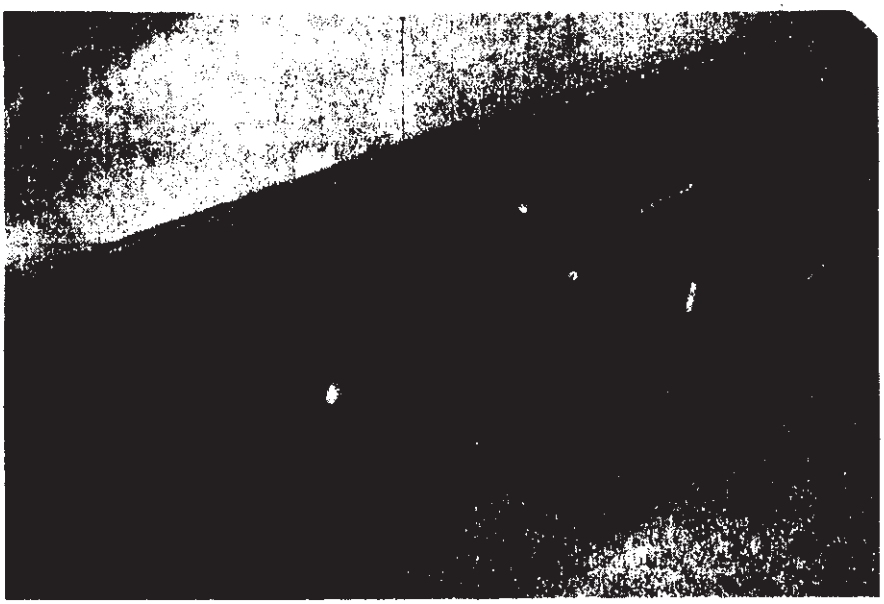


Four additional cosmetic bags, similar to those found during the initial search of the parcel were located in the same area.



Additional cosmetic bags in garage

When the fake kilograms were recovered and examined, it was noted they had been cut into along the side.



Fake kilogram cut into

Additionally, a digital scale, a Glock® 9mm pistol (Serial SYK946), numerous pistol magazines and ammunition were located in the master bedroom. A pistol magazine for a Sig Sauer® 9mm was located in the kitchen along with a bottle of Polyethylene Glycol. PSP completed an inventory receipt which has been appended as **Exhibit 7**. (*Note: Polyethylene Glycol is a laxative but is commonly used as a "cutting" agent for cocaine to provide more bulk weight.*)

A copy of the search warrant photos have been appended as **Exhibit 8.**

SECOND PARCEL:

On or about February 22, 2019, Postal Inspectors identified a Priority mail parcel bearing tracking number 9505511017429051176795. This parcel weighed approximately eight pounds eleven ounces and was addressed to "*Carmen Diaz*" 35 Redwood St. Chambersburg, PA 17201. The return address was "*Juan Rivera*" at a PO Box 2819 in Juncos, PR 00777. A review of available records could not associate the name on the return address with the listed PO Box. This parcel was exposed to a PSP drug detection canine who alerted on the parcel as containing suspected narcotics.

Based on the alert, a federal search warrant was obtained (*1:19-MC-118*) within the Middle District of Pennsylvania (**Exhibit 9**). This warrant was executed on February 25, 2019 and located inside the parcel were two cosmetic bags each containing a kilogram of cocaine. The kilograms had been heat and vacuum sealed along with multiple layers of plastic wrap, dryer sheets, and carbon paper. Images of the parcel opening have been appended as **Exhibit 10**.



Suspect parcel bearing 9505511017429051176795







PRIOR MAILINGS:

On or about February 13, 2019, U.S. Postal Inspectors identified suspicious parcels from Puerto Rico to 35 Redwood Street, Chambersburg, PA. A review of postal records revealed at least five prior parcels, weighing in excess of four pounds or greater, being delivered to the residence in various names. Additional records searched disclosed none of the names identified were known to reside or receive mail there. Known prior mailings to 35 Redwood Street included:

Postal Tracking Number: 9505514362468303196905
Weight: 3.62 lbs
Delivered date: 11/2/2018
From: Las Piedras, PR 00771
Addressed to: 35 Redwood St. Chambersburg, PA
(***Name unknown and not available***)

Postal Tracking Number: 9505511017429002168510
Weight: 5.25 lbs
Delivered date: 1/7/2019
From: Juncos, PR 00777
Addressed to: "**Damariz Rivera**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505514362489016215486
Weight: 6.25 lbs
Delivered date: 1/19/2019
From: Las Piedras, PR 00771
Addressed to: "**Damariz Rivera**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505514362489022216750
Weight: 8.88 lbs
Delivered date: 1/25/2019
From: Las Piedras, PR 00771
Addressed to: "**Carmen Diaz**" 35 Redwood St. Chambersburg, PA

Postal Tracking Number: 9505511017429036174068
Weight: 4.88 lbs
Delivered date: 2/8/2019
From: Juncos, PR 00777
Addressed to: "**Carmen Diaz**" 35 Redwood St. Chambersburg, PA

INTERVIEWS:

Upon being taken into custody on February, 22, 2019, Inspector Corricelli and Trooper Nesbit attempted to interview SANTANA however, he claimed he was not fluent in English. Trooper Nesbit elicited the assistance of PSP Corporal Kent Ramirez who attempted a telephonic interview of SANTANA. SANTANA was provided his *Miranda* rights and acknowledged understanding. After several minutes, SANTANA requested an attorney and the conversation was terminated. A copy of the recorded conversation is appended as **Exhibit 11.**

OFFENDER DETAILS:

Adam Neftali-SANTANA is a 36 year old Hispanic male. He has one prior misdemeanor arrest for DUI in which he received a deferred prosecution/Accelerated Rehabilitation Disposition in Franklin County (2016). A review of employment history shows minimal work with a temporary agency. At the time of his arrest for this offense, SANTANA had a valid permit to carry a concealed firearm (28-00019149) issued in Franklin County (PA) on 5/11/2017 .

OTHER:

On or about February 21, 2019, Postal Service representatives responsible for mail delivery to 35 Redwood St. Chambersburg advised Adam SANTANA receives mail at the residence. They did not recognize the last name "Diaz" as receiving mail there but did believe last names of "Flores" and "Perez" might receive mail there as well.

Following completion of the search warrant on February 22, 2019, Adam Neftali-SANTANA was arrested and booked on state charges for Manufacture, Delivery, or Possession with intent to Deliver a controlled substance. He was denied bail and remains in custody at the Franklin County (PA) Prison. He is scheduled for trial n or about 10/24/2019. The state docket number is CP-28-CR-0001077-2019.

A review of the pending state docket shows SANTANA is being represented by Attorney Jose L. Ongay of Plymouth Meeting, PA with contact number (484) 681-1117.

On or about March 1, 2019, Inspectors applied for and received a federal search warrant for SANATANA's cell phone recovered during the search warrant on his residence (**Exhibit 12**). The phone was submitted to the PSP Computer Crime Laboratory on or about March 4, 2019. The phone was returned from the lab on or about March 8, 2019. A subsequent review of the data obtained from the phone disclosed nothing relevant to this investigation.

On or about April 3, 2019, the four kilograms of suspected cocaine received from the two parcels (*9505511017439050164884* & *9505511017429051176795*) were submitted to the PSP Harrisburg Regional Laboratory for analysis. On or about April 12, 2019, the laboratory provided a report confirming all four bricks were cocaine with a combined weight of 4,005 grams (+/- 9grams). A copy of their report has been appended as **Exhibit 13**.

PSP Trooper Nesbit requested origin information on the firearm recovered during the search of Santana's residence (Glock #SYK946). Results will be reported under separate cover.

A copy of PSP Trooper Nesbit's report has been appended as **Exhibit 14**.

WITNESSES:

1. Postal Inspector M.J. Corricelli, USPIS (717-257-5581)
   - Can testify to all aspects of this investigation
2. Trooper Steven Nesbit, PSP (717-317-5096)
   - Can testify to all aspects of this investigation
3. Corporal Scott Fidler, PSP (717-317-5000)
   - Can testify to all aspects of this investigation
4. Postal Inspector S.L. Knoll, USPIS (717-257-2333)
   - Can testify to the parcel and house warrants

- Other investigators present for the delivery and residence warrant will be provided upon request.

EXHIBITS: Provided electronically on attached disk.

1. Federal Search warrant and affidavit, RE: parcel 9505511017439050164884
2. Copy of digital images from opening parcel 9505511017439050184884
3. PA search warrant and application for Santana's residence
4. PA Application and order authorizing mobile tracking device
5. PSP Trooper Reid supplemental report dated 2/26/2019
6. Copy of video surveillance from support aircraft, dated 2/22/2019
7. Search warrant inventory for Santana's residence, dated 2/22/2019
8. Copy of search warrant photographs of Santana's residence, dated 2/22/2019
9. Federal Search warrant and affidavit, RE: parcel 9505511017429051176795
10. Copy of digital images from opening parcel 9505511017429051176795
11. Copy of recorded Santana interview, dated 2/22/2019
12. Federal Search warrant and affidavit, RE: Santana cell phone
13. PSP Forensic laboratory report RE: four kilogram analysis
14. PSP Trooper S. Nesbit incident report.

I can best be reached at (717) 257-5581 or via email micorricelli@uspis.gov for any questions or concerns regarding this matter.

Respectfully,

M.J. Corricelli

M.J. Corricelli
U.S. Postal Inspector

CC: Trooper Steven Nesbit, Pennsylvania State Police | Bureau of Criminal Investigation

EXHIBIT C

SP 7-0050 (12-2011)

PENNSYLVANIA STATE POLICE
INCIDENT REPORT

REPORT TYPE: ☒ INITIAL ☐ CONTINUATION ☐ SUPPLEMENTAL

DATE(S) OF INCIDENT: 02/22/19 FRI

INCIDENT NO.: PA19-228739

TIME(S) OF INCIDENT: 1200

JUVENILE: ☐

DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
- ☐ INTOXICATION WORK SHEET
- ☐ FELONY CRIMES AGAINST THE PERSON
- ☐ VICTIM/WITNESS ASST GUIDE RECEIPT
- ☒ PROPERTY RECORD
- ☒ OTHER Stat Narc
- ☐ MISSING PERSON CHECKLIST
- ☐ STATEMENT FORM(S)
- ☐ RIGHTS WARNING AND WAIVER

DISP: ☒ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED - DATE

- A ☐ DEATH OF ACTOR
- B ☐ PROSECUTION DECLINED
- C ☐ EXTRADITION DENIED
- D ☐ VICTIM REFUSED TO COOPERATE
- E ☐ JUVENILE/NO CUSTODY
- N ☐ NOT APPLICABLE
- ☐ MULTIPLE CLEAR-UP

1. ORI/STATION	2. LOCATION	ZONE
PAPSPA01/DLED-CIU	35 Redwood ST	99

3. CITY/TWP/BORO	CODE	4. COUNTY	CODE
Chambersburg Boro	401	Franklin County	28

5. VICTIM NO.	NAME	ADDRESS	HOME TELEPHONE NO.
1	Society		

6. EMPLOYER NAME	ADDRESS	WORK TELEPHONE NO.

7. RACE / ETHY.	8. SEX	9. DOB	10. AGE	11. RES. STAT.	12. REL. TO OFFENDER(S)	13. TYPE INJ.	14. CIRC.	15. CON. TO OFF.	16. TYPE VICT.	17. OFF. NO. REL.
/										01

5. VICTIM NO.	NAME	ADDRESS	HOME TELEPHONE NO.
2			

6. EMPLOYER NAME	ADDRESS	WORK TELEPHONE NO

7. RACE / ETHY.	8. SEX	9. DOB	10. AGE	11. RES. STAT.	12. REL. TO OFFENDER(S)	13. TYPE INJ.	14. CIRC.	15. CON. TO OFF.	16. TYPE VICT.	17. OFF. NO. REL.
/										

18. OFFENSE

SIMPLE ASSAULT	03 CRIMINAL MISCHIEF	TERRORISTIC THREATS	THEFT BY UNLAWFUL TAKING OR DISPOSITION
BURGLARY	MISSING PERSON	HARASSMENT	01 CONTROLLED SUB., DRUG, DEVICE & COSMETIC ACT
ESCAPE	AGGRAVATED ASSAULT	ARSON BY RELATED OFF.	DRIVING UNDER INFLUENCE OF ALCOHOL/CONTROLLED SUB.
OTHER			

19. NO.	20. STATUTE	21. SECTION NO.	22. UCR	23. HATE/BIAS	24. OFF. USED	25. OFF. LOC.	26. ETY. METH.	NO.	27. ACTY. TYPE	28. WPN/FC	A
01	CS	780-113	18A	88	D	20			D		

29. VEHICLE: ☐ STOLEN ☐ RECOVERED ☒ SUSPECT ☐ OTHER

30. LIC	31. LIS	32. LIY	33. LIT	34. VIN	35. VYR	36. VMA
KHN-2624	PA	2019	SW	1FMFU18537LA42719	2007	Ford

37. VMO	38. VST	39. VCO	40. DOT	41. MIS	42. MILEAGE
Expedition		White			

43. NO.	44. PROPERTY DESCRIPTION	45. PRD. DESC.	46. TYPE LOSS	47. QTY.	48. VALUE	49. DATE REC.
01	Cocaine (kllo)	10	06	2		
	See attached property record(s)					

50.	YES	NO		YES	NO
INCIDENT PROMPTLY REPORTED BY VICTIM	☒	☐	NEIGHBORHOOD/AREA CANVASS	☐	☒
CAN A SUSPECT BE NAMED	☒	☐	ANY WITNESSES LOCATED	☐	☒
EVIDENCE AT SCENE TO LINK OFFENDER	☒	☐	OFFENDER INFORMATION AVAILABLE	☒	☐
CAN A VEHICLE BE IDENTIFIED WITH CRIME	☒	☐	IDENTIFIABLE/TRACEABLE PROPERTY	☐	☒
SCENE PROCESSED FOR LATENT PRINTS	☐	☒	UNIQUE/UNUSUAL METHOD OF OPERATION	☐	☒
LATENT PRINTS DISCOVERED	☐	☒	THOUGHT TO BE CONNECTED WITH KNOWN CRIME PATTERN	☒	☐
SCENE CHECKED FOR WITNESSES	☐	☒	CLEAN MESSAGE/NCIC ENTRY	☐	☒

51. DATE/TIME OFFICER ARRIVED	52. DATE/TIME OFFICER DEPARTED	53. DATE OF REPORT	54. PART ONE ONLY	55. LCE NOTIFIED	56. SUPV. INIT./BADGE NO.
02/22/19 1200	02/22/19 / 1600	02/23/19	☐	☐ YES ☒ NO	

57. OFFICER'S NAME/SIGNATURE	BADGE NO.	58. INVES. RECM.	59.	60. PAGE
Tpr. Steven NESBIT	10233	☒ CONT. ☐ TERM	☐ CONCUR ☐ NONCONCUR	01

STATION

SP 7-0050A (12-2011)
PENNSYLVANIA STATE POLICE
INCIDENT REPORT - PART II

REPORT TYPE: ☒ INITIAL ☐ CONTINUATION ☐ SUPPLEMENTAL

DATE(S)/DAY(S) OF INCIDENT: 02/22/19 FRI | INCIDENT NO.: PA19-228
TIME(S) OF INCIDENT: 1200 | JUVENILE: ☐ | DOMESTIC VIOL: ☐

ATTACHMENTS:
☐ INTOXICATION WORK SHEET ☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON ☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASST GUIDE RECEIPT ☐ RIGHTS WARNING AND WAIVER
☒ PROPERTY RECORD
☒ OTHER Stat Narc

DISP: ☒ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED - DATE
A ☐ DEATH OF ACTOR D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

61. ORI/STATION	62. DATE OF REPORT	63. OFFENSE
PAPSPA01/DLED-CIU	02/23/19	Act 64/PWI

64.	65. OFFENDER NO.	NAME	66. ADDRESS STREET CITY STATE ZIP
☒ ACCUSED ☐ SUSPECT	1	Adam Neftali SANTANA	35 Redwood St. Chambersburg, PA 17201

67. HOME PHONE NO.	68. NICKNAMES/ALIAS (NN/First Middle Last)	69. HEIGHT	70. WEIGHT	71. HAIR	72. EYES	73. MARITAL STATUS
787-718-2890		5'11"'	250	BLK	BRO	Married

74. RACE / ETHY	75. SEX	76. DOB	77. AGE	78. RES. STAT.	79. OFF. CODE	80. TYPE ARREST	81. DATE OF ARREST	82. ARMED WITH	A	83. OTN/NON-TRAFFIC CIT. NO.
W / H	M	11/16/83	35	R	18A	O	02/22/19	01		X240181-4

84. FINGERPRINTED	85. PHOTOGRAPHED	86. DISP. UNDER 18	87. VIC. NO. REL.	88. SSN	89. OLN	STATE	EXPIRES
☒ YES ☐ NO	☒ YES ☐ NO		01	583-95-7728	31907442/PA		

90. BIRTHPLACE	91. EMPLOYER/SCHOOL	92. MISC. NO.
Puerto Rico	N/A	SID/43622552

64.	65. OFFENDER NO.	NAME	66. ADDRESS STREET CITY STATE ZIP
☐ ACCUSED ☐ SUSPECT	2		

67. HOME PHONE NO.	68. NICKNAMES/ALIAS	69. HEIGHT	70. WEIGHT	71. HAIR	72. EYES	73. MARITAL STATUS
- -						

74. RACE / ETHY	75. SEX	76. DOB	77. AGE	78. RES. STAT.	79. OFF. CODE	80. TYPE ARREST	81. DATE OF ARREST	82. ARMED WITH	A	83. OTN/NON-TRAFFIC CIT. NO.
/										

84. FINGERPRINTED	85. PHOTOGRAPHED	86. DISP. UNDER 18	87. VIC. NO. REL.	88. SSN	89. OLN	STATE	EXPIRES
☐ YES ☐ NO	☐ YES ☐ NO						

90. BIRTHPLACE	91. EMPLOYER/SCHOOL	92. MISC. NO.
		SID/

DOMESTIC VIOLENCE/PFA CHECKLIST

93. PREVIOUS EVENTS ☐ YES ☐ NO (EXPLAIN IN NARRATIVE)

94. COMPLAINANT NAME (LAST, FIRST, MIDDLE) VICTIM IS COMPLAINANT ☐ R/S/A

95. ADDRESS TELEPHONE NO.

96. CONTACT PERSON NAME (LAST, FIRST, MIDDLE) VICTIM'S TEMPORARY ADDRESS ☐ R/S/A

97. ADDRESS TELEPHONE NO.

98. VICTIM'S INJURIES (OBSERVED)

99. VICTIM'S INJURIES (REPORTED)

100. INJURIES PHOTOGRAPHED	101. VICTIM INTERVIEWED	102. STATEMENT	103. VICTIM IS ALSO AN ACTOR (EXPLAIN IN NARRATIVE)
☐ YES ☐ NO	☐ YES ☐ NO	☐ SIGNED WRITTEN ☐ TAPED	☐ YES ☐ NO ☐ ARRESTED

104. ARRAIGNED DATE/TIME	105. VICTIM INFORMED OF ARREST/BAIL DATE/TIME	106. WEAPONS USED/THREATENED (INCLUDE DETAILS IN NARRATIVE)
☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

107. LIST ALL CHILDREN'S NAME, R/S/A/, ADDRESS, TELEPHONE NUMBER AND TEMPORARY ADDRESS (LIST ADDITIONAL CHILDREN IN NARRATIVE)

108. ACTOR'S INJURIES (OBSERVED)

109. ACTOR'S INJURIES (REPORTED)

110. INJURIES PHOTOGRAPHED	111. ACTOR INTERVIEWED	112. STATEMENT	113. ACTOR IS ALSO A VICTIM (EXPLAIN IN NARRATIVE)
☐ YES ☐ NO	☐ YES ☐ NO	☐ SIGNED WRITTEN ☐ TAPED	☐ YES ☐ NO

114. ARRAIGNED DATE/TIME	115. VICTIM INFORMED OF ARREST/BAIL DATE/TIME	116. WEAPONS USED/THREATENED (INCLUDE DETAILS IN NARRATIVE)
☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

117. OFFICER'S NAME/SIGNATURE	BADGE NO.	118. INVES. RECM.	119. SUPV. INIT./BADGE NO.	120.	121. PAGE
Tpr. Steven NESBIT	10233	☒ CONT. ☐ TERM.		☐ CONCUR ☐ NONCONCUR	02

STATION

1739

STATE POLICE
CONTINUATION SHEET ☒
INVESTIGATION REPORT ☐

REPORT TYPE
☒ INCIDENT
☐ OTHER

DATE(S)/DAY(S) OF INCIDENT: 02/22/19 FRI
INCIDENT NO.: PA19-228739
TIME(S) OF INCIDENT: 1200
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

K SHEET ☐ MISSING PERSON CHECKLIST
AGAINST THE PERSON ☐ STATEMENT FORM(S)
ASST GUIDE RECEIPT ☐ RIGHTS WARNING AND WAIVER
CORD
at Narc

DISP: ☒ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED- DATE
A ☐ DEATH OF ACTOR D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

ON: PAPSPA01/DLED-CIU
2. DATE OF REPORT: 02/23/19

SE: Act 64
4. VICTIM: Society

Investigation Details:

On 02/22/19, The United States Postal Inspector(s) intercepted two parcels. The parcels are described as a United States Postal Service (USPS) Express mail parcels. One parcel is bearing tracking # 9505511017439050164884 sent from Juan RIVERA PO BOX 2819 Juncos, PR 00777, and sent to, Carman DIAZ 35 Redwood St. Chambersburg, PA 17201. The parcel measured approximately 12 1/4" x 12 1/4" x 6" and weighed approximately 8 pounds 8 ounces. The parcel was mailed on 02/19/19.

The second parcel is bearing tracking # 95055110174290511767 95 sent from Juan RIVERA PO Box 2819 Juncos, PR 00777, and sent to, Carman DIAZ 35 Redwood St. Chambersburg, PA 17201. The parcel measured approximately 12 ¼ x 12 ¼ x 6 and weighed approximately 8 pounds 11 ounces. The parcel was mailed on 2/20/19.

Through further investigation it was determined a Federal search warrant would be completed on USPS Express mail parcel bearing tracking # 9505511017439050164884. A search warrant on the parcel bearing tracking number 95055110174290511767 95 would be requested at a later date. The search warrant for parcel # 9505511017439050164884 was applied for and granted by a US Federal Judge. Upon executing the search warrant the parcel was found to contain two multicolored bags. Each bag contained a kilogram brick of cocaine. The two bricks weigh approximately 2,088 grams. Tpr. David LONG tested the suspected cocaine using a TruNarc analyzer. The TruNarc provided a positive test result for cocaine HCL

On 02/22/19, at 1317 hours, Members of the PA State Police, Franklin County Drug Task Force, and The United States Postal Inspectors performed a controlled delivery of the aforementioned parcel to 35 Redwood St. Chambersburg Boro, Franklin County. Prior to the controlled delivery, the kilograms of cocaine were removed and replaced with sham kilograms. It was further determined PSP would use a GPS tracker/light sensor inside the parcel. A subsequent court order was prepared. I also prepared an anticipatory search warrant for the residence of 35 Redwood ST. The court order and search warrant were reviewed by Franklin County Assistant District Attorney Jonathan FAUST. The Court Order and Search Warrant were then reviewed and signed by Franklin County Judge, Jeremiah ZOOK. The GPS tracker/light sensor was then placed inside the parcel. Upon delivery of the parcel, by a US Postal Inspector, it was placed on the front porch and in front of the main door to the residence.

PSP Aviation was also requested for this investigation. PSP members conducted aerial surveillance of 35 Redwood ST. The aerial surveillance was further recorded.

CONTINUED:

6. OFFICER'S NAME/SIGNATURE	BADGE NO.	7. INVEST. RECM.	8. SUPV. INIT./BADGE NO.	9.	10. PAGE
Tpr. Steven NESBIT	10233	☒ CONT. ☐ TERM.		☐ CONCUR ☐ NONCONCUR	03

STATION

SP 7-0051 (12-2011)	REPORT TYPE	DATE(S) DAY(S) OF INCIDENT	INCIDENT NO.
PENNSYLVANIA STATE POLICE CONTINUATION SHEET ☒ SUPPLEMENTAL INVESTIGATION REPORT ☐	☒ INCIDENT ☐ OTHER	02/22/19 FRI	PA19-228739
		TIME(S) OF INCIDENT: 1200	JUVENILE: ☐
			DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
☐ INTOXICATION WORK SHEET ☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON ☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASST GUIDE RECEIPT ☐ RIGHTS WARNING AND WAIVER
☒ PROPERTY RECORD
☒ OTHER Stat Narc

DISP: ☒ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED- DATE
A ☐ DEATH OF ACTOR D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

1. ORI/STATION	2. DATE OF REPORT
PAPSPA01/DLED-CIU	02/23/19
3. OFFENSE	**4. VICTIM**
Act 64	Society

Investigation Details Continued:

At approximately 1324 hours, Eric A. WAGAMAN, 82 West Queen St. Chambersburg, PA, 17201,PA OLN 26343042, of Valley Community Housing Corporation, was observed pulling into 35 Redwood St. WAGAMAN is a maintenance mechanic. He was operating a Valley Community Housing Corporation vehicle. Upon pulling into the driveway he and James DUVALL another maintenance employee, exited the vehicle and approached the front door. WAGAMAN proceeded to pick up the parcel and enter the residence.

The parcel was placed inside and WAGAMAN proceeded to open the garage door of the residence. At this time, I made contact with an employee at the Community Center of Redwood Park. I spoke with the employee and asked that WAGAMAN be contacted and for him to return to the office. She agreed and WAGAMAN proceeded to the center.

Upon speaking with WAGAMAN it was learned he was at the residence to complete several maintenance tasks. New flooring was installed in the first floor of the residence. He was there to put the stove, refrigerator, toilet, and several other items into the proper place. When asked, he advised he did observe a parcel at the front door. He advised it is common practice for him to pick up parcels and put them inside the residence. He advised he will then leave a note on the door that advises the homeowner that he was there, and he put the parcel inside the home. I advised him we were conducting an active investigation on the residence. He was advised of some of the details of this investigation and requested for safety reasons not to enter the home. It should be noted WAGAMAN was not acting under any law enforcement direction when he picked up the parcel and took it inside the residence.

As I spoke with WAGAMAN near the community center, surveillance members advised SANTANA pulled into the driveway. He was operating a white Ford Expedition. Upon his arrival, he walked into the residence with a female, later identified as his 10 YOA daughter Adanielis SANTANA. At 1345 hours, the GPS tracking indicated the parcel had moved. At 1347 hours, the light sensor was activated. The activation indicated the parcel was opened and the kilogram containing the Gps tracker/light sensor was exposed to light.

Upon receiving this information, PSP, Franklin County Drug Task Force, and The Postal Inspectors converged on the residence to execute the search warrant. PSP members knocked and announced our presence. With no answer to the front door, force was used to enter the front door. Upon entering the front door, PSP members secured the rear doors to the residence. As they approached the rear doors, SANTANA exited the rear garage door. He was holding the two sham kilograms. As PSP members made contact with SANTANA, the kilograms were thrown away from him. He was taken into custody. The residence was secured, and the residence was fully photographed. Photographs were taken by myself and Cpl. Scott FIDLER. The photographs were later downloaded from the digital camera onto a departmental computer. The photographs of the residence and all items seized during the search warrant were reviewed. The photographs accurately represented the residence and items seized. They were subsequently downloaded, un-edited, onto a non-re-writeable CD-R. The CD-R was later placed into evidence at PSP Chambersburg.

CONTINUED

6. OFFICER'S NAME/SIGNATURE	BADGE NO.	7. INVEST. RECM.	8. SUPV. INIT./BADGE NO.	9. CONCUR / NONCONCUR	10. PAGE
Tpr. Steven NESBIT	10233	☒ CONT. ☐ TERM.		☐ CONCUR ☐ NONCONCUR	04

STATION

SP 7-0051 (12-2011)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☒
SUPPLEMENTAL INVESTIGATION REPORT ☐

REPORT TYPE
☒ INCIDENT
☐ OTHER

DATE(S) OF INCIDENT: 02/22/19 FRI

INCIDENT NO.: PA19-228739

TIME(S) OF INCIDENT: 1200

JUVENILE: ☐

DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
☐ INTOXICATION WORK SHEET
☐ FELONY CRIMES AGAINST THE PERSON
☐ VICTIM/WITNESS ASST GUIDE RECEIPT
☒ PROPERTY RECORD
☒ OTHER STAT NARC
☐ MISSING PERSON CHECKLIST
☐ STATEMENT FORM(S)
☐ RIGHTS WARNING AND WAIVER

DISP: ☒ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED- DATE
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSPA01/DLED-CIU

2. DATE OF REPORT: 02/23/19

3. OFFENSE: Act 64

4. VICTIM: Society

Investigation Details Continued:

During the search warrant several items were seized. A Glock 19 Serial #SYK946 was located in the master bedroom. Several Glock magazines, 9mm ammunition, and a digital scale was also found inside the bedroom. The parcel was located inside the garage. It was opened, cut, and the multicolored bag that had contained the sham kilograms was located near the parcel. The parcel was found on top of a Suzuki scooter parked inside the garage. Postal Inspector KNOLL checked under the seat of the Suzuki scooter. She located 5 bags similar in size and shape to the muli-colored bag the kilograms were contained in. The bags would indicate SANTANA has received similar parcels that contained kilograms of cocaine. Also located on the Suzuki scooter was a black iPhone. Another item of note was a bottle of Polyethylene Glycol found in a kitchen cabinet. For a full list of items seized, the location seized, and the law enforcement member locating the item seized, refer to the search warrant receipt of inventory.

During the execution of the search warrant, I, Postal Inspector Michael CORRICELLI, and Tpr. COX conducted and interview with SANTANA. He was in custody and it was immediately learned he was not fluent in English. With this information I contacted Cpl. Kent RAMIREZ. Cpl. RAMIREZ was able to speak with SANTANA. SANTANA was provided his Miranda Rights. He acknowledged those rights and Cpl. RAMIREZ spoke with SANTANA for several minutes. It was related SANTANA knew that he should cooperate but ultimately requested an attorney. Questioning was subsequently stopped. SANTANA was then transported to the PSP Chambersburg Barracks.

At 1423 hours, I spoke to Judith PEREZ of 5 Rachel DR. Chambersburg, PA -787-586-7195. PEREZ is Adam SANTANA'S mother and Adanielis' grandmother. She responded to the residence to pick up Adanielis SANTANA. When asked, she related she had no idea Adam was actively involved in trafficking cocaine. She advised he only stays at 35 Redwood ST. and is not known to have large sums of money. She took custody of Adanielis.

All evidence was reviewed and entered into evidence at PSP Chambersburg under PSP property number H03-25782.

SANTANA was fully processed, and a criminal complaint was prepared. He was taken to the Franklin County Prison and released into their custody. The complaint was provided to Franklin County Correctional Officers for arraignment.

PACIC was notified
A STAT NARC was completed

6. OFFICER'S NAME/SIGNATURE	BADGE NO.	7. INVEST. RECM.	8. SUPV. INIT./BADGE NO.	9.	10. PAGE
Tpr. Steven NESBIT	10233	☒ CONT. ☐ TERM.		☐ CONCUR ☐ NONCONCUR	05

STATION

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☐

☒ INCIDENT
☐ OTHER

02/22/2019-Friday | PA19-228739

TIME(S) OF INCIDENT: 1349 Hours | JUVENILE ☐ | DOMESTIC VIOLENCE ☐

ATTACHMENTS:
☐ MISSING PERSON CHECKLIST
☐ FELONY CRIMES AGAINST THE PERSON ☐ STATEMENT FORM(S)
☐ VICTIM/WITNESS ASSISTANCE CURB RECEIPT ☐ RIGHTS WARNING AND WAIVER
☐ PROPERTY RECORD ☐ OTHER

DISP.: ☐ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED - DATE
A ☐ DEATH OF ACTOR D ☐ VICTIM REFUSED TO COOPERATE
B ☐ PROSECUTION DECLINED E ☐ JUVENILE/NO CUSTODY
C ☐ EXTRADITION DENIED N ☐ NOT APPLICABLE ☐ MULTIPLE CLEAR-UP

1. ORI/STATION:
2. DATE OF REPORT: 02/26/19

3. OFFENSE: Act 64
4. VICTIM: Society

6. NARRATIVE

Investigation:

On 02/22/19 Cpl. Justin LONG and I were requested by BCI Drug Law unit to assist with a package delivery and search warrant at 35 Redwood St., Chambersburg Borough, Franklin County. I was informed by Tpr. NESBIT that there were two bricks of cocaine scheduled to be delivered to the aforementioned address. Tpr. NESBIT related that they had a search warrant for the resident if the package was taken into the residence. Tpr. NESBIT further related that the suspect was a hispanic male.

Actions:

On 02/22/2019 Cpl. LONG and I were assigned by Cpl. FIDLER/Tpr. NESBIT to watch the back door of the 35 Redwood St., while they went to the front of the residence. I heard them announce themselves as state police and that they had a search warrant. I then observed a hispanic male exiting the residence through the back door. The male had what appeared to be two black bricks of cocaine, one in his left hand and one in his right hand. I identified myself as a state trooper and told him to get down on the ground, the male then threw both bricks of cocaine onto the ground. Cpl. LONG and I then took the male into custody without incident.

Cpl. LONG and I then assisted searching the residence. Reference search warrant inventory/receipt from this incident.

Cpl. LONG and I also assisted with entering all of the evidence into the evidence locker at PSP Chambersburg.

Conclusion:
Investigation continues.

5. OFFICER'S NAME/SIGNATURE	BADGE NO.	7. INVEST. RECM.	8. SUPV. INIT./BADGE NO.	9. ☐ CONCUR ☐ NONCONCUR	10. PAGE
Tpr. Donn REID / PAPSP3600/HARRISBURG	10361	☒ CONT. ☐ TERM.			06

STATION

SP 7-0051 (12-2011)

PENNSYLVANIA STATE POLICE
CONTINUATION SHEET ☐
SUPPLEMENTAL INVESTIGATION REPORT ☒

REPORT TYPE
☒ INCIDENT
☐ OTHER

DATE(S) DAY(S) OF INCIDENT: 02/22/19 FRI
INCIDENT NO.: PA19-228739
TIME(S) OF INCIDENT: 1200
JUVENILE: ☐
DOMESTIC VIOLENCE: ☐

ATTACHMENTS:
☐ INTOXICATION WORK SHEET
☐ FELONY CRIMES AGAINST THE PERSON
☐ VICTIM/WITNESS ASST GUIDE RECEIPT
☒ PROPERTY RECORD
☐ OTHER
☐ MISSING PERSON CHECKLIST
☐ STATEMENT FORM(S)
☐ RIGHTS WARNING AND WAIVER

DISP: ☒ CLEARED BY ARREST ☐ UNFOUNDED ☐ EXCEPTIONALLY CLEARED- DATE
A ☐ DEATH OF ACTOR
B ☐ PROSECUTION DECLINED
C ☐ EXTRADITION DENIED
D ☐ VICTIM REFUSED TO COOPERATE
E ☐ JUVENILE/NO CUSTODY
N ☐ NOT APPLICABLE
☐ MULTIPLE CLEAR-UP

1. ORI/STATION: PAPSPA01/DLED-CIU
2. DATE OF REPORT: 02/27/19
3. OFFENSE: Act 64
4. VICTIM: Society

Investigation Details:

On 02/25/19, a Federal Search Warrant was applied for and approved by a US Federal Judge. The search warrant was for the previously mentioned parcel bearing USPS tracking # 9505511017429051176795. The search warrant was applied for and granted by a US Federal Judge. Upon executing the search warrant the parcel was found to contain two multicolored bags. Each bag contained a kilogram brick of cocaine. The two bricks weigh approximately 2,054 grams. Tpr. Clint LONG tested the suspected cocaine using a TruNarc analyzer. The TruNarc provided a positive test result for cocaine HCL.

It was determined the US Postal Inspector's would apply for a Federal Indictment on SANTANA. As a result, Special Agent (SA) Michael CORICELLI retained the two-kilogram bricks of cocaine. On 02/27/19, I removed items # 9, 10, and 15 of PSP property record # H03-25782, from PSP Chambersburg. The items to include the seized kilogram bricks of cocaine and a black iPhone were turned over to SA CORICELLI.

On 02/27/19, I also downloaded the recorded interview with SANTANA onto a PSP Departmental computer. I reviewed the interview and it accurately represented the interview. I downloaded the interview, unedited, onto a non-rewriteable CD-R. The CD-R was placed into evidence under PSP property # H03-25782 (A). A copy of was made as a working copy.

The search warrant receipt of inventory and return were returned to the Franklin County Clerk of Courts.

An ETRACE form was completed as per Departmental Regulations.

6. OFFICER'S NAME/SIGNATURE	BADGE NO.	7. INVEST. RECM.	8. SUPV. INIT./BADGE NO.	9.	10. PAGE
Tpr. Steven NESBIT	10233	☒ CONT. ☐ TERM.		☐ CONCUR ☐ NONCONCUR	07

STATION

SP 7 - 007

PENNSYLVANIA STATE POLICE
PROPERTY RECORD

4. STATUS: ☐ EVIDENCE ☐ FOUND ☐ RECOVERED ☒ RECEIPT ☐ OTHER

5. OFFENSE:

6. STATION/DISTRICT OFFICE: CHAMBERSBURG/2130

7. SUBMITTING OFFICER: BADGE NO.:

8. RECEIVING OFFICER: BADGE NO.:

9. DATE: TIME:

10. INVESTIGATING OFFICER: BADGE NO.:

11. SIGNATURE OF RECEIVING OFFICER:

12. FOUND OR RECOVERED FROM/LOCATION: ADDRESS: TELEPHONE NO.: LOCATION:

13. DATE: TIME:

14. CODES

STORAGE AREA
1. PROPERTY ROOM
2. SAFETY DEPOSIT BOX
3. EXPLOSIVE MAGAZINE
4. NON - DEPARTMENT
5. IMPOUND LOT
6. OTHER DEPT. FACILITY
7. NOT APPLICABLE

DISPOSITION
1. DESTROYED
2. ESCHEATED
3. EXPENDED IN LABORATORY
4. RELEASED TO OWNER/FINDER
5. DONATED
6. FORFEITURE
7. OTHER
8. CONVERTED TO DEPT. USE
9. TRANSFERRED
10. FWD to DHQ
11. FWD TO FSU

REMOVAL CODE
1. CUSTODY
2. COURT
3. LABORATORY
4. OTHER
5. ESCHEATABLE
6. COMPUTER CRIME OFFICE
7. FINAL DISPOSITION
8. INVESTIGATION
9. REPACKAGE
10. FSU

15. ITEMS - (ONE ITEM PER LINE)	16. TYPE PROP	17. CODE	18. QTY	19. VALUE	20. STORAGE AREA CODE	21. DISP. CODE
9 USPS PRIORITY MAIL BOX CONTAINING MAKEUP BAG	25	6	1			
10 BRICKS OF COCAINE	10	6	2			
15 BLACK I-PHONE	75	6	1			

22. PROPERTY IN	22. PROPERTY OUT	23. DATE & TIME	24. ITEM NO.(S)	25. OFFICER'S SIGNATURE/BADGE NO.	26. CUSTODIAL OFFICER'S INIT/BADGE NO.	27. REMOVAL CODE, LOCATION & REMARKS	28. ESTIMATED DATE OF RETURN	29. COMPUTER ENTRY

30. I HEREBY CERTIFY THAT I AM THE OWNER OF PROPERTY OR AUTHORIZED AGENT TO RECEIVE ITEM NO.(S)

31. CLAIMANT'S NAME: Michael J. Corricelli #5423 | OWNER'S NAME: | ADDRESS: | TELEPHONE NO.:

32. CLAIMANT'S SIGNATURE: [signature] 2-27-2019 @ 1608 hrs | OWNER'S SIGNATURE: | DATE:

33. PICS APPROVAL NO.: | 34. INACTIVE ☐

1. PROPERTY RECORD CONTINUATION

2. CAD/CASE NO. PA 2019-228739

3. INVENTORY NO. H03-25782

000195

SP 7 - 007

PENNSYLVANIA STATE POLICE
PROPERTY RECORD

4. STATUS: [X] EVIDENCE [ ] FOUND [ ] RECOVERED [ ] RECEIPT [ ] OTHER

5. OFFENSE: ACT 84

6. STATION/DISTRICT OFFICE: CHAMBERSBURG/2130

7. SUBMITTING OFFICER: TPR STEVEN P NESBIT — BADGE NO.: 10233

8. RECEIVING OFFICER: — BADGE NO.:

9. DATE: ~~2/26/2019~~ 2/27/19 — TIME: 1410

10. INVESTIGATING OFFICER: TPR STEVEN P NESBIT — BADGE NO.: 10233

11. SIGNATURE OF RECEIVING OFFICER:

12. FOUND OR RECOVERED FROM: PSP DEPARTMENTAL COMPUTER — ADDRESS: 679 FRANKLIN FARM LN., CHAMBERSBURG, PA 17202 — TELEPHONE NO.: N/A — LOCATION: PSP CHAMBERSBURG

13. DATE: ~~2/26/2019~~ 2/27/19 — TIME: 1353

14. CODES

STORAGE AREA
1. PROPERTY ROOM
2. SAFETY DEPOSIT BOX
3. EXPLOSIVE MAGAZINE
4. NON - DEPARTMENT
5. IMPOUND LOT
6. OTHER DEPT. FACILITY
7. NOT APPLICABLE

DISPOSITION
1. DESTROYED
2. ESCHEATED
3. EXPENDED IN LABORATORY
4. RELEASED TO OWNER/FINDER
5. DONATED
6. FORFEITURE
7. OTHER
8. CONVERTED TO DEPT. USE
9. TRANSFERRED
10. FWD TO DHQ
11. FWD TO FSU

REMOVAL CODE
1. CUSTODY
2. COURT
3. LABORATORY
4. OTHER
5. ESCHEATABLE
6. COMPUTER CRIME OFFICE
7. FINAL DISPOSITION
8. INVESTIGATION
9. REPACKAGE
10. FSU

15. ITEMS - (ONE ITEM PER LINE)	16. TYPE PROP	17. CODE	18. QTY	19. VALUE	20. STORAGE AREA CODE	21. DISP. CODE
1 CD-R CONTAINING RECORDED INTERVIEW	7	6	1	0.00		
2						
3						
4						
5						

22. PROPERTY IN	22. PROPERTY OUT	23. DATE & TIME	24. ITEM NO.(S)	25. OFFICER'S SIGNATURE/BADGE NO.	26. CUSTODIAL OFFICER'S INIT/BADGE NO.	27. REMOVAL CODE, LOCATION & REMARKS	28. ESTIMATED DATE OF RETURN	29. COMPUTER ENTRY

30. I HEREBY CERTIFY THAT I AM THE OWNER OF PROPERTY OR AUTHORIZED AGENT TO RECEIVE ITEM(S) NO.

31. CLAIMANT'S NAME	OWNER'S NAME	ADDRESS	TELEPHONE NO.

32. CLAIMANT'S SIGNATURE	OWNER'S SIGNATURE	DATE

33. PICS APPROVAL NO.	34. INACTIVE [ ]

1. PROPERTY RECORD CONTINUATION

2. CAD/CASE NO. PA 2019-228739

3. INVENTORY NO. H03-25782A

000196

SP 7 - 007

PENNSYLVANIA STATE POLICE
PROPERTY RECORD

1. PROPERTY RECORD CONTINUATION

2. CAD/CASE NO. PA 2019-228739

3. INVENTORY NO. H03-25782

4. STATUS	5. OFFENSE	6. STATION/DISTRICT OFFICE
☒ EVIDENCE ☐ FOUND ☐ RECOVERED ☐ RECEIPT ☐ OTHER	ACT 64	CHAMBERSBURG/2130

7. SUBMITTING OFFICER	BADGE NO.	8. RECEIVING OFFICER	BADGE NO.	9. DATE	TIME
TPR DONN A REID	10361				

10. INVESTIGATING OFFICER	BADGE NO.	11. SIGNATURE OF RECEIVING OFFICER
TPR STEVEN P NESBIT	10233	

12. FOUND OR RECOVERED FROM	ADDRESS	TELEPHONE NO.	LOCATION	13. DATE	TIME
35 REDWOOD ST.	PA	N/A	CHAMBERSBURG BOROUGH	2/22/2019	1349

14. CODES

STORAGE AREA
1. PROPERTY ROOM
2. SAFETY DEPOSIT BOX
3. EXPLOSIVE MAGAZINE
4. NON - DEPARTMENT
5. IMPOUND LOT
6. OTHER DEPT. FACILITY
7. NOT APPLICABLE

DISPOSITION
1. DESTROYED
2. ESCHEATED
3. EXPENDED IN LABORATORY
4. RELEASED TO OWNER/FINDER
5. DONATED
6. FORFEITURE
7. OTHER
8. CONVERTED TO DEPT. USE
9. TRANSFERRED
10. FWD TO DHQ
11. FWD TO FSU

REMOVAL CODE
1. CUSTODY
2. COURT
3. LABORATORY
4. OTHER
5. ESCHEATABLE
6. COMPUTER CRIME OFFICE
7. FINAL DISPOSITION
8. INVESTIGATION
9. REPACKAGE
10. FSU

15. ITEMS - (ONE ITEM PER LINE)	16. TYPE PROP	17. CODE	18. QTY	19. VALUE	20. STORAGE AREA CODE	21. DISP. CODE
1 GLOCK 19 SER#SYK946	13	6	1	350.00		
2 9MM MAGAZINES	59	6	5	50.00		
3 BAG OF 9MM AMMUNITION (79 ROUNDS)	59	6	1	30.00		
4 BOX OF WINCHESTER 9MM AMMUNITION	59	6	1	20.00		
5 DIGITAL SCALE WITH PAPERWORK	11	6	1	10.00		

22. PROPERTY IN	22. PROPERTY OUT	23. DATE & TIME	24. ITEM NO.(S)	25. OFFICER'S SIGNATURE/BADGE NO.	26. CUSTODIAL OFFICER'S INIT/BADGE NO.	27. REMOVAL CODE, LOCATION & REMARKS	28. ESTIMATED DATE OF RETURN	29. COMPUTER ENTRY

30. I HEREBY CERTIFY THAT I AM THE OWNER OF PROPERTY OR AUTHORIZED AGENT TO RECEIVE ITEM(S) NO.

31. CLAIMANT'S NAME	OWNER'S NAME	ADDRESS	TELEPHONE NO.

32. CLAIMANT'S SIGNATURE	OWNER'S SIGNATURE	DATE

33. PICS APPROVAL NO.	34. INACTIVE ☐

000197

	ITEMS - (ONE ITEM PER LINE)	TYPE PROP	CODE	QTY	VALUE	STORAGE AREA CODE	DISP. CODE
6	BOTTLE OF DRUG CUTTING AGENT-POLYETHYLENE GLYCOL	11	6	1	0.00		
7	BLACK HAND BAG CONTAINING (2) GUN BOXES	59	6	1	1.00		
8	MAKEUP BAGS WITH PACKAGING	25	6	5	20.00		
9	USPS PRIORITY MAIL BOX CONTAINING MAKEUP BAG	25	6	1	10.00		
10	BRICKS OF COCAINE	10	6	2	0.00		
11	GRAY LG SMART PHONE	75	6	1	20.00		
12	BLACK ALCATEL SMART PHONE	75	6	1	20.00		
13	GRAY ALCATEL SMART PHONE	75	6	1	20.00		
14	BLACK GALAXY S7 SMART PHONE	75	6	1	20.00		
15	BLACK I-PHONE	75	6	1	20.00		
16	CD CONTAINING PHOTOGRAPHS	77	6	1	0.00		

000198

1. PROP. REC. CON.

2. CAD/CASE NO. PA 2019-228739

3. INVENTORY NO. H03-25782

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**Crim. No. 1:19-CR-251**
	:	
v.	:	
	:	**(JUDGE RAMBO)**
ADAM NEFTALI SANTANA,	:	
Defendant	:	
	:	**(Filed Electronically)**

BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMSS THE INDICTMENT

COMES NOW, the United States of America, by and through its attorneys, Bruce D. Brandler, Acting United States Attorney for the Middle District of Pennsylvania, and Scott R. Ford, Assistant United States Attorney and files this Response to Defendant's Motion to Dismiss the Indictment. (Doc. 67.)

I. INTRODUCTION

When presenting testimony to the Grand Jury in order to indict the defendant, U.S. Postal Inspector Michael Corricelli made two minor inaccurate statements. First, he stated that the defendant moved a parcel containing two sham kilograms of cocaine into his residence, when in fact a maintenance worker had moved the package into the

home earlier. Second, Inspector Corricelli stated a second package containing two kilograms of cocaine had arrived at the postal facilities in Harrisburg "later in the day" when in fact the "second package" actually arrived a few minutes before a first package which also contained two kilograms of cocaine.

Neither of these inaccuracies significantly influenced the Grand Jury's decision to indict the defendant. With regard to the controlled delivery, the Grand Jury also heard that the defendant opened the package containing sham cocaine and when officers executed a search warrant on his residence, the defendant fled out of the back of his residence, with the two fake kilograms of cocaine. Further, the Grand Jury heard that upon seeing law enforcement, the defendant threw the fake kilograms and tried to run. Further, the arrival of the packages was of little significance as both were destined for the defendant's home and both contained two kilograms of cocaine. For these reasons, there is no basis to dismiss the indictment and the defendant's motion should be dismissed.

II. FACTS

A. The Controlled Delivery

On February 22, 2019, United States Postal Inspectors intercepted two parcels addressed to 35 Redwood Street, Chambersburg, PA 17201. (Government Exhibit (GE) 1, Pennsylvania State Police (PSP) Incident Report PA19-228739, pg. 3.) Parcel Number 95055 11017439050164884 was received at the U.S. Postal Service Processing and Distribution Center in Harrisburg at approximately 12:49 A.M. and Parcel Number 9505511017429051 176795 was received at approximately 12:38 A.M. Inspectors conducted a K-9 lineup for both parcels and a K-9 alerted to both.

On the morning of February 22, 2019, a federal search warrant was obtained on package number 95055 11017439050164884.[1] Upon executing the warrant, law enforcement found two multicolored bags, each containing approximately one kilogram of suspected cocaine. That same day, February 22, 2019, at 1:17 P.M., members of the Pennsylvania State Police, Franklin County Drug Task Force, and the

[1] Inspectors would later obtain a search warrant for parcel number 9505511017429051 on Monday, February 25, 2019. (GE 1, pg. 6.)

United States Postal Inspectors performed a controlled delivery of the parcel to 35 Redwood Street, Chambersburg, Pennsylvania. Upon delivery of the parcel, by a U.S. Postal Inspector, it was placed on the front porch and in front of the main door of the residence. (*Id.*)

At approximately 1:24 P.M., officers observed Eric Wagaman, of Valley Community Housing Corporation, pull into 35 Redwood Street. Mr. Wagaman was a maintenance mechanic and operating a Valley Community Housing Corporation vehicle. Upon pulling into the driveway, Mr. Wagaman and James Duvall, another maintenance employee, exited the vehicle and approached the front door. Mr. Wagaman proceeded to pick up the parcel and enter the residence. The parcel was placed inside and Wagaman proceeded to open the garage door of the residence. (*Id.*, pg. 7.)

At that time, Trooper Steven Nesbit, of the Pennsylvania State Police made contact with an employee at the Community Center of Redwood Park. Trooper Nesbit asked the employee to contact Mr. Wagaman and have him return to the office. The employee complied with the request and Mr. Wagaman returned to the office. Mr.

Wagaman informed Trooper Nesbit that new flooring had been installed at 35 Redwood Street and he had gone to the residence to put the stove, refrigerator, toilet, and several other items into the proper place. Trooper Nesbit asked about the parcel and Mr. Wagaman stated he observed it at the front door and it was common practice for him pick up parcels left outside residences, place them inside, and a leave a note on the front door informing the owner that he had moved the parcel inside. Trooper Nesbit informed Mr. Wagaman that he was conducting an active investigation and asked that Mr. Wagaman not enter the home. (*Id.*)

As Trooper Nesbit spoke with Mr. Wagaman at the community center, he was informed by other surveillance members that the defendant, Adam Santana, had pulled into the driveway of 35 Redwood Street in a white Ford Expedition. Upon his arrival, Santana walked into the residence with a female, later identified as his 10 year old daughter, Adanielis Santana. At 1:45 P.M., a GPS tracking device located in the parcel indicated the parcel had moved. At 1:47 P.M., a light sensor inside the parcel was activated indicating the sham

kilograms of cocaine the officers had placed inside the parcel were exposed to light. Law enforcement then executed a search warrant on the residence and Santana was observed fleeing out the back of the residence with the sham kilograms of cocaine in his hands. At that time, he was taken into custody. (*Id.*)

B. The Grand Jury Testimony

On August 28, 2019, U.S. Postal Inspector Michael Corricelli presented testimony to the Grand Jury in support of an indictment against Santana. Inspector Corricelli testified to the following in regard to the controlled delivery on February 22, 2019:

> "And then one of the postal inspectors puts on a uniform of a letter carrier. We delivered it to that address, 35 Redwood in Chambersburg. An individual later identified as Adam Santana took the box into the house, opened the box. And upon the box being opened, we executed a state search warrant for the residence."

(GE 2, Grand Jury Testimony of Inspector Corricelli, pg. 5.)

Inspector Corricelli also testified to the following in regard to Parcel Number 9505511017429051176795:

> "Surprisingly enough, a second package arrived later that day from the same address and the same fictitious name. Based on those parameters, we the next day ran a

> dog. A PSP drug detection K-9 alerted again to the presence of narcotics."

(*Id.*, pg. 14.)

III. PROCEDURAL HISTORY

On August 28, 2019, the defendant was charged by way of indictment with: conspiracy to possess with the intent to distribute five kilograms and more of cocaine, in violation of 21 U.S.C. §846 (Count 1); attempt to possess with intent to distribute 500 grams and more of cocaine, in violation of 21 U.S.C. §846 (Count 2); and possession of a firearm in furtherance of drug trafficking, in violation of 18 U.S.C. §924(c) (Count 3). (Doc. 1.) Trial is scheduled to begin on Monday, August 16, 2021.

On Friday, August 13, 2021, the defendant filed a "Motion to Dismiss the Indictment," based on factual inaccuracies in Inspector Corricelli's Grand Jury testimony. (Doc. 67.)

The Government now responds.

IV. RELEVANT LAW

The dismissal of a federal indictment is a " 'drastic remedy.'" *United States v. Muhammad*, 336 F. App'x 188, 193 (3d Cir. 2009)

(quoting *United States v. Morrison*, 449 U.S. 361, 365 n.2 (1981)). As a general matter, a district court may not dismiss an indictment based upon alleged errors in grand jury proceedings unless those errors prejudiced the defendant. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254 (1988). In order to find prejudice, "the district court must establish that 'the violation substantially influenced the grand jury's decision to indict,' or . . . [that] there is 'grave doubt' that the decision to indict was free from the substantial influence of such violations." *United States v. Soberon*, 929 F.2d 935, 939-40 (3d Cir. 1991) (quoting *Bank of Nova Scotia*, 487 U.S. at 256). "[T]he presentation of . . . allegedly perjured testimony to the grand jury does not fall into the narrow category of cases in which dismissal of charges without a showing of prejudice is warranted." *Id.* at 940.

V. ARGUMENT

The only material differences between the facts and Inspector Corricelli's Grand Jury Testimony are as follows:

a. Inspector Corricelli testified that Santana took the parcel inside the house, when in fact a maintenance worker, Mr. Wagaman, took the parcel inside the house.

b. Parcel Number 9505511017429051 176795 was actually received at the Processing and Distribution Center 11 minutes prior to 95055 11017439050164884 rather than "later that same day."[2]

It is clear that neither of these statements prejudiced the defendant in such a way as to justify dismissing the indictment. It is highly doubtful the fact Mr. Wagaman took the parcel into the residence instead of the defendant or the timing of the arrival of the parcels influenced the Grand Jury in any significant way. This is particularly true as Inspector Corricelli also testified:

> "And upon the box being opened, we executed a state search warrant for the residence. At that time Mr. Santana was trying to run out of the back door with the two fake kilos. And upon seeing law enforcement, he threw the kilos, tried to run, and was intercepted."

(GE 2, Grand Jury Testimony, pg. 5.)

The defendant is not contesting the factual consistency of this statement, nor is he contesting that both packages seized on February

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[2] Santana argues Inspector Corricelli's Grand Jury testimony was also inaccurate because, "The Government did not use an agent dressed as a letter carrier." (Doc. 67, pg. 2.) However, the package was in fact delivered to 35 Redwood Street by a Postal Inspector dressed as a letter carrier. (GE 1, pg. 3.) Therefore, this point requires no further consideration.

22, 2018 and destined for the defendant's residence contained two kilograms of cocaine. (*Id.* pgs. 4 and 11.) Given this additional testimony, the grand jury's decision to indict was clearly not "substantially influenced" by the inaccuracies, nor can it be said to place the Grand Jury's decision to indict in "grave doubt." *Soberon*, 929 F.2d at 939-40. Thus, the defendant's motion is without merit and should be denied.

VI. CONCLUSION

For these reasons, there is no basis to dismiss the indictment and the defendant's motion should be denied.

Respectfully submitted,

BRUCE D. BRANDLER
Acting United States Attorney

Dated: August 13, 2021

/s/ Scott R. Ford
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**Crim. No. 1:19-CR-251**
	:	
v.	:	
	:	**(JUDGE RAMBO)**
ADMAN NEFTALI SANTANA,	:	
Defendant	:	
	:	**(Filed Electronically)**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this Friday, August 13, 2021, she served a true and correct copy of the foregoing

BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT

by mailing a copy to:

Jose Ongay, Esquire
jlolaw@live.com

/s/Irana Abrams
Irana Abrams
Legal Assistant

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

UNITED STATES OF AMERICA,	:	**No: 19-CR-251**
	:	
v.	:	
	:	
ADAM NEFTALI SANTANA,	:	
	:	
Defendant.	:	**Judge Sylvia H. Rambo**

ORDER

AND NOW, this 16th day of August 2021, upon consideration of Defendant's motion to dismiss the indictment and after hearing oral argument on the motion, **IT IS HEREBY ORDERED** that the motion is **DENIED** for the following reasons:

The law is clear that a district court may not dismiss an indictment based on prosecutorial misconduct in grand jury proceedings without making a factual finding that the defendant was prejudiced. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 251 (1988). To find prejudice, the court must establish that "the violation substantially influenced the grand jury's decision to indict," or that "there is grave doubt that the decision to indict was free from the substantial influence of the violations." *Id.*

The Defendant's motion focuses on two errors before the grand jury. The first error is that the postal inspector testified before the grand jury that the package at issue was delivered to Defendant's residence by an undercover postal agent wearing

a mailman uniform, when in fact it was dropped off by an actual mailman. I fail to see how this error could have influenced the grand jury's decision in any way. The identity of the person that delivered the package has no impact on whether probable cause existed to indict Defendant for his alleged crimes. The error was therefore harmless and did not prejudice defendant.

The second error is that the postal inspector testified that after delivery, the defendant was the one who picked up the package from his doorstep and brought it inside his house. This testimony was incorrect because, as the police reports show, it was actually a maintenance worker at the property that picked up the package and brought it inside.

This error was misleading and more significant, and it may have added some level of persuasiveness to the government's showing before the grand jury. Nevertheless, the court does not have grave doubt that the that the decision to indict was free from the substantial influence of the error because, just as the Third Circuit found in *United States v. Lawrence,* 708 F. App'x 84, 87 (3d Cir. 2017), the grand jury was presented with "considerable additional evidence supporting a decision to indict."

This evidence included the following:

1. The package was addressed to a name that was not associated with anyone that received mail at the residence;

2. The Defendant opened the package inside his residence;

3. The Defendant sliced into the substance that had been replaced for the real cocaine;

4. The package that was sent to Defendant's residence had contained cocaine in "unique flower cosmetic bags," and police found several more of the same unique bags inside Defendant's residence, in the same location that he had cut into the package. The police also determined several packages of similar weight had been sent to Defendant's residence, also from fictitious addresses, in the months leading up to his receipt of the package at issue;

5. On the same day of Defendant's arrest, police intercepted a second package addressed to Defendant's residence. Just as the first package, the second package contained cocaine inside cosmetic bags, and it was sent using the same fictitious address as the first package;

6. After Defendant was arrested, police recovered a digital scale from his residence, as well as one or more chemicals commonly used by drug traffickers to cut cocaine;

7. Police recovered a firearm from Defendant's residence, and it is very common for police to find such firearms in the vicinity of people trafficking in narcotics, and especially cocaine.

This evidence, presented to the grand jury, provides strong cause to believe that Defendant attempted to receive the package believing to be cocaine, regardless of the fact that it was a different individual who brought the package inside from the

doorstep. The grand jury was thus presented with considerable additional evidence to support Defendant's indictment, and there is no grave doubt that the decision to indict was free from the substantial influence of the erroneous testimony.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

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

UNITED STATES OF AMERICA	:	
	:	Criminal Case No. 1:19-CR-251
vs.	:	
	:	(Judge Wilson)
ADAM NEFTALI SANTANA,	:	
Defendant	:	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
DAY 1, PAGES 1 THROUGH 152

BEFORE THE HONORABLE JENNIFER P. WILSON
UNITED STATES DISTRICT COURT JUDGE
NOVEMBER 8, 2021; 9:07 A.M.
HARRISBURG, PENNSYLVANIA

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Luz Meck, Spanish Interpreter

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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(The following proceedings were held in the courtroom in the absence of the prospective jurors:)

THE COURT: Please be seated. Good morning. This is the case of *United States v. Adam Neftali Santana*. We're here today for a jury trial.

I held an off-the-record pretrial conference by telephone with defense counsel and government counsel on Friday, November 5th, and we are now on the record in Courtroom 1 for purposes of essentially putting on the record any remaining matters that need to be of record before we begin jury selection.

So the first matter is that we discussed the use of a sidebar headset system, and in addition to the sidebar headset system for counsel, which we will use in just a moment to make sure it's working for all counsel, we also have now a headset system for purposes of interpreting. Are you able to hear, Mr. Santana?

THE DEFENDANT: Yes.

THE COURT: All right. Very good. And when we conclude this brief on-the-record conference, I'll give counsel an opportunity, we'll use the attorneys' sidebar headset system. We also need to provide a *Brady* notice for Mr. Santana.

So before we begin this trial, I note that Federal Rule of Criminal Procedure 5 was amended on October 21 of 2020

to require courts to give both oral and written notice of the government's *Brady* disclosure obligations on the first scheduled court date when both the prosecutor and defense counsel are present. In your case, Mr. Santana, today is the first opportunity for the required oral notice, so I am providing that notice to you now.

I hereby issue an order confirming that the United States has an obligation to timely disclose *Brady* information to the defendant. I remind government counsel that failure to comply with these disclosure obligations may result in consequences, such as the exclusion of evidence, dismissal of charges, contempt proceedings, disciplinary referral, and any other relief authorized by law. I will enter a written order further confirming these obligations.

To be clear, this amendment does not alter or expand the government's existing obligations. It simply requires courts to provide notice to defendants at the earliest opportunity. Do you have any questions about that notice, Mr. Santana?

THE DEFENDANT: No.

THE COURT: Okay. Have our interpreters been sworn, Ms. Edleblute?

COURTROOM DEPUTY: Yes.

THE COURT: All right. Very good. So then counsel for the United States, is there anything following from our

off-the-record pretrial conference or otherwise that you would like to place on the record before jury selection?

MR. FORD: No, Your Honor.

THE COURT: Mr. Ongay?

MR. ONGAY: No, Your Honor.

THE COURT: All right. Very well. We will conclude this conference. We'll go off the record.

(Discussion held off the record.)

(Recess taken.)

(Prospective jurors enter courtroom.)

THE COURT: Good morning. Please be seated, everyone. Ladies and gentlemen, I am Judge Jennifer Wilson, and I am the trial judge for the case that brings you into the courtroom this morning.

You have been called today as prospective jurors for the case of *United States v. Adam Neftali Santana.* This is a criminal case. Seated in front of me are members of my staff. To my left is our court reporter, who will be making a record of everything said in the courtroom, which is called a transcript. Seated next to the court reporter is my law clerk, Katie Dixon, who will be assisting me during this trial. And then to her right is my courtroom deputy for this case, who you already met, Tori Edleblute.

I join everyone in this room in thanking you for your service already as jurors today. I understand that you watched

a video this morning called, *Called to Serve*. I've watched it, as well, and so I'm aware that you've already had some degree of explanation of the importance of service, as well as the process of jury selection. I will do my best not to repeat the points already made in the video as we move ahead with the selection of the jurors who will decide this case.

In just a few moments, I'm going to begin asking you questions to assess your qualifications to sit as jurors in this case. You are about to take an oath to answer my questions truthfully. As you know already from the video, this process is called voir dire. So I'll now ask you all to stand so that the courtroom deputy can administer an oath.

COURTROOM DEPUTY: Please raise your right hand.

(Prospective jurors sworn.)

COURTROOM DEPUTY: Thank you.

THE COURT: Thank you, jurors. Please be seated. So the voir dire examination will begin with a brief statement about the particulars of this case. The purpose of providing this statement is to tell you about the case very generally and to identify the parties and their lawyers.

Questions will then be asked to find out whether you have any personal knowledge of or interest in the case before us and also to determine whether there's any reason why you cannot render a fair and impartial verdict. Please accept this questioning process in the spirit of its objective, which is to

select a fair and impartial jury.

Before I delve into questioning, I do need to provide one more important explanation. As you're all aware, there are various masking policies in Pennsylvania and throughout our country. The same is true in our federal courthouse. As a result, inside the courthouse, in accordance with federal requirements, everyone is required to wear a mask at all times with one exception.

The exception arises when a courtroom participant is speaking, such as myself when I'm speaking to you or to counsel, witnesses when they are testifying, and counsel when they are conducting examinations or making statements or arguments.

So before you came into court this morning, you were all asked to fill out a questionnaire, and that's done in an effort to streamline this jury selection process. The attorneys and I each have a copy of your completed questionnaires, and we will refer to your answers rather than making you repeat all of your answers.

You have each been assigned a juror number on the sticker on your jacket or your top, and we do that in an effort to protect your privacy. I will refer to you by your juror number, and I will ask you to identify yourself, at the right moment, by your juror number.

If you do have a response to a question I ask, you'll

let me know that by raising your hand. We'll bring a microphone to you so that we can all hear your answer, and when it's your turn to respond, please stand up, state your juror number, and then provide your answer. As I mentioned, we do have a microphone, and we'll circulate that to you as needed so that we make an accurate transcript of everything said in the courtroom.

Now, if I ask a question that you would be more comfortable answering without the other prospective jurors hearing your answer, you should simply ask to speak to me up front. This is called a sidebar conference. For your information, the attorneys will be able to listen, it will be taken down in the record, but I can offer you this option to protect your privacy.

(Cellphone ringing.)

If anyone has a cellphone on -- no one is in trouble -- just silence them now. We want to make sure we don't have any disruptions. All right? So everyone take a moment, maybe, and just make sure.

All right. Anytime there is a sidebar conference, for everyone's knowledge, we will turn on the white noise and we will use a special set of headphones up front in the courtroom. This is intended to enable us to have a private conversation up here at the bench.

It is intended that you folks who are prospective

jurors and in the gallery will not hear this conversation. If you can hear the conversation, please let me know that right away by raising your hand.

If you come forward, we will provide you with headphones, and we will ask you to keep those throughout jury selection. But, again, it is intended that if you utilize that option, that it's a private conversation.

Now, after I conclude the questioning, I will ask all prospective jurors to remain seated while I confer with counsel up here at the bench for a sidebar conference. After I finish conferring with counsel about who should be excused for cause and after counsel has an opportunity to exercise their peremptory challenges, I will then identify the jurors who will be empaneled for this case.

This process does take some time, I'll move as quickly as possible, but I do ask for your patience, your attention, and, most importantly, your honesty, as this is a matter of great importance to the parties and their counsel, as well as to this court.

So I will now turn to the questioning, beginning with a description of the case.

(Whereupon, the voir dire was conducted, and a jury of twelve and two alternates was empaneled.)

THE COURT: All right. Jurors, please remain standing, and Ms. Edleblute will -- actually, before I do that,

Mr. Ford, are you satisfied with the jury?

MR. FORD: Yes, Your Honor.

THE COURT: Mr. Ongay, are you satisfied with the jury?

MR. ONGAY: Yes, Your Honor.

THE COURT: All right. Ms. Edleblute, please administer an oath.

COURTROOM DEPUTY: Please raise your right hand.

(Jury sworn.)

COURTROOM DEPUTY: Thank you.

THE COURT: All right. Thank you. Empaneled jurors, you can be seated. The way we will proceed at this point is, I'm going to ask our empaneled jurors to remain in the courtroom. In just a moment, I'm going to allow our excused jurors to process out of the courtroom.

So for empaneled jurors, just please remain seated when your colleagues are excused. We have to give Ms. Edleblute a few moments to make sure that our excused jurors are processed out.

I do want to thank all of you collectively and, in particular, those of you who are now being excused. The service that you've rendered this morning is incredibly important to this process. I know you watched a video that explained that to you, but I do want to just emphasize that you do have this court's appreciation. I know that counsel and the

parties also appreciate the service you rendered.

In order to enable us to select a fair and impartial jury, it takes a large room of people who are willing to come in and serve and provide your time and answer questions, sometimes uncomfortable questions, with honesty. So we all appreciate the service that you've rendered this morning.

So with that, I'm going to invite Ms. Edleblute to go to the back door, and so for those of you who are now excused, you can go ahead and proceed out, and we'll wait just a moment while you do that.

(Excused prospective jurors leave courtroom.)

So, now, empaneled jurors, we are going to take a recess in just a moment, and so when we do, Ms. Edleblute will escort all of you into the jury deliberation room, which is through that door right over there. We're going to take a lunch recess.

And before you return to the courtroom, Ms. Edleblute will be doing a couple of things. She'll give you some instructions about your conduct as jurors. She'll give you some instructions, as well, in the form of a binder that will be something you can utilize throughout the trial. So she'll give that to you before we come back in here.

And I do want you to know that your personal items will be absolutely safe in the jury room. You're in a federal courthouse, and that room is as secure as it can be, so you can

feel free to leave your personal items in the jury deliberation room. And when you return, the only thing you'll bring with you is the binder, if you wish, and it does have notepaper, and we'll give you a writing implement.

I do have to ask that you leave your cellphones and any other electronic devices in the jury deliberation room. And, as I said, where we'll pick up after lunch is, I will provide you some specific instructions for your conduct as jurors and your evaluation of the evidence in this case, and then counsel will have the opportunity to present opening statements.

So one just cautionary note before we part ways and let you take a lunch break is, I do have to ask that you not discuss this case. I know you haven't learned much yet, but the little bit of information you've been provided, you can't discuss that between yourselves or with anyone else until it's time to deliberate in this case. So I would just give you that one cautionary instruction. You can talk about anything else of a personal interest except this case until it's time to deliberate.

So for everyone's planning purposes, it is now a few minutes after 12:00. We will return at 1:15 following the lunch recess, and we'll begin at that point with instructions and opening statements. Court is in recess.

(Luncheon recess taken.)

(The following proceedings were held in the courtroom in the absence of the jury:)

THE COURT: Thank you. Please be seated. A couple of quick things just off the record while we're getting assembled.

(Discussion held off the record.)

THE COURT: We're going to go on the record for just a minute. Based on an off-the-record conference with counsel, it has been determined that we will not have witness sequestration of fact witnesses or any witnesses in this case based on the request of defense counsel.

It had been previously discussed during our off-the-record pretrial conference that all fact witnesses would be sequestered, but based on an agreement of counsel, we are no longer sequestering any fact or other witnesses in this case.

With that, counsel for the United States, are you prepared for the jury?

MR. FORD: We are, Your Honor.

THE COURT: Counsel for the defendant, are you prepared for the jury?

MR. ONGAY: Yes, Your Honor.

THE COURT: We'll bring the jury in.

(Jury enters courtroom.)

THE COURT: Please be seated, everyone. Welcome back from our lunch recess, jurors.

Now that you have been sworn, it's my job to tell you what your role is as jurors in this case, and so let me begin by inviting you, if you wish, I've provided you with the same set of instructions I'm about to read. They are in your binder. Again, some people remember better from reading than listening, so you have both options available to you. You're under no obligation to read along, but you can, if you'd like.

So with respect to your role, under our system of justice, the role of the jury is to find the facts of the case based on the evidence presented in the trial. You must decide the facts only from the evidence presented to you in this trial. From the evidence that you will see and hear in court, you will decide what the facts are and then apply to those facts the law that I will give to you in my final instructions. That is how you will reach your verdict.

Whatever your verdict, it will have to be unanimous. All of you will have to agree on it or there will be no verdict. In the jury room, you will discuss the case among yourselves, but ultimately each of you will have to make up his or her own mind. Therefore, each of you has a responsibility which you cannot avoid, and you should do your best throughout the trial to fulfill this responsibility.

I play no part in finding the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or about what your verdict should

be. My role is to make whatever legal decisions have to be made during the course of the trial and to explain to you the legal principles that must guide you in your decisions.

You must apply my instructions about the law. Each of the instructions is important. You must not substitute your own notion or opinion about what the law is or ought to be. You must follow the law that I give to you whether you agree with it or not.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by any person's race, color, religion, national ancestry, gender, or position in life or in the community.

Here are some important rules about your conduct as jurors:

One, keep an open mind. Do not make up your mind about the verdict until you have heard all of the evidence in the case and I have given you final instructions about the law at the end of the trial and you have discussed the case with your fellow jurors during your deliberations.

Two, do not discuss the case among yourselves until the end of the trial when you retire to the jury room to deliberate. You need to allow each juror the opportunity to keep an open mind throughout the entire trial. During trial, you may talk with your fellow jurors about anything else of a

personal nature or of common interest.

Three, during the trial, you should not speak to any of the parties, lawyers, or witnesses involved in this case, not even to pass the time of day. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride in the elevator, or the like, remember, it is because they are not supposed to talk or visit with you either.

Four, do not talk with anyone else or listen to others talk about this case until the trial has ended and you have been discharged as jurors. It is important not only that you do justice in this case, but that you give the appearance of justice. If anyone should try to talk to you about the case during the trial, please report that to me through the courtroom deputy immediately. Do not discuss the situation with any other juror.

Five, do not discuss this case with anyone outside the courtroom or at home, including your family and friends. You may tell your family or friends that you have been selected as a juror in a case, and you may tell them how long the trial is expected to last.

However, you should also tell them that the judge instructed you not to talk any more about the case and that they should not try to talk to you about it. The reason for this is that sometimes someone else's thoughts can influence you. Your thinking should be influenced only by what you learn

in this courtroom.

Six, until the trial is over and your verdict is announced, do not watch or listen to any television or radio news programs or reports about the case or read any news or Internet stories or articles about the case or about anyone involved with the case.

Seven, do not use a computer, cellphone, other electronic device or tool of technology while in the courtroom or during deliberations. These devices may be used during breaks or recesses for personal uses but may not be used to obtain or disclose information about this case.

You may not communicate with anyone about the case on your cellphone, through email, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any Internet chat room or by way of any other social networking websites, including Google Plus, FaceBook, MySpace, LinkedIn, and YouTube. You may not use any similar technology of social media even if I have not specifically mentioned it.

Eight, do not do any research or make any investigation on your own about any matters relating to this case or this type of case.

This means, for example, that you must not visit the scene, conduct experiments, consult reference works or dictionaries, or search the Internet, websites, or blogs for additional information or use a computer, cellular phone, or

other electronic devices or tools of technology or any other method to obtain information about this case, this type of case, the parties in the case, or anyone else involved in the case.

Please do not try to find out information from any source outside the confines of this courtroom. You must decide this case based only on the evidence presented in the courtroom and my instructions about the law. It would be improper for you to try to supplement that information on your own.

Nine, finally, you should not concern yourselves with or consider the possible punishment that might be imposed if you return a verdict of guilty.

Now, during the trial, it may be necessary for me to talk with the lawyers out of your hearing. That is called a bench or sidebar conference. If that happens, please be patient. We also ask that you advise me, through my courtroom deputy, if you are able to hear any of the bench or sidebar conferences because, as you know already, the purpose is to hold these discussions outside the hearing of the jury for important reasons.

I know you may be curious about what we are discussing. We are not trying to keep important information from you. These conferences are necessary for me to discuss with the lawyers objections to evidence and to be sure that evidence is presented to you correctly under the rules of

evidence.

We will, of course, do what we can to keep the number and length of these conferences to a minimum. If I think the conference will be long, I will call a recess.

I may not always grant a lawyer's request for a conference. Do not consider my granting or denying a request for a conference as suggesting my opinion of the case or what your verdict should be.

At the end of the trial, you must make your decision based on what you remember of the evidence. You will not have a written transcript of the testimony to review, so you must pay close attention to the testimony as it is given.

If you wish, you may take notes to help you remember what witnesses said. My courtroom deputy has arranged for pens, pencils, and paper. If you do take notes, please keep them to yourself until the end of the trial when you and your fellow jurors go to the jury room to decide the case.

Here are some other specific points to keep in mind about note-taking:

Note-taking is permitted, but it is not required, so you are not required to take notes, and how many notes you may want to take, if any, is entirely up to you. Be brief in your notes. Please make sure that note-taking does not distract you from your tasks as jurors. You must listen to all of the testimony of each witness.

You also need to decide whether and how much to believe from each witness. That will require you to watch the appearance, behavior, and manner of each witness while he or she is testifying. You cannot possibly write down everything that is said, and there's always a fear that a juror will focus so much on note-taking that he or she will miss the opportunity to make important observations.

Also, your notes are memory aids. They are not themselves evidence. So notes are not the same thing as a record or written transcript of the trial. Whether or not you take notes, you will need to rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by notes.

Do not use your notes or any other juror's notes as authority to persuade fellow jurors. In your deliberations, do not give any more or less weight to the views of a fellow juror because that juror did or did not take notes.

Do not assume that just because something is in someone's notes that it necessarily took place in court. It is just as easy to write something down incorrectly as it is to hear or remember it incorrectly.

Notes are not entitled to any greater weight than each juror's independent memory of the evidence. You should rely on your individual and collective memories when you deliberate and reach your verdict.

Also, do not take your notes away from court. I repeat, at the end of each day, please leave your notes in the jury room and do not take them with you. You will leave your notes in the jury room during the lunch break and at the conclusion of each day of trial.

My courtroom staff will collect your notes and place them in a locked room at the end of each day. My staff is responsible for making sure that no one looks at your notes.

Also, immediately after you have finished your deliberations and I have accepted your verdict, my staff will collect and destroy your notes to protect the secrecy of your deliberations.

Only the lawyers and I are allowed to ask questions of witnesses. You are not permitted to ask questions of witnesses. If, however, you are unable to hear a witness or a lawyer or me, please raise your hand and I will correct the situation immediately.

The trial will proceed in the following manner: First, the lawyers will have an opportunity to make opening statements to you. The prosecutor may make an opening statement at the beginning of the case. The defendant's lawyer may make an opening statement after the prosecutor's opening statement, or the defendant may postpone the making of an opening statement until after the government finishes presenting its evidence. The defendant is not required to make

an opening statement.

The opening statements are simply an outline to help you understand what each party expects the evidence to show. What is said in the opening statements is not itself evidence.

Second, after opening statements, the government will introduce the evidence that it thinks proves the charges stated in the indictment. The government will present witnesses, and the defendant's lawyer may cross-examine those witnesses. The government may also offer documents and other exhibits into evidence.

Third, after the government has finished presenting its evidence, the defendant may present evidence, but he is not required to do so. As I will tell you many times during this trial, the government always has the burden or obligation to prove each and every element of the offenses charged beyond a reasonable doubt.

The defendant is presumed to be innocent of the charges. The law never imposes on a defendant in a criminal case the burden of proving his innocence by calling any witnesses, producing any exhibits, or introducing any evidence.

Fourth, after all of the evidence has been presented, the lawyers will have the opportunity to present closing arguments. Closing arguments are designed to present to you the parties' theories about what the evidence has shown and what conclusions may be drawn from the evidence. What is said

in closing arguments is also not evidence, just as what is said in the opening statements is not evidence.

Fifth, after you have heard the closing arguments, I will give you orally and in writing the final instructions concerning the law that you must apply to the evidence presented during the trial. As I am doing now, I may also give you instructions on certain aspects of the law during the trial, as well as at the end of the trial.

Sixth, after my final instructions on the law, you will then retire to consider your verdict. Your deliberations are secret. You will not be required to explain your verdict to anyone.

Your verdict must be unanimous. That means all twelve of you must agree to it. You must keep your minds open during this trial. Do not make up your mind about any of the questions in this case until you have heard each piece of evidence and all of the law which you must apply to that evidence, in other words, until you begin your deliberations.

This trial is expected to last three days. However, this is simply a prediction and not a guarantee. Each day the court will begin trial at 9 o'clock a.m., and we will take a morning break, a lunch break, and an afternoon break with the goal to recess each day at 4:30 p.m. The court may adjust the schedule as needed to accommodate the court, the parties, and the witnesses.

You are permitted to use your cellphones during breaks, but you may not bring your phones into the courtroom.

Now, you must make your decision in this case based only on the evidence that you see and hear in the courtroom. Do not let rumors, suspicions, or anything else that you may see or hear outside of court influence your decision in any way.

The evidence from which you are to find the facts consists of the following: The testimony of the witnesses, documents and other things received as exhibits, and any fact or testimony that is stipulated, that is, formally agreed to by the parties.

The following are not evidence: The statements and arguments of the lawyers for the parties in this case, the questions by lawyers and any questions that I might ask. You must not assume that a fact is true just because one of the lawyers or I ask a question about it. It is the witness's answers that are evidence.

Of course, you may need to consider the question to know what a witness means by his or her answer. For example, if a witness answers "yes" to a question, you will have to consider the question in order to understand what the witness is saying.

Also not evidence are objections by lawyers, including objections in which the lawyers state facts. Also not evidence

is any testimony that I strike or tell you to disregard and anything you may see or hear about this case outside of the courtroom.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events and give it whatever weight you believe it deserves. If your experience and common sense tell you that certain evidence reasonably leads to a conclusion, you may reach that conclusion.

The rules of evidence control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. An objection simply means that the lawyer is asking me to decide whether the evidence should be allowed under the rules.

Lawyers have a responsibility to their clients to make objections when they think evidence being offered is improper under the rules of evidence. You should not be influenced by the fact that an objection is made.

You should also not be influenced by my rulings on objections to evidence. If I overrule an objection, the question may be answered or the exhibit may be received as evidence and you should treat the testimony or exhibit like any other.

I may allow evidence only for a limited purpose. If I do that, I will instruct you to consider the evidence only for that limited purpose, and you must follow that instruction.

If I sustain an objection, the question will not be answered or the exhibit will not be received as evidence. Whenever I sustain an objection, you must disregard the question or the exhibit entirely. Do not think about or guess what the witness might have said in answer to the question. Do not think about or guess what the exhibit might have shown.

Sometimes a witness may have already answered before a lawyer objects or before I rule on the objection. If that happens and if I sustain the objection, you should disregard the answer that was given.

Also, I may order that some testimony or other evidence be stricken or removed from the record. If I do that, I will instruct you to disregard that evidence. That means when you are deciding the case, you must not consider or be influenced in any way by the testimony or other evidence that I told you to disregard.

Although the lawyers may call your attention to certain facts or factual conclusions that they think are important, what the lawyers say is not evidence and is not binding on you. It is your recollection and interpretation of the evidence that controls your decision.

Also, do not assume from anything I do or say during

the trial that I have any opinion about the evidence or about any of the issues in this case or about what your verdict should be.

Two types of evidence may be used in this trial: Direct evidence and circumstantial or indirect evidence. You may use both types of evidence in reaching your verdict.

Direct evidence is simply evidence which, if believed, directly proves a fact. An example of direct evidence occurs when a witness testifies about something the witness knows from his or her own senses, something the witness has seen, touched, heard, or smelled.

Now, circumstantial evidence is evidence which, if believed, indirectly proves a fact. It is evidence that proves one or more facts from which you could find or infer the existence of some other fact or facts. An inference is simply a deduction or conclusion that reason, experience, and common sense leads you to make from the evidence.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to find that a disputed fact exists on the basis of another fact. For example, if someone walked into the courtroom wearing a wet raincoat and carrying a wet umbrella, that would be circumstantial or indirect evidence from which you could find or conclude that it was raining. You would not have to find that it was raining, but you could.

Sometimes different inferences may be drawn from the

same set of facts. The government may ask you to draw one inference, and the defense may ask you to draw another. You and you alone must decide what inferences you will draw based on all of the evidence.

You should consider all the evidence that is presented in this trial, direct and circumstantial. The law makes no distinction between the weight that you should give to either direct or circumstantial evidence. It is for you to decide how much weight to give any evidence.

In deciding what the facts are, you must decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. Credibility refers to whether a witness is worthy of belief. Is the witness truthful? Is the witness's testimony accurate? You may believe everything a witness says or only part of it or none of it.

You may decide whether to believe a witness based on his or her behavior and manner of testifying, the explanations the witness gives, and all the other evidence in the case just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember to use your common sense, your good judgment, and your own experience.

In deciding what to believe, you may consider a number

of factors:

First, the opportunity and ability of the witness to see or hear or know the things about which the witness testifies; two, the quality of the witness's knowledge, understanding, and memory; three, the witness's appearance, behavior, and manner while testifying; four, whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; five, any relation the witness may have with a party in the case and any effect that the verdict may have on the witness; six, whether the witness said or wrote anything before trial that is different from the witness's testimony in court; seven, whether the witness's testimony is consistent or inconsistent with other evidence that you believe; and, eight, any other factors that bear on whether the witness should be believed.

Inconsistencies or discrepancies in a witness's testimony or between the testimony of different witnesses may or may not cause you to disbelieve that witness's testimony. Two or more persons witnessing an event may simply see or hear it differently. Mistaken recollection, like failure to recall, is a common human experience.

In weighing the effect of an inconsistency, you should consider whether it is about a matter of importance or an insignificant detail. You should also consider whether the inconsistency is innocent or intentional.

You are not required to accept testimony even if the testimony is not contradicted and the witness is not impeached. You may decide that the testimony is not worthy of belief because of the witness's bearing and demeanor or because of the inherent improbability of the testimony or for other reasons that are sufficient to you.

After you make your own judgment about the believability of a witness, you can then attach to that witness's testimony the importance or weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testify. What is more important than numbers is how believable the witnesses are and how much weight you think their testimony deserves.

The government has charged the defendant, Adam Neftali Santana, with violating federal law, specifically conspiracy to distribute and possess with intent to distribute cocaine hydrochloride, attempted possession with intent to distribute cocaine hydrochloride, and possession of a firearm in furtherance of a drug trafficking crime.

The charges against Mr. Santana are contained in the indictment. An indictment is just the formal way of specifying the exact crimes Mr. Santana is accused of committing. An indictment is simply a description of the charges against a

defendant. It is an accusation only. An indictment is not evidence of anything, and you should not give any weight to the fact that Mr. Santana has been indicted in making your decision in this case.

Now, to help you follow the evidence, I will now give you a brief summary of the elements of each offense, each of which the government must prove beyond a reasonable doubt in order to convict Mr. Santana of the offenses charged.

With respect to Count 1, conspiracy to distribute and possess with intent to distribute cocaine hydrochloride, the elements are: First, that two or more persons agreed to distribute cocaine hydrochloride; second, that Mr. Santana was a party to or a member of that agreement; and, third, that Mr. Santana joined the agreement or conspiracy knowing of its objectives to distribute cocaine hydrochloride and intending to join together with at least one other alleged conspirator to achieve those objectives, that is, that Mr. Santana and at least one other alleged conspirator shared a unity of purpose and the intent to achieve that objective.

With respect to Count 2, attempted possession with intent to distribute cocaine hydrochloride, the elements are, first, that Mr. Santana intended to commit the crime of possession with intent to distribute a controlled substance as I will define that offense, and, second, that Mr. Santana performed an act constituting a substantial step toward the

commission of possession with intent to distribute a controlled substance which strongly corroborates or confirms that the defendant intended to commit that crime.

Lastly, with respect to Count 3, possession of a firearm in furtherance of a drug trafficking crime, the elements are, first, that Mr. Santana committed the crimes charged in Count 1 or Count 2 of the indictment, and, second, that Mr. Santana knowingly possessed a firearm in furtherance of that crime, and, if so, you must consider whether the possession was in furtherance of conspiracy to distribute and possess with intent to distribute cocaine hydrochloride or attempt to distribute cocaine hydrochloride.

What I have just told you is only a preliminary outline of the elements of the offenses charged. At the end of the trial, I will give you final instructions on the elements of the offenses charged and on other matters of law. Those final instructions will be more detailed, and they will guide you in reaching your verdict in this case.

Mr. Santana has pleaded not guilty to the offenses charged. Mr. Santana is presumed to be innocent. He starts the trial with a clean slate, with no evidence against him. The presumption of innocence stays with Mr. Santana unless and until the government presents evidence that overcomes that presumption by convincing you that Mr. Santana is guilty of the offenses charged beyond a reasonable doubt.

The presumption of innocence requires that you find Mr. Santana not guilty unless you are satisfied that the government has proved guilt beyond a reasonable doubt.

The presumption of innocence means that Mr. Santana has no burden or obligation to present any evidence at all or to prove that he is not guilty. The burden or obligation of proof is on the government to prove that Mr. Santana is guilty, and this burden stays with the government throughout the trial.

In order for you to find Mr. Santana guilty of the offenses charged, the government must convince you that Mr. Santana is guilty beyond a reasonable doubt. That means that the government must prove each and every element of the offenses charged beyond a reasonable doubt. A defendant may not be convicted based on suspicion or conjecture but only on evidence proving guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt or to a mathematical certainty. Possible doubts or doubts based on conjecture or speculation are not reasonable doubts. A reasonable doubt is a fair doubt based on reason, logic, common sense, or experience.

A reasonable doubt means a doubt that would cause an ordinary person -- an ordinary, reasonable person to hesitate to act in matters of importance in his or her own life. It may arise from the evidence or from the lack of evidence or from the nature of the evidence.

If, after hearing all the evidence, you are convinced that the government has proved Mr. Santana guilty beyond a reasonable doubt, you should return a verdict of guilty. However, if you have a reasonable doubt as to an element of an offense, then you must return a verdict of not guilty.

Mr. Santana is charged with more than one offense. Each offense is charged in a separate count of the indictment. The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. You must separately consider the evidence that relates to each offense, and you must return a separate verdict for each offense.

For each offense charged, you must decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of that particular offense. Your decision on one offense, whether guilty or not guilty, should not influence your decision on any of the other offenses charged. Each offense should be considered separately.

All right. Jurors, that concludes my preliminary instructions. We will now turn to the matter of opening statements. And while Mr. -- Mr. Ford, will you be giving the opening statement on behalf of the United States?

MR. FORD: Yes, Your Honor.

THE COURT: All right. So while Mr. Ford gets ready, if any juror wants to stand or stretch, that was a long set of instructions, so feel free to stand and stretch for a moment.

Mr. Ford, you can get into position.

MR. FORD: Yes, Your Honor. Good afternoon, ladies and gentlemen. On February 22nd, 2019, postal inspectors at the Harrisburg Post Office identified two packages that they deemed suspicious.

Both of these packages were headed for 35 Redwood Drive, Chambersburg, Pennsylvania. Both packages had been sent from Puerto Rico, both packages came from a sender that was not associated with the return address, and both packages were headed to an addressee who was not associated with 35 Redwood Street. Additionally, there had been other suspicious packages that had been going to 35 Redwood Street.

So based on that information, U.S. Postal Inspector Michael Corricelli decided to run drug dogs by the two packages. The dog alerted to both packages. Now, Inspector Corricelli wanted to move quickly because he wanted to do what's called a controlled delivery, and I'm going to talk about that here in a second. So he only got a search warrant for the first -- for one package.

He then contacted the Pennsylvania State Police. The Pennsylvania State Police obtained a search warrant for 35 Redwood Street -- or, I'm sorry, before he did that, he opened up the package -- or once he got that search warrant, he opened up the package. Inside the package he found two very distinctive cosmetic bags. These cosmetic bags were zip-tied

shut. He opened up the zip ties. Inside them he found dryer sheets, and also inside he found little trinkets from a dollar store in Puerto Rico.

Additionally, he found two big blocks covered in black carbon paper. Whenever he cut into those black blocks of carbon paper, he identified two kilograms of cocaine in that first package. Based on that information, he contacted the Pennsylvania State Police.

Now, again, he wanted to move quickly because he wanted to do what's called a controlled delivery. So the Pennsylvania State Police obtained the search warrant for the home, 35 Redwood Street, to be executed once the package was delivered inside.

He also was able to get the Pennsylvania State Police to put a helicopter on station, and he also was able to put together a team to enter the house once the controlled delivery happened.

So a postal inspector dressed as a mail carrier arrived at 35 Redwood Street, and he placed a package on the doorstop. It was the same package that Inspector Corricelli had opened, only instead of putting cocaine back inside, they put what's called sham packages. They didn't want to run the risk of the cocaine being placed -- getting away and being out on the street, so instead they were sham packages.

They looked like those black bricks, but they had

sensors in them. There was a light sensor so the officers would know whenever the package was opened. There was also a GPS so they would know if the package was moved.

So that postal inspector placed the package on the front doorstep. There were police officers on station surrounding the house. And, again, they had that helicopter flying above videotaping the entire scene, and you're going to have the opportunity to see the video.

A maintenance worker arrived at the house, Mr. Eric Wagaman, and you're going to hear from Mr. Wagaman. He's going to tell you that he was there to do some work on the house, he saw the package on the front steps. There had been some porch pirates in the neighborhood, so he took the package, moved it inside.

The officers observed this, they saw that it was a maintenance worker, so they went to his boss and asked him to leave. Mr. Wagaman got the phone call, he left the house, and as soon as he left the house, shortly thereafter, the defendant, Adam Neftali Santana, arrived in his car with his ten-year-old daughter.

Mr. Santana and his ten-year-old daughter entered the house, and almost immediately the officers were alerted through that tracker that the package had moved. Shortly thereafter, they were alerted that the package had been opened. With that information, they decided to execute the search warrant.

Officers lined up outside the door, and they entered. As they entered, they went through the living room. They found his ten-year-old daughter in the living room. Then they went through the kitchen and into the garage.

As they were going through the garage, Mr. Santana ran out the back. And as he ran out the back, he had those two black sham packages in his hand. And agents, as they approached him, he threw them away from him because he knew that they were cocaine and he wasn't to have it.

So also inside the house the officers found that package, the one that had been delivered. In just the short amount of time that it took them to execute that search warrant, the mailing address and the return label had been shredded.

Additionally, they found other cosmetic bags very similar to the ones that they found inside this package whenever they opened it. They found other pieces of carbon paper. They also found other trinkets from the exact same dollar store in Puerto Rico, all indicative that he had received previous packages. Additionally, in his bedroom, they found a loaded handgun.

So armed with that information, they then obtained a search warrant for the third package, and you're going to hear about this from Agent -- from Inspector Corricelli. And inside that second package, they also found two bricks of cocaine,

also in almost identical cosmetic bags, also with trinkets from a dollar store in Puerto Rico, also wrapped in carbon paper, also with dryer sheets.

So the charges in this case, Count 1 is conspiracy to possess with intent to distribute five kilograms of cocaine. That addresses the entire amount that we talked about. Count 2 is attempt to possess with intent to distribute 500 grams of cocaine. That's the attempt to possess the 500 kilograms that we talked about. And then, finally, possession of a firearm in furtherance of drug trafficking. That's the possession of the firearm that I mentioned in correlation to the drugs.

Now, the witnesses you're going to be hearing from, after opening statements, you're going to hear from Inspector Corricelli. He's going to tell you about those two packages that I just mentioned. He's also going to mention a previous package that had been delivered to 35 Redwood Street that had been deemed suspicious.

After Inspector Corricelli, you're going to hear from Trooper Nesbit of the Pennsylvania State Police. He led that search, that team that executed the search warrant that went into the house and chased the defendant out the back. Tomorrow morning you're going to hear from Mr. Wagaman. He's that maintenance worker that brought the package inside.

You're also going to hear from Trooper Justin Long. He was stationed at the rear of the house, and he was the

person that ultimately arrested the defendant. Then you're going to hear again from Inspector Corricelli, and he's going to tell you about other packages that had previously been delivered to that address that were very similar.

And, finally, you're going to hear from Corporal Scott Fidler of the Pennsylvania State Police, and he's going to testify for you as what's called an expert in drug trafficking.

We like to think that at this point you probably have no idea what a kilo of cocaine would cost in Chambersburg in 2019 or what's the difference between a kilogram of cocaine versus a gram of cocaine, and Corporal Fidler is hopefully going to put some of those ideas -- teach you about some of these ideas so that you can better understand drug trafficking, the trade, and how it's executed.

Now, again, we represent the United States of America. And as you heard earlier, my name is Assistant United States Attorney Scott Ford, and I'm assisted in this case by Assistant United States Attorney Christian Haugsby. Ms. Shelby Reed is also with our office. She's going to be running the PowerPoint and all of the exhibits you're going to be seeing on your screen.

It's our intent to give you the case, to put the facts before you to let you make the decision. We're not going to be trying to throw any curveballs, we're just going to try and present the facts to you, and at the end, it's our hope that

you will find the defendant guilty on all three counts. Thank you.

THE COURT: Thank you, Mr. Ford. Mr. Ongay, would you like to present an opening statement on behalf of the defendant?

MR. ONGAY: Yes, Your Honor.

THE COURT: Please do.

MR. ONGAY: Your Honor, I'm going to move the podium a little bit. I do need to use a microphone because I tend to be soft-spoken. May I proceed, Your Honor?

THE COURT: Please do.

MR. ONGAY: May it please the court, Mr. Ford, members of the jury, my name is Jose Ongay. I am an attorney, and I represent Mr. Santana in this case.

During my opening statement, I'm going to, just like the government, tell you what I foresee the evidence actually shows in this case. I am going to touch, also, on minor points that I believe the court covered adequately, but I believe they're important from the point of view of your analysis and decision in this case.

First, evidence in a criminal case or in any case cannot come all at once, all at the same time, it comes one witness at a time, one question at a time. You will not be able to really figure out what happened until you have heard all of the evidence and until you have also received the

court's instructions. So try to avoid trying to figure out what happened. It will make the job easier.

There are two concepts, direct examination and cross-examination, and thus it's pretty much the way lawyers present the evidence. The government presents the witnesses by conducting direct examination. The defense then will have the right, whenever it feels is necessary or appropriate, to ask questions of those witnesses, and that is called cross-examination.

Now, it is important for you to recognize that the testimony that you hear during cross-examination is as significant and as important as the testimony that you hear during direct examination. You should give them the same importance.

In terms of evaluating the testimony, just use your common sense, rely on your life experience. Listen very carefully to the witnesses. Listen to their tone of voice and observe their demeanor. With that and the additional instructions the court will give you, that will be more than enough for you to evaluate any testimony presented in this case.

This is a criminal case, so there are some concepts that are unique to a criminal case. There is a presumption of innocence that the court already discussed at length. Please understand that the important thing about that, it's that the

defendant remains innocent throughout the entire proceedings until after you have heard all the evidence, deliberated, and concluded the evidence proving guilt beyond a reasonable doubt.

Now let's talk about guilt beyond a reasonable doubt and the elements. The court will provide you extensive definitions about the three charges that will contain all the necessary explanations and instructions for you to analyze the elements. But think about it simply as an algebraic equation, that is, A plus B equals C.

When you're analyzing the case, we all have gut feelings, we all hear things, and sometimes we come to a conclusion that something happened, and we may come to the conclusion that Mr. Santana is guilty. You may conclude, after you hear all the evidence, before you deliberate, that in your gut, Mr. Santana is clearly guilty.

Then you begin to deliberate after you hear the judge's instructions, and even after that deliberation, you are still convinced that Mr. Santana is guilty in your gut. But when you go through the evidence and you analyze the evidence and try to fit it into the elements of the offense, you'll realize that notwithstanding your gut feeling, an element has not been established. If that happens, regardless of how you feel, you cannot find the defendant guilty. You must find the defendant not guilty.

Now, there are other concepts in the criminal trial

that will affect your -- how you will look at the evidence and how you will judge the case. We went, this morning, through extensive questioning for the purpose of both sides attempting to select what we consider to be a fair juror -- a fair jury, a jury that will give both sides a fair trial.

Human beings tend to -- when they sit in judgment, they think that -- they are going to wait until they hear both sides, and they're going to do that because that is the fair way to do things, let's hear both sides.

In a criminal case, that is incorrect. And that sounds counterintuitive, I understand that. But because the defendant is presumed innocent and a defendant does not have to testify and a defendant does not have to call a single witness, he pretty much does not have to present the other side, so you cannot expect to hear both sides.

You can still give the defendant and the government a fair trial. All you have to do is follow the court's instructions, which she already provided, that the only way you can find the defendant guilty is by evaluating the evidence and making the decision whether the evidence established each element of the offense beyond a reasonable doubt. If you do that, you would have given the defendant more than a fair case, more than a fair trial, as well as the government.

Now let's talk about the case, and let's talk about the facts and the charges. Yes, this actually did not begin on

February the 22nd, 2019. It really began on February the 13th, 2019, when a parcel was intercepted also addressed to 35 Redwood Street and also not addressed to Mr. Santana or any of the members of his household.

If I am correct, my memory serves me right, that parcel was retrieved from the delivery process, exposed to a drug detection dog, and the dog did not alert for the presence of a controlled substance. Then that parcel was allowed to be delivered.

In fact, it was subject to somewhat of a controlled delivery. That parcel was actually placed by postal inspectors or letter carriers -- and I believe it was postal inspectors -- by the front door of 35 Redwood Street.

Now, on the 22nd of February, another parcel is intercepted, and this is the parcel the government discussed and was found to, indeed, contain two kilos of cocaine. This parcel was also not addressed to Mr. Santana or any of the members of his household.

The government did several things before they began the process of the controlled delivery. First, they obtained that warrant that alerted them electronically whenever the parcel was moved or opened.

They also obtained something that is called an anticipatory search warrant. This is not your average search warrant where once it's obtained, the government can then

execute that warrant and search the premises. This warrant had a condition, and the condition is that an individual, presumably a resident of 35 Redwood Street, would accept the parcel and will bring the parcel into the home.

The warrant also contained language that if those conditions were not met, that warrant was null and void and had to be returned to the issuing authority. As the government explained in their opening, that did not take place.

Postal inspectors did not hand-deliver that parcel -- and the evidence will show this -- to Mr. Santana or any of the members of his household. They did not even attempt to deliver it to Mr. Santana or any of the members of his household. They simply placed the parcel in front of the front door and left it there, then a third party comes in and brings it into the home.

The evidence will also show that when the third party, the mechanic, the maintenance person, was inside the home, he was contacted and directed explicitly to leave the location and not to touch the parcel, in other words, do not bring the parcel back out. And the maintenance worker complied, left the property without touching the parcel or bringing it outside.

The evidence will also show you, interestingly, that when this case was presented to the grand jury -- and the grand jury is simply a body that will hear evidence and will approve charges, and those charges, once they're approved, they're called an indictment.

When the government presented its case to the grand jury, they did not tell the grand jury that they had left a parcel by the porch next to the door. They did not tell the grand jury that a maintenance mechanic had brought in the parcel. They did not tell the grand jury that the maintenance, mechanical worker had been instructed to not touch the parcel and leave the premises.

Instead, the testimony to the grand jury, presented by the government to the grand jury was that Mr. Santana accepted the parcel and brought it into the home, a drastic distinction from what actually happened. And, again, this is important because the warrant required that an individual accept the parcel and brings it into the home.

Now, I have just discussed indirectly how the parcel was delivered. And I will not discuss the results of the search. I believe the government covered that. But I'm going to discuss the total parcels that were delivered so that you understand exactly what the evidence really shows.

The evidence is as follows: There were a total of eight parcels that the government alleges were somehow placed in the mail and addressed to 35 Redwood Street. Not one of those parcels was addressed to Mr. Santana, and not one of those parcels was addressed to Mr. Santana's family members that resided at that location.

In addition, only two of those parcels, two of them,

were found to contain a controlled substance. In fact, one of the parcels, the one that I referred to that was the one that sparked the whole thing on the 13th of February, that parcel, as I explained, was intercepted and exposed to the drug detection dog and no alert was provided by the dog that it was a controlled substance.

So out of the eight parcels, there were six that did not contain a controlled substance. And what I mean by that, to be specific, is that there is no direct evidence that there was a controlled substance in those six other parcels, only there is evidence about the last two parcels.

There is also no evidence that any of the parcels were actually handed to Mr. Santana, any of the eight parcels were handed to Mr. Santana. And of the six previous parcels before the ones on the 22nd of February, there is no evidence that Mr. Santana received one of those parcels. There's no signed receipt handed by the postal -- by the letter carrier that you acknowledge that you received the parcel.

Now, the charge of conspiracy to distribute five kilograms or more -- if I may have a second. Five kilograms, excuse me, or more of cocaine, that charge involves all eight parcels. Again, there is only evidence of four kilos.

The court discussed briefly with you the elements of that charge, and one element that I want to discuss is the first one that she mentioned, and that is that two or more

individuals agreed to distribute or possess with intent to distribute a controlled substance, in this case cocaine.

Now, what do we have here? We have here several parcels being sent to an address, and we have, allegedly, someone in that address receiving those parcels. And we do have evidence that in two of the parcels, there were four kilos of cocaine. So there's no question about that. We're not pretending that that did not happen.

The question is, does that evidence establish a conspiracy? It may establish other crimes, but Count 1, it's not other crimes. Count 1 is conspiracy. I submit to you that at best -- and I will argue this and demonstrate it through cross-examination and in my closing argument -- what you have here is a buyer-seller relationship.

And the court is going to instruct you that there is a difference between a conspiracy and a buyer-seller relationship. If you conclude that there was someone selling cocaine to the recipient of those parcels who was, in turn, the buyer, and that is what the evidence establishes, that's not sufficient evidence for you to find the defendant guilty of conspiracy. I'm not saying that the parties did not engage in other criminal activity, but that evidence does not establish conspiracy.

Now, the court will tell you something like this, that the fact that Mr. Santana may have purchased controlled

substances from another person and then, in turn, sold those controlled substances --

MR. FORD: Your Honor, objection. I feel like we're getting into closing argument here rather than opening statement.

THE COURT: Mr. Ongay, opening statement is limited to a preview of what you anticipate the evidence to show.

MR. ONGAY: I understand. I will wrap it up. I'm just going to add, if I may allow one statement on that point, and the evidence, in order to convict my client of conspiracy, will require you to find evidence of other criminal activity besides their agreement between the parties to buy and sell.

The second charge, the second charge deals -- and I will be quicker on that one -- with the attempted possession with intent to distribute the 500 grams or more of cocaine. That charge only involves the first parcel that was intercepted and actually subject to the controlled delivery on the 22nd of February. That count does not address any other deliveries or parcels.

I submit to you that attempted possession with intent to distribute is a specific intent crime. It means it is something that the person clearly intends to commit, and it requires that person to have full knowledge in order for that person to truly form the intent.

The manner in which the parcel was delivered and

reached the interior of 35 Redwood Street, I submit to you respectfully that does not allow the conclusion that Mr. Santana intentionally took possession of that parcel with the intent to distribute cocaine.

The third charge, that one involves the firearm. This charge relates to the firearm that was found in the second-floor bedroom inside a dresser drawer. The firearm was not possessed by Mr. Santana personally. It was not even near Mr. Santana when Mr. Santana was apprehended.

The charge, in order for my client to be convicted, requires that that firearm was used to help in the commission of the conspiracy and in the commission of the attempted possession with intent to distribute the cocaine.

The first time that a firearm is mentioned, it's the very day that my client was apprehended, which was the 22nd of February. So there is no evidence that my client possessed or had a firearm back in November when the government first alleges the conspiracy began.

There are several factors that the court will instruct you -- I believe there are eight of them -- that you will use to determine whether you will conclude whether my client did, in fact, possess the firearm and that the possession of the firearm, in fact, helped him commit either conspiracy or the attempted possession charge.

I will simply instruct you or remind you that the

court is going to instruct you that simultaneous possession of the firearm with --

MR. FORD: Again, Your Honor, I would renew my original objection.

THE COURT: Sustained. Mr. Ongay, you can preview the evidence.

MR. ONGAY: I will wrap it up, Your Honor. Please listen carefully to the evidence, listen carefully to the questions that are asked on cross-examination. I believe that once you do that and you hear the evidence, you will agree that the evidence is insufficient to convict my client.

Last, I'd like to thank you for being here, for agreeing to participate as members of this jury. Generally, in normal circumstances, being part of a jury can present an inconvenience. Today, during the pandemic, it's much more of a sacrifice, and I thank you for that.

THE COURT: Thank you, Mr. Ongay. I think what we'll do is, jurors, we're going to take our afternoon recess briefly, and then when we return, I'll invite the government to present their case-in-chief.

So this is our first recess. I'll just remind you, I know I just instructed you, but while we're on a recess, don't confer with each other or anyone else or do any reading or research about this case. You're going to learn everything here in the courtroom.

So we will stand in recess until -- according to that clock, it's 2:25, so we'll take a recess until 2:45 -- 1:45. Sorry, what time is it?

MR. ONGAY: It is two, Your Honor.

THE COURT: It is now 2:25. We will stand in recess until 2:45.

MR. ONGAY: Thank you, Your Honor.

(Jury leaves courtroom.)

THE COURT: Thank you. Please be seated. I just have two matters that I wanted to bring up, and then I'll give everyone an opportunity for a recess.

Number one, the utilization of interpreters for the benefit of the defendant is not something that I've given -- that I've brought the jury's attention to. I did note during my preliminary instructions several of the jurors were noticing that we have interpreters.

Is there any request on behalf of the defendant that I provide any instruction to the jury regarding --

MR. ONGAY: I think to play it safe, Your Honor, the court should address the issue that there's an interpreter and that that should not be a factor. I think the court may have mentioned something about certain other immutable characteristics, but I think that maybe the fact that my client does not speak English should not be used against him.

THE COURT: Any objection to the court so instructing

the jury?

MR. FORD: No, Your Honor.

THE COURT: All right. I will do that when we return from this recess.

The other issue that I wanted to raise is that there was a fact witness listed by government's counsel in the list of witnesses that the jury could expect to hear from who was not provided to the court in advance and was not previewed to the jury during jury selection, Mr. Wagaman.

MR. ONGAY: Yeah, Mr. -- they notified me, and I saw the email.

THE COURT: Is he listed?

LAW CLERK: It was in the PowerPoint.

THE COURT: All right.

MR. ONGAY: It is.

MR. FORD: We added him Friday, Your Honor. I thought I saw him on your --

THE COURT: Let me make sure. Ms. Dixon thinks the answer is yes. I stand corrected, it is in the instructions. What I was looking at just a moment ago is the witness list that was filed. He's not listed on the witness list, and I inferred from that that he was not listed to the jury.

MR. FORD: Yes, Your Honor.

THE COURT: But problem solved, he was disclosed to the jury, so we do not have an issue with that. All right. Is

there anything else to be raised before we take our recess?

MR. FORD: No, Your Honor.

MR. ONGAY: No, Your Honor.

THE COURT: All right. I'll see you back at 2:45.

(Recess taken.)

THE COURT: Everybody ready? Let's get the jury.

(Jury enters courtroom.)

THE COURT: Please be seated. Welcome back, jurors. I'm going to invite the government to begin their case-in-chief, but before I do, just one additional instruction that I neglected to give you earlier, and that is this:

So the defendant is participating with the aid of two interpreters who are seated at the table behind Mr. Ongay and Mr. Santana. They are using microphones and headsets.

And I just wanted to instruct you that the interpreters are specially trained for such translation. In addition, that the defendant is participating with the aid of the interpreters is not evidence of anything, and you are not to draw any negative inference because of the defendant's use of the interpreters.

All right. With that, I'll invite government's counsel to call their first witness.

MR. FORD: Yes, Your Honor. The government calls Postal Inspector Michael Corricelli.

THE COURT: Inspector, please come forward and remain

standing next to the witness chair until we administer an oath.

MICHAEL CORRICELLI, called as a witness, having been duly sworn or affirmed, testified as follows:

COURTROOM DEPUTY: Could you please state your first and last name and spell your name for the court reporter.

THE WITNESS: Yes, Michael Corricelli. And it's spelled C-o-r-r-i-c-e-l-l-i.

THE COURT: Thank you. Inspector, you can have a seat, and you can feel free to keep your mask off while you testify.

THE WITNESS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. FORD:

Q. Sir, with whom are you employed?

A. I am currently employed by the United States Postal Inspection Service based here in Harrisburg, Pennsylvania.

Q. And what is your duty title?

A. I'm a United States postal inspector, which if you're not familiar -- and a lot of people aren't -- we're the oldest federal law enforcement agency in the country. So I'm a federal agent just like FBI or DEA, Secret Service, just I work specifically for the postal inspectors.

Q. And, Inspector Corricelli, how long have you been a postal inspector?

A. I've been with the inspection service over 20 years. Prior

to that, I spent seven years as a special agent for the Air Force, Office of Special Investigations, and a short stint with the Naval Criminal Investigative Service. So I've been a federal agent over 28 years total.

Q. And what are your current duties with the postal inspectors?

A. I'm currently assigned to narcotics trafficking. My job is to find and intercept and present for prosecution when individuals use the United States mails to traffic in narcotics, either the cash proceeds going one way or narcotics coming back, and I specifically mostly work in the South Central, Pennsylvania area.

Q. And, Inspector Corricelli, approximately how many cases have you worked with regard to the use of the mail to traffic narcotics?

A. Hundreds.

Q. So with regard to this particular case, did there come a time in early February of 2019 that you identified Mr. Santana?

A. Yes, sir.

Q. All right. And did that involve a postal package with the number ending in 5608?

A. Yes, sir.

Q. Inspector Corricelli, please tell the jury how you became -- how you identified that package in particular and what drew your attention to it.

A. So working narcotics trafficking we focus a lot on inbound mail into South Central, Pa., that is coming from our source or primary source areas.

For us in this area, a big source area is Puerto Rico. We get a lot of cocaine from Puerto Rico. We also focus on New Mexico, Arizona, Texas, and Southern California for methamphetamines, fentanyl, and also coke. But most of our coke is coming out of the Puerto Rico area, so we target that mail.

On or about February 12th of 2019 one of my counterpart postal inspectors in Puerto Rico contacted me and said -- he or she, I can't recall which one it was, there are several, obviously, down there -- they had identified an outbound package leaving Puerto Rico for Chambersburg, Pennsylvania, and said that it met some of the criteria that we look at for potentially being contraband.

This inspector asked me if I'd be interested in doing followup, and I obviously jump at an opportunity. I never turn away a game. This individual forwarded that package to me, and I received it through Express Mail, overnight mail, the next day on the 13th of February.

Q. And I'd like to bring up Government Exhibit 2. Inspector Corricelli, is that on your screen?

A. Yes, sir.

Q. Could you tell us what this is?

A. Yes, sir. This is a -- it's an Excel spreadsheet. We have access, by virtue of our employment with the postal service, we have access to postal shipping records.

If you've ever shipped anything or received anything through postal, you know that postal, you can track it online. We can track it with a heck of a lot more detail internally.

What this shows is that a package ending in -- the second column is label, so the --

THE COURT: Mr. Ford, why don't we not have the witness testify to the contents of the exhibit unless and until it's in evidence. As well, it's currently only displayed on the witness's monitor.

MR. FORD: Yes, Your Honor.

THE COURT: It's not in evidence, so it's not displayed.

MR. FORD: Okay.

THE WITNESS: Sorry.

BY MR. FORD:

Q. Could you just tell us what that is?

A. It just shows us how it -- or when it was accepted by postal and when it was delivered and where it transited each step.

Q. And how did you obtain this?

A. I have access to it by virtue of my employment. I have access to all postal internal records.

MR. FORD: Your Honor, I'd offer into evidence Government Exhibit 2.

THE COURT: Is there any objection?

MR. ONGAY: No, Your Honor.

THE COURT: Government's Exhibit 2 is admitted. And would you -- are you requesting that it be published?

MR. FORD: Yes, Your Honor.

THE COURT: Permission granted.

BY MR. FORD:

Q. Inspector Corricelli, so, again, this is the internal documents from the post office that track that package. Correct?

A. Yes, sir.

Q. And what package number are we talking about?

A. If you look at the second column from the left, it says "label" at the top. And a postal series -- a lot of Priority Mail starts 9505, and this one ends in 5608.

Q. And is it common practice to identify, as shorthand, the last four digits of a package?

A. Yes, sir. For time sensitivity, we just usually look at the last four when we're talking about it.

Q. So, again, this is for package 5608. And when was this package received by the post office?

A. If you look at the far right, third column from the right, it shows that it was accepted by the postal service on the

11th of February, 2019, at approximately 12:02 p.m.

Q. And where was it accepted?

A. Forgive my Spanish, I think it's Juncos. Juncos, Juncos, Puerto Rico.

Q. All right.

A. And it was destined for 35 Redwood Street in Chambersburg, Pennsylvania.

Q. And when did it arrive in your hands?

A. The 13th of February, sir.

Q. And I'd like to bring up Government Exhibit 1. Inspector Corricelli, could you tell us what that is?

A. Yes, sir. That is a photograph that I took of that first suspect parcel ending in number 5608.

MR. FORD: And I would offer this into evidence, Your Honor.

THE COURT: Any objection?

MR. ONGAY: No, Your Honor.

THE COURT: Government's Exhibit 1 is admitted.

MR. FORD: And permission to publish, Your Honor.

THE COURT: Granted.

BY MR. FORD:

Q. Inspector Corricelli, please tell the jurors, what is this?

A. Sir, this is a standard Priority Mail parcel. Any customer of the postal service can walk into a post office, get a box like this for free, and then they fill out the label, bring it

to a retail clerk, one of the window clerks, and pay to have this box shipped anywhere in the world.

Q. And, Inspector Corricelli, particularly, it says here for the address, Madelinee Diaz at 35 Redwood Street, Chambersburg.

A. Yes, sir.

Q. Did you look into any records to determine if a Madelinee Diaz lived at that address?

A. I did search a number of databases both commercially available, such as Google, as well as internal postal records and other databases that we have access to by virtue of our position in law enforcement, one is a search engine that our agency pays for, and I could not find anybody by that name at that address, sir.

Q. And what about the return address, Carmen Rivera, P.O. Box 2618, Juncos, Puerto Rico, did you investigate that name and address?

A. I did, sir. And the first thing, when we get a box like this, we look and see is it a valid return address, and that is a valid P.O. box. However, the name Carmen Rivera could not be associated to that particular post office box.

Q. So, now, armed with this information, what did you do next?

A. Based on that, that's what we need to justify running a dog. We don't -- based on best practices, we don't just run drug detection dogs on every box we find. We like to have something we can articulate to say, hey, this makes it

suspicious. The fact that it's coming from a name we can't find, going to a name that we can't find, that was enough to justify my suspicion, and we introduced it to a Pennsylvania State Police drug detection K9.

Q. And what happened whenever -- well, and tell us, how exactly do you do that?

A. So my agency does not have our own dogs. It's a cost issue. It's a timing and a training issue. So we have a partnership with the Pennsylvania State Police where I'm actually somewhat assigned to a task force with them, and we use their dogs.

When we bring in a state police dog, we take five boxes that have no contraband in it. We have a person that -- we call them the clean person. They never touch a suspect parcel. And they place those five clean boxes out, and the dog is allowed to run on those to see if the dog is alerting, working, asleep. Sometimes dogs have bad days, as well.

And then once the dog handler who's in charge tells us, okay, the dog is ready, then we remove one of the parcels, and then I will place this in one of the five slots. And then the dog handler will then run the dog again and determine if the dog alerts to the presence of a possible contraband.

Q. And what happened whenever you ran the dog on this package?

A. The dog did not alert this time.

Q. And have you had cases where the dog failed to alert and

ultimately you found out that there were drugs in the package?
A. A number of times, sir.
Q. But in this particular case, the dog did not alert?
A. That's correct, sir. And that doesn't really disturb us that much.
Q. So what did you do after that?
A. Based on the fact that the dog didn't alert, that means I would not be able to justify applying for, receiving a federal search warrant. Even though I'm a U.S. postal inspector, I still need a federal search warrant to open up mail. I can't just open it up because I'm curious.

So because we couldn't justify the federal warrant, I brought this, on the 14th, back down to Chambersburg, and I placed it into the letter carrier's bin. A lot of the mail that you receive is automated, so the carrier gets trays of mails. Parcels, though, they put them in a big bin, and then they bring the bin out to their vehicle, and that's how they do it.

So I figured out, based on this label -- you'll see on the far left side it says C011. That means it's Carrier Route City 11. That's the route number. I brought it to the Chambersburg Post Office, and I placed it in C11's bin for him or her, I can't remember what the carrier -- who was the letter carrier, for them to deliver it.

And then I went and sat on the neighborhood at 35

Redwood and waited for the carrier to deliver this particular parcel.

Q. I'd like to bring up Government Exhibit 47. Inspector Corricelli, could you tell us what this is?

A. Yes, sir. This is a map of South Central, Pennsylvania.

MR. FORD: And I'd offer this into evidence, Your Honor.

THE COURT: Any objection?

MR. ONGAY: No, Your Honor.

THE COURT: Government's 47 is admitted.

MR. FORD: And I'd ask to publish, Your Honor.

THE COURT: Permission granted.

BY MR. FORD:

Q. Inspector Corricelli, could you explain to the jury, where exactly is 35 Redwood Street, Chambersburg, in relation to Harrisburg?

A. Southwest, about 45 minutes southwest of Harrisburg toward the Maryland border.

Q. And I'd like to bring up Government Exhibit 48. Could you tell us what this is?

A. Forty-eight, sir, is a closer image. The other one was a much, obviously, wider view. This is narrowing it down to a more localized map view of 35 Redwood in Chambersburg.

Q. And 49?

A. Forty-nine is a commercially available, through Google Maps

or some other service, satellite image of 35 Redwood Street in Chambersburg.

MR. FORD: Your Honor, I offer into evidence Exhibits 48 and 49.

THE COURT: Any objection?

MR. ONGAY: No objection.

THE COURT: Government's 48 and 49 are admitted.

MR. FORD: If we could publish 48.

THE COURT: Permission granted.

BY MR. FORD:

Q. And could you explain to the jury, generally speaking, where Redwood Street is in Chambersburg. What type of area is it, residential, commercial?

A. It's a residential area, sir.

Q. Forty-nine.

MR. FORD: Permission to publish it, Your Honor?

THE COURT: Granted.

BY MR. FORD:

Q. All right. Could you tell us what this is?

A. Yes, sir. This is that satellite view, commercially available satellite view of 35 Redwood.

Q. So you mentioned that you dropped that package off with the carrier?

A. Yes, sir.

Q. After you dropped it off, where did you go?

A. I went to sit on this neighborhood, conduct surveillance to see what happened with this parcel once it was delivered.
Q. And using the markers that are up there -- or, actually, I'm sorry, just your finger, Inspector Corricelli, could you place an X at the location where you put your vehicle?
A. I'm not a hundred percent sure. I believe, because I, at the time, typical of the government, no disrespect, but working narcotics, I was driving a big blacked-out Tahoe with extra antennas. Not the greatest vehicle for conducting surveillance, so I was down the street quite a piece.

I believe I was where I just designated a blue X, and I was basically doing surveillance in my passenger -- or driver's side mirror, rear mirror.
Q. And what happened while you were conducting surveillance?
A. I saw the regular postal person arrive on street driving a postal vehicle. He or she went up to 35 Redwood and placed a white parcel that appeared consistent with the one I had put in the bin onto the front porch of 35 Redwood and then departed. And I saw the parcel sitting on the front porch of that street -- of that house, excuse me.
Q. And how long did it sit there?
A. I don't believe it was very long. I don't recall. I did write a report on it. I believe less than an hour.
Q. And what became of the package?
A. An individual, large, heavyset Hispanic male, who I later

identified to be Mr. Santana, arrived. I saw him look around. He picked up the parcel, he looked at it.

He then got onto his cellphone and was looking around the neighborhood while it appeared as if he was talking on the cellphone. I can't say if he actually placed a call or if he was just looking around.

But he sat for a bit, and that was what we would deem as suspicious behavior, and then he entered into the residence --

Q. Did you get --

A. -- with the parcel.

Q. Sorry.

A. Sorry.

Q. Did you take any photographs while you were conducting the surveillance?

A. I did, sir.

Q. And have those been marked as Exhibits 4 through 7?

A. I would have to see them, sir, to answer that honestly.

Q. All right. If we could bring up Government Exhibit 4, 5, 6, and 7.

A. Yes, sir, those are the photographs I took from my rearview mirror.

MR. FORD: And, Your Honor, I would offer into evidence Government Exhibits 4 through 7.

THE COURT: Mr. Ongay?

MR. ONGAY: No objection.

THE COURT: Government's 4, 5, 6, and 7 are admitted.

MR. FORD: And permission to publish, Your Honor.

THE COURT: Permission granted.

BY MR. FORD:

Q. If we could bring up Exhibit 4. Inspector Corricelli, could you tell us what that is?

A. Yes, sir. This is -- the red house is 35 Redwood. It's actually transposed, so it's actually backwards because it's in the rearview mirror, but that is the address of 35 Redwood Street.

Q. If you could just clarify that a little bit. Again, this photograph, you were sitting in your car with your back to the house. Is that right?

A. Correct, sir.

Q. And you took the photograph in --

A. The rearview mirror, sir.

Q. So, actually, that red house is on the right side?

A. Correct, sir. And you can see -- if I may circle.

Q. Yeah.

A. The white box is sitting on -- there was some kind of bench or chair or something that the postal person put the box onto.

Q. All right. And Government Exhibit 5, what is this?

A. That is the individual we later determined to be Mr. Santana bringing the box inside the residence.

Q. And Government Exhibit 6?
A. The same image, just a little closer, zoomed in.
Q. And seven?
A. The same individual.
Q. And, again, this was on February 14th, 2019. Is that correct, Inspector Corricelli?
A. That is correct, sir.
Q. Did you -- were there other packages that you came to identify associated with 35 Redwood Street that you deemed suspicious?
A. There are, but if I may?
Q. Yeah.
A. I did see that individual leave the residence.
Q. Okay.
A. Would you like me to describe that?
Q. Yes, please.
A. Approximately -- after he went inside with the box, approximately a half hour later that individual came back out carrying what looked like a white box and a bag of trash, went to a trash receptacle on the side of his house, deposited those items into the trash bin, and then went back in the house and then left in a silver car a few moments later.
Q. So, again, that was on February 14th, 2019. Correct?
A. Yes, sir.
Q. Following the delivery of that package, did you become

aware of other packages that were being delivered that you deemed suspicious?

A. Yes, sir. Based on the first package and then the behavior I saw this individual conduct, it basically made me believe that we were on to something serious and that it was consistent with possible criminal activity. So I put an alert up on the house. Basically that means that anytime they're getting parcels in, I get alerted by an automated system, and then I'm able to intercept those parcels much easier.

Q. And when was the next parcel that you identified?

A. I believe it was February 22nd, sir.

Q. And was it one parcel or two?

A. It was two.

Q. I'd like to bring up Government Exhibit 37. Could you tell us what that is?

A. Yes, sir. That is the same postal records or a parcel that ends in 4884.

Q. All right. And, again, with regard to this parcel, the automated system told you there's a parcel coming to 35 Redwood Street?

A. Yes, sir. It basically just alerts me in saying, hey, there's a parcel that was accepted by the postal service, it's en route to a certain destination.

Q. And particularly with regard to Exhibit 37, what is this document?

A. This is the postal record that shows when it was accepted by postal and each step it took in the postal process.
Q. And which package is this for?
A. This would be what we've identified as the second one that I was able to put my hands on, and it ends in 4884.
Q. And I'd like to bring up Government Exhibit 208. Can you tell us what this is?
A. Yes, sir, the same thing, postal records for a separate parcel, and this one ends in 6795.

MR. FORD: Your Honor, I offer into evidence Government's Exhibits 37 and 208.

MR. ONGAY: No objection, Your Honor.

THE COURT: All right. Government's 37 and 208 are admitted.

MR. FORD: And permission to publish both exhibits, Your Honor.

THE COURT: Granted.

BY MR. FORD:
Q. All right. If we can go back to 37. Inspector Corricelli --
A. Yes, sir.
Q. -- this should be now up in front of the jury. If you could please explain to the jury what this document is.
A. So this document shows it was a Priority Mail parcel that was received in Juncos, Puerto Rico, on the 19th of February,

2019, at approximately 10:53 a.m. And it shows that -- so the way the postal service works is, they rely on regional processing centers. We have one in Harrisburg. San Juan is the one for Puerto Rico. This shows that it went from Juncos to San Juan, San Juan to Harrisburg, and then I intercepted it in Harrisburg.

Q. And when was it accepted in Juncos?

A. February the 19th, 2019, at 10:53 hours, a.m.

Q. And when did it arrive in Harrisburg, precisely?

A. February 22nd just after midnight, 12:49 a.m.

Q. And now if we can go to 208.

A. This is the third package, and this was 6795. This was accepted in Juncos, Puerto Rico, on the 20th of February, 2019, at approximately 10:21 a.m. And it arrived in Harrisburg on February the 22nd, also just after midnight at approximately 12:38 a.m.

Q. All right. So on 19 February -- or on February 19th at about 10:53 a.m., package two, also 4884, we're calling it package two or 4884, that was accepted in Juncos on February 19th. Correct?

A. Correct, sir.

Q. And then the next day, on February 20th, package three arrives, we're calling it package three or 6795, that's accepted at Juncos?

A. Yes, sir.

Q. But then both of those packages arrive in Harrisburg essentially at the same time, a little after midnight on February 22nd?
A. That is correct, sir.
Q. Is that common --
A. Very.
Q. -- that two packages, one is given to the post office on one day, the other one is given the next day, and they both end up at --
A. Anybody who has ever ordered anything online from the postal service knows that guaranteed delivery is nice in theory but not practical. So for those two to show up at the same time, it's very common, sir.
Q. Now, you testified at the grand jury, correct, Inspector Corricelli?
A. I did.
Q. And you presented this case to the grand jury for indictment. Is that right?
A. Yes, sir, I did.
Q. And whenever you presented it, you made two misstatements. Correct?
A. I did, yes, sir.
Q. All right. What was the misstatement that you made about the packages, about these two packages?
A. The first misstatement I made was that I got the second --

excuse me, this third package, that I had gotten it later in the day or -- I believe I said I got it later, when, in fact, I actually got them at the same time. I just made a mistake of fact.

Q. Again, they were accepted on different days?

A. They were accepted on different days. I grabbed them at the same time. I just worked one up first, and the other one I worked up later because of time management.

Q. So now let's talk about this. It's February 22nd, 2019.

A. Okay.

Q. You have both these packages.

A. Yes, sir.

Q. What did you do?

A. They weren't the only packages we had, as well. We had others that were suspect.

I did run, I did run the address and the return address to see if the names matched, if the names were not matching. And, again, the name that the package was going to did not match anybody at that residence that we could find. The return address had a name associated with a P.O. box that we could not find.

So based on that, I called Pennsylvania State Police and requested the assistance of a drug detection K9, and then we ran these boxes, both boxes by a K9.

Q. And what happened when you ran the packages by a K9?

A. The dog did alert to both packages for the presence of a controlled substance being contained within.
Q. And you went through that same process that you testified to earlier about package one?
A. Yes, sir. We do it the same way every time. It's one of those things where, as a baby agent back in the early '90s, they told us if you do it the same way every time, you don't have to really remember much.

In this particular case, when I run or ask K9 to run, we always put out five clean boxes. We have a separate person. This way there's no cross-contamination, where if I picked up the dirty box, maybe it's on my hands and then I touch a clean box and the dog alerts. So we have -- we always use that system, a clean person, a dirty person, and the same five-box run.
Q. And so a separate run for package two, separate run for package three?
A. Yes, sir.
Q. Both alerts. Right?
A. Correct.
Q. All right. So now you've got these positive alerts from the dog. What did you do?
A. Based on that, I immediately contacted the corporal that oversees the state police team that I'm a part of, which is the central interdiction team. And what we do is, we make a

decision, immediately we try to triage the location, is this a place that we could safely do a controlled delivery.

And a controlled delivery is when one of -- a United States postal inspector will dress as a postal employee. We're the only agency that can actually drive postal vehicles and put on postal uniforms. Like, DEA and FBI can't because we're actually postal employees.

So a controlled delivery is when we set up a security element, a surveillance element, and then we deliver that parcel with the intent of seeing who does it belong to, where does it go, what other evidence of criminal activity can we find.

Because these things are -- there are a lot of moving parts to it, I chose to select the first box that I ran, which was 884, and -- I believe that's the first one I ran, but I just picked one of the two. They were fairly identical in terms of same size box, very similar in weight, both about eight pounds. So we just chose one in the interest of time management.

I called the state police. We pull up maps right away online and see, okay, is this a house we can get to safely, because there are -- obviously there are neighborhoods that we can't go into safely without too great of a danger factor. This house looked like it was a potentially good place to do a delivery to.

So state police will do a number of things. One is, they'll shoot a trooper down to actually recon, reconnaissance of that target area to see how do we get in, how do we get out, what vehicles are there, can we identify people associated with it, are there any cameras on the place, are there other threats, such as dogs, do we see children's toys. They do that kind of recon because then we have to put a plan together of how we're going to approach this house.

One trooper will go, based on our findings, will go and apply for state search warrants. They get basically three separate warrants.

One is an anticipatory search warrant for a residence, and that states -- an anticipatory search warrant basically says if the parcel crosses the threshold and goes into the residence by any means, then the warrant is now active. Like, if the parcel never goes in, we can't activate the warrant. It has to go in. It doesn't specify who or how, it says go in.

They will get a tracking order, which is a GPS order, because when we do the controlled delivery, we place a GPS tracking device inside the box. In case the box doesn't go in the house and it goes into a car, we want to be able to follow it.

The other thing we do is, we put a light sensor in. And a light sensor is, when the box opens up, we get alerted to know that, hey, the box didn't just go in there and sit there,

it's actually open and somebody is doing something with it.

So we have all these different moving parts and pieces we do, and there are other things. We have to get manpower together. We have to arrange for a helicopter because we like to have overhead surveillance when we can and the weather cooperates, we do that.

Based on that, I picked just one box, I applied for a federal search warrant, got in, identified two kilos of cocaine, we got our plan moving.

Q. All right. So did you take photographs --

A. I did, sir.

Q. -- whenever you opened that package?

A. Every time.

Q. And are those photographs contained in Government's Exhibits 10 through 35?

A. If I may see them, I can answer.

Q. I'll tell you what, you have the -- to make things a little bit faster, they're in there. If you can just identify if those are the photographs that you took of -- there should also be an exhibit list tucked into the --

A. Yes, sir, these are the photographs that we took.

MR. FORD: Your Honor, I offer into evidence Government's Exhibits 10 through 35.

THE COURT: Mr. Ongay?

MR. ONGAY: If I may have a second, Your Honor.

THE COURT: Certainly.

MR. ONGAY: No objection, Your Honor. Sorry for the delay.

THE COURT: Government's 10 through 35 are admitted. Would you like to publish those to the jury?

MR. FORD: Yes, Your Honor.

THE COURT: Permission granted.

BY MR. FORD:

Q. If we can bring up Government Exhibit 10. Inspector Corricelli, can you tell us what this is?

A. Yes, sir, the first, the first parcel we do. It's the parcel with a copy of the search warrant, the federal search warrant.

Q. And Government Exhibit 12?

A. The same image, just sideways so we could get a better image with the tracking information and the addressee information.

Q. All right. So it says, Juan Rivera, P.O. Box 2819, Juncos, is the return address.

A. Yes, sir.

Q. Did you find any information regarding Juan Rivera associated with that P.O. box?

A. I could not find anybody with that name associated with that P.O. box, sir.

Q. And what about Carmen Diaz, did you find anything

associated with a Carmen Diaz at 35 Redwood Street?
A. No, sir, but I did note that that was the same name as on the return address from the parcel the week prior.
Q. All right. If we can bring up Government Exhibit 13.
A. The same, just the label up closer.
Q. Fourteen?
A. Fourteen is the underside of the parcel. We document this for a couple of reasons. One, to show the excess taping, and, two, so that -- when we do a controlled delivery, we use the same parcel, so we try to get the tape as close to original as we can.
Q. What do you mean by excess taping, Inspector Corricelli?
A. Sir, you'll notice there's clear tape on all seams and along the center line, as well as the corners, left and right.
Q. Fifteen, could you tell us what this is?
A. That is the underside of the box when we first open it. That's so we could see exactly how that box was packaged. And what you see are these two cosmetic bags with a bunch of dryer sheets.
Q. Sixteen?
A. Underneath the parcel -- or the cosmetic bags were more dryer sheets and also some really inexpensive children's toys.
Q. And if I could ask, Ms. Reed, if you could blow up the orange price tag there. Inspector Corricelli, could you tell us what that is?

A. Sir, I was able to find that -- that price tag is a store in Puerto Rico called All Ways 99. I believe they have them in other places besides just Puerto Rico, but there is one down there in Juncos.

Q. If we can zoom back out and if we can go to 17.

A. The two cosmetic bags.

Q. And 18?

A. I noticed that the cosmetic bags had black zip ties securing the zippers together.

Q. Nineteen?

A. The zip ties had been cut off, and the parcels had been -- or the cosmetic type bags had been opened. And what we saw was, on the left of each one is what looks like a brick with black -- lots of plastic and black, what I know to be carbon paper.

Q. Twenty?

A. The same thing just close up.

Q. Twenty-two?

A. Both bricks taken out of the cosmetic bags.

Q. And, again, so these were the two bricks that were taken out of the bag, what we're calling package two or 4884?

A. 884, yes, sir.

Q. All right. And what are those numbers on the carbon paper?

A. That's -- I don't know if that's a manufacturer. I don't see a lot of carbon paper anymore. When I was a kid, it was

real popular, especially doing homework, sharing it. For anybody who was born in the '60s or beyond, carbon paper used to be real popular. We only see it in one place now.

Q. And what is that one place that you see it?

A. Drug trafficking.

Q. And what's it used for there?

A. There is a myth that it absorbs odor, it helps to detect -- or detract odor. I've had informants tell us that it throws off X-rays. Had another informant tell us that it's, like I said, to absorb odor. The same with the dryer sheets, we've had informants tell us they use dryer sheets to absorb the cocaine odor.

Q. Twenty-three?

A. The carbon paper has been mostly cut off. As you can see, there are still a couple of small pieces of it. But this is common how we receive our cocaine in. It's not uncommon at all to have 10, 12 layers of plastic wrap, heat and vacuum seal, wet wipes, chemical adulterants, coffee grounds.

That's why, when we have a dog that doesn't hit on a box, that's not that uncommon because they go through great lengths to try avoiding detection and odor emitting. And sometimes they're very successful, and sometimes they're not.

Q. Twenty-four?

A. The same thing with a lot of the plastic cut off. We try to cut down as far down as we can so that when we weigh the

bricks, we get as close to an accurate weight as we can. But we also don't expose ourselves unnecessarily, so we go as low as we can without getting too low.

Q. Twenty-six?

A. Really bad photo. Thank you. Oh, wait a minute, that was 25. I'm sorry. Twenty-six is a really good photo. This is a photograph of a brick. And what you'll notice on the right side of it, there is what's called a brick stamp.

Manufacturers and traffickers of wholesale cocaine will often mark their product. When they press it -- cocaine is a powder, and when they press it into a brick -- this is actually a hard brick surface. They will impress upon it a logo. We've seen, like, a Nike logo, Addidas, Apple logo, Lexus, whatever. And what it does is, it kind of -- it's their brand, hey, this is my logo. And we can see what looks like the start of a brick stamp on the right.

Q. Twenty-seven?

A. This is a photograph of a brick, and the device at the top is called a TruNarc. It's an infrared spectrometer. And what it does is, in the old days -- and you've probably seen it on shows like *Cops* or *Live PD* where we used to take a foreign substance and put it in a little plastic vial. We'd break the vials, you'd shake it up, and wait for the color change.

Well, that's still an effective way to do field-screening. The problem is, that exposes us to the

chemical. And if it's fentanyl or something else, I prefer not to get exposed. So a company came up with this thing, a thermodynamics, TruNarc. And what it does is shoots an infrared laser through the plastic into the substance and then compares it to an infrared signature with a known database.

So it gives us a presumptive positive for the substance with a very high degree of scientific certainty. In other words, it's not lab analysis, but it's darn close. And what this is, this was an analysis of the brick confirming that it is cocaine hydrochloride.

Q. And, again, I think a couple times you mentioned that it was a photo of a brick. It's one of the bricks?

A. One of the two in the box.

Q. And that was, again, package two or 4884?

A. Yes, sir.

Q. All right. Government Exhibit 29?

A. Both bricks side by side.

Q. Thirty-one?

A. The second brick with another TruNarc test to make sure they're both cocaine.

Q. And when was that test performed?

A. It would be the 22nd of February, 2019, at approximately 11:02 a.m.

Q. Thirty-two?

A. Both bricks side by side where you can see the same brick

stamp in the top portion of it.
Q. Thirty-three?
A. One of the things we do, as I said, we weigh it. This isn't a final weight. This is a field expedient weight. The lab is the one who does the actual weight because we don't cut all the way down, so we usually have about a two- to five-gram difference. But what this is showing is one of the bricks weighed 1,046 grams or just over one kilo, a kilo being a thousand grams.
Q. Thirty-four?
A. This is the second brick. I know it's the second brick because it's actually listed as number two with my initials, and it weighed just over a kilogram, as well, at 1,042 grams.
Q. And 35?
A. Both bricks with my -- the numbers, my initials, and what they weighed and the date. And that is how we package them for our evidence purposes.

MR. FORD: And, Your Honor, may I approach the witness?

THE COURT: Yes.

MR. FORD: For the record, I'm showing defense counsel what's been marked as Government Exhibit 163, and I'm showing it to Inspector Corricelli.

THE WITNESS: Thank you, sir.

BY MR. FORD:

Q. Inspector Corricelli, could you tell us what that is?
A. Yes, sir. This is the two bricks of cocaine that we recovered from the second parcel ending in 884. You can see it's my evidence tape across the top. And you'll also notice what you don't see in the photo is the blue evidence tape which is from the Pennsylvania State Police Crime Lab. It went through -- when we have blue tape, that means it went through the forensic crime lab for analysis, as well.
Q. So this photo that we're looking at, Government Exhibit 35, that was taken on February 22nd. Correct?
A. Yes, sir.
Q. So after you ran the TruNarc, you got a presumptive that it's cocaine, what did you do with that cocaine?
A. This immediately went into my evidence room. We book it into evidence. We have a -- obviously a very secure facility for cocaine and certain other items.

I called back to the state police and said, hey, we definitely have cocaine. At that point we made a decision to do a controlled delivery of a parcel. However, we don't actually deliver the real substance because if somehow they get out the back and run away or it goes in a car and we lose them, we don't want to put this type of drugs into the community if we can help it.

Q. So it stayed in your evidence locker for the short term. Correct?

A. Yes, sir.
Q. Did it eventually go to the PSP lab?
A. It did, sir.
Q. And, again, I probably should -- when I say "PSP," what do you take that as?
A. Pennsylvania State Police.
Q. And is that a common acronym that law enforcement uses?
A. Yes, it is.
Q. All right. So it goes to the PSP lab. What does the PSP lab do with it?
A. They do a weight and confirmation analysis where they actually -- a forensic chemist will take samples of each brick and confirm what the substance is. In this case, they came back and said that it was cocaine hydrochloride and provided weights that are very similar, both over one kilo.

MR. FORD: And, Your Honor, I would ask for permission for the jury to inspect it.

BY MR. FORD:
Q. And before I do that, I should ask, this has been -- it is in another bag?
A. It's triple bagged.
Q. So it's triple bagged, so there's no chance of contamination, Inspector Corricelli?
A. I'm holding it without gloves, sir.

MR. FORD: Your Honor, I would ask for the jury to be

able to inspect it.

THE COURT: Well, why don't we first secure its admission.

MR. FORD: Yes, Your Honor. I apologize, Your Honor. I offer into evidence Government Exhibit 163.

THE COURT: Mr. Ongay?

MR. ONGAY: No objection, Your Honor.

THE COURT: All right. Government's Exhibit 163 is admitted and may be published to the jury.

MR. FORD: I'm sorry, Your Honor?

THE COURT: It may be published.

MR. FORD: Yes, Your Honor.

THE COURT: You don't need to pass it among the jurors, but you can display it to the jury.

MR. FORD: All right. Inspector Corricelli, if I could ask you, if you could just come up, if you could just stand --

THE COURT: Actually, Mr. Ford, you can do that.

MR. FORD: Yes, Your Honor.

THE COURT: The witness can stay at the witness stand.

THE WITNESS: Thank you, Your Honor.

BY MR. FORD:

Q. All right. Inspector Corricelli --

A. Sir.

Q. -- so we've talked about this a little bit. You got the

search warrant for the package. You've opened up the package. Meanwhile, you have PSP preparing for a controlled delivery. Is that right?

A. That is correct, sir.

Q. And who is your contact at PSP?

A. Trooper Nesbit, Steven Nesbit.

Q. So Trooper Steve Nesbit is working on this. And you mentioned this in passing, you don't want to use the cocaine for the actual controlled delivery. Correct?

A. No, sir, we don't.

Q. And why is that?

A. The risk of it coming into contact with the citizens is not worth the chance. So what we do is, we take -- the real cocaine gets secured in a facility, and then we use what's called sham, which is something that looks like and feels like it, similar in size and weight. A kilo is obviously a thousand grams. That's about 2.2 pounds. So we have other items that are very similar to that.

Q. And just generally speaking, what did -- the items that were used on this date, what did it look like?

A. They're actually black bricks. They're wrapped in tape. They're almost like drywall or a plaster, and they're very, very similar in size and color to what we received.

Q. And do you put anything, any type of electronic monitors in those?

A. Yes, sir, we do. Inside the parcel will be a GPS tracker, and also inside the brick itself will be a light detector so that if -- once we seal the box, we set the light detector. Once it is opened, any light at all will alert us through cellular phones that the box has been opened and the light has been activated.

Q. And Trooper Nesbit, again, he got warrants for all of this?

A. Yes, sir, he did.

Q. All right. So you've built these packages, you've got the warrants. What did you do next?

A. We executed a controlled delivery on the 22nd of February. So what we do is, we put -- in addition to a trooper and a helicopter -- and this time we used Pennsylvania State Police helicopters. Sometimes we use National Guard. It depends on who's available and who's ready. We'll put a surveillance team out, as well as an operational team to execute entry into the residence, if it requires that.

Q. And were you present during that?

A. I was.

Q. Where were you at?

A. I was almost in the same spot that I was doing surveillance previously, but I was in a different vehicle with my partner at the time.

Q. And was the package delivered?

A. It was, by a postal inspector dressed as a postal letter

carrier.
Q. And approximately what time of day did that occur?
A. I honestly don't recall. It was late morning, early afternoon. Most likely it was post-lunchtime because we have -- obviously by the time we get the federal warrant, we get the state warrants, we get everybody in place and drive all the way down to Chambersburg, there are a lot of moving parts and there's a lot of time that we have to get through. I would say it was probably after 1 o'clock.
Q. All right. So the package is delivered. What happened next?
A. Then we sit and wait. This is where it gets difficult because we've waited up to eight hours, ten hours before for someone to come home, take it in. We didn't wait that long.

At one point what we witnessed was a maintenance vehicle pull up and one or two maintenance guys get out. One saw the box, picked it up, brought it into the residence. It was like, oh, boy, what happens now? That was kind of unexpected.

So I believe it was Trooper Nesbit went to the office. Those places are rental places, they're not owned, to the best of my knowledge. He went to the property management and talked to them and found out that the individuals were in there doing routine assigned maintenance. They were renovating. I believe they were doing floors or trim or something in there.

Trooper Nesbit had them call the maintenance workers to come out of there and come to the community office where they worked and told them to leave the parcel in. We made a debate, do we bring it back out, and the answer was, it's already there, we're not touching it again, we'll see what happens when somebody comes home. And we sat there and waited.

The individual maintenance person, Mr. Wagaman, went and talked to Trooper Nesbit, said, look, we have a problem with mail thieves in this area, so I routinely, whenever I go into a person's dwelling, just like an apartment complex would, the maintenance people bring in the boxes to kind of help with theft issues in that neighborhood.

So based on that we said, okay, let's just leave the parcel inside if that's his normal thing. It's not like he did something abnormal. We didn't feel like he was involved in this operation. So we just told him, leave it alone, don't go back in, but don't go back, we don't want you going back there today.

Q. And, Inspector Corricelli, again, we mentioned that there were two misstatements you made during grand jury.

A. Yes, sir.

Q. And we talked about the first one. Is this the second one?

A. This is definitely the second one, sir.

Q. And isn't it true that you told the grand jury an individual later identified as Adam Santana took the box into

the house, opened the box, and upon the box being opened, we executed a state search warrant for the residence?

A. That is correct. In retrospect -- and we figured this out after grand jury -- what I had done is, I had confused the first, when I saw him come and bring the house -- or the box in the house with this particular one. Mr. Santana did not bring this box into the house.

Q. So, again, I mean, at the grand jury you just made the misstatement, you said that it was -- Santana brought the box in the house?

A. Yes.

Q. In fact, it was Wagaman?

A. Yes, sir. There was no intent. I didn't feel that that changed anything. It didn't matter who brought it into the house. The way the anticipatory search warrant is written is as long as the box crosses the threshold and it's not one of us -- like, if the door is open, I can't throw it in and say, oh, the box is in. That would be unscrupulous and unethical.

Q. So, Inspector Corricelli, Mr. Wagaman brings it in, Trooper Nesbit calls him back out?

A. Yes, sir.

Q. What happens next?

A. Short minutes, I believe, later, an individual pulls up in a vehicle, and we recognize it to be Mr. Santana, and he's got a 10-, 12-year-old child with him. They enter the residence.

And I mentioned that there's a GPS tracker in there, in the box. That tracker is sensitive enough that we can tell when the box is picked up or moved within the residence.

Almost immediately after he went in, that sensor went off and told us that the box is moving, and then minutes later we got the indication that the light sensor went off. That indicates that the box had been opened.

MR. FORD: Your Honor, at this point I would pass the witness, but, again, as I mentioned earlier, I would like to recall Inspector Corricelli later in my case-in-chief.

THE COURT: And that's been discussed and agreed, and so now we will have cross-examination on this portion of Inspector Corricelli's testimony. You may proceed.

MR. ONGAY: Certainly, Your Honor. May I conduct the cross-examination from my table, or will the court prefer that I go to the podium?

THE COURT: You may conduct your examination from wherever is convenient. I just ask you remove your mask so we can all hear you well.

MR. ONGAY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ONGAY:

Q. Good afternoon, Inspector.

A. Good afternoon, sir.

Q. A quick question. You have said a few times during your

direct examination that as long as the box crosses the threshold, that's all the warrant requires?
A. That's a generalization, yes, sir.
Q. Okay. Did you apply for the warrant?
A. I did not, sir.
Q. But I assume you did read the warrant?
A. I read it -- it's the same language that we use all the time, so I didn't read this particular warrant prior to this actual operation. But it's the same language we use, and we do a lot of these operations.
Q. So if I was to tell you that the warrant reads that an individual must accept the parcel and then that individual must bring the parcel into the home, to be specific it says the individual must bring the parcel into 35 Redwood Street before the warrant could be executed, will that sound correct to you?
A. I would prefer to read it to be precise, but it's approximately true.

MR. ONGAY: May I approach, Your Honor?

THE COURT: Certainly.

MR. ONGAY: Strictly for the purpose of refreshing the witness's recollection.

THE WITNESS: Thank you, sir.

MR. ONGAY: You're welcome.

THE COURT: Mr. Ongay, if you could just identify for the record what it is you've just provided to the witness.

MR. ONGAY: Certainly, Your Honor. For the record, I will mark this for purposes of identification as -- let's call it D1. And it is a copy of an Application for Search Warrant and Authorization from the Commonwealth of Pennsylvania, and it's approximately four pages long.

THE COURT: Thank you.

BY MR. ONGAY:

Q. Inspector Corricelli --

A. Sir.

Q. -- on the third page, the fourth paragraph, on the very first top of that sentence, can you read it to yourself and tell me if that refreshes your recollection?

A. May I read it out loud, sir, or --

THE COURT: No, to yourself.

BY MR. ONGAY:

Q. No.

A. Sorry.

Q. It's only for your own benefit.

A. Yes, sir. It refreshes my recollection, yes, sir.

Q. So it's clear that the warrant required that an individual had to accept the parcel and bring it into the residence of 35 Redwood Street. Is that correct?

A. Yes, sir.

Q. And let me ask you a separate question. And you don't have to look at the warrant yet. You first have to try to answer

from your memory.

Isn't it true, also, that the warrant stated explicitly that if that did not occur, the warrant was null and void and needed to be returned to the issuing authority?

MR. FORD: Your Honor, I'm going to object to this line of questioning under relevance.

THE COURT: Let's approach.

(The following discussion occurred at sidebar:)

THE COURT: I can hear you partially. My headset is not cooperating. Okay. There's a relevance objection. Mr. Ford, do you want to elaborate on that?

MR. FORD: Yes, Your Honor. At this point the search -- I believe there was already a motion to suppress evidence based on the search warrant in this case. The court has already upheld or already denied that motion. Based on that, I just don't think that it's relevant at this point to get into whether or not the search warrant was properly executed.

THE COURT: Mr. Ongay, what's the relevance of the testimony regarding the specific terms of the warrant application?

MR. ONGAY: Well, Your Honor, it contradicts the postal inspector's testimony on direct about the warrant simply requiring going across the threshold. The warrant not only did not require that, it was explicit that if the conditions were

not met, it was null and void. And this goes to attack his credibility, and I think that's relevant.

THE COURT: Okay. So you're offering -- so the questioning is intended to elicit questions regarding the credibility of the witness, not to make an argument ultimately that the warrant was null and void?

MR. ONGAY: Correct.

THE COURT: Okay. Because, of course, that issue has been ruled on by Judge Rambo already.

MR. ONGAY: Yes, Your Honor.

THE COURT: All right. So I'm going to overrule the objection on the basis of the explanation provided by Mr. Ongay, and I'll indicate that to the jury.

MR. FORD: Yes, Your Honor.

THE COURT: Please proceed.

(The discussion at sidebar was concluded.)

THE COURT: The objection is overruled. You may proceed with your questioning, Mr. Ongay.

BY MR. ONGAY:

Q. Inspector --

A. Sir.

Q. -- do I need to repeat the question, or do you recall it?

(Static noise.)

THE COURT: One moment. We're getting some feedback, and I'm not sure -- well, it seems to have stopped. Please

proceed.

THE WITNESS: Could you please repeat the question, Mr. Ongay?

BY MR. ONGAY:

Q. Yes. Do you recall if the warrant stated that if an individual did not accept and bring this parcel into 35 Redwood Street, that in that event, the warrant will be null and void?

A. Yes, sir.

Q. And so it did state that. Correct?

A. I believe so, yes, sir.

Q. Okay. And you did not obtain this warrant, it was Trooper Nesbit. Correct?

A. Correct, sir.

THE COURT: Mr. Ongay, you're welcome to remove your mask, if you'd like, just for clarity of questioning.

MR. ONGAY: I apologize, Your Honor.

THE COURT: No, that's fine.

MR. ONGAY: I get confused taking them off and putting them on.

THE COURT: We can all relate.

BY MR. ONGAY:

Q. All right. So you testified about parcels. Correct?

A. Yes.

Q. That were delivered. And if I'm going beyond the scope, I'll ask the court's indulgence. I just want to touch on this

subject fully.

Isn't it correct that there were, in total, eight parcels, that somehow there are records that were purportedly delivered to 35 Redwood Street?

A. I can't specifically say eight at this point. I need to review the evidence. But I believe that's correct, sir. I know it's more than five.

Q. Okay. So let's go over again, the first one was the one on the 13th --

A. Okay.

Q. -- that was actually delivered on the 14th?

A. Correct, sir.

Q. Okay. And then the next two are the two that were intercepted on the 22nd of February?

A. Correct, sir.

Q. That would make it three.

A. Yes, sir.

Q. And then, according to your report, you or someone else conducted an investigation that discovered five additional parcels that had been shipped from Puerto Rico also to 35 Redwood Street. So that would make it eight. Is that correct?

A. Again, I'd need to refresh with my report, but that sounds correct, sir. I know there is -- I did an investigation, I found other parcels.

MR. FORD: Your Honor, I would object because it is

outside the scope at this point. Again, we're going to be recalling Inspector Corricelli and talking about those other parcels. I believe that might be an appropriate line of questioning at that point.

MR. ONGAY: If the government is going to address that then, then I have no problem waiting on that issue.

THE COURT: Mr. Ford, are you planning to address the other parcels later?

MR. FORD: Yes, Your Honor.

THE COURT: All right. So subject to the earlier agreement we reached, I will sustain the objection.

MR. ONGAY: Okay.

BY MR. ONGAY:

Q. Now, correct me if I'm wrong, only in the last two parcels were controlled substances found?

A. In the last two that I intercepted, yes, sir.

Q. Yes.

A. Controlled -- yes.

Q. Okay. Now, you first became involved in this investigation on the 13th of February. Correct?

A. The 12th of February.

Q. The 12th, I'm sorry. And before the 12th of February, you had no knowledge of Mr. Santana?

A. That is correct, sir.

Q. And you did not determine Mr. Santana's identity on the

14th. Is that correct?
A. I believe I had his driver's license photo at that time, sir.
Q. On the 14th?
A. I believe I did.
Q. Okay. So on the 14th of February, that's eight days before the 22nd, you had access to his driver's license?
A. If he has a Pennsylvania driver's license, yes, sir.
Q. So that's the first time then that you learn about Mr. Santana. Is that correct?
A. Yes, sir, that's correct.
Q. And you had never investigated Mr. Santana before the 14th of February? Let's say the 13th.
A. That is correct, sir.
Q. That is correct. Okay. And your investigation was limited to identifying him as a person?
A. No, sir. What we were looking at is not just Mr. Santana, but anybody that might be associated with that address who might have been planning or trying to receive cocaine parcels.
Q. Okay.
A. So Mr. Santana just happened to be the individual I witnessed on the -- I believe the 14th picking a box up. And at the time I believed it was Mr. Santana. I wasn't a hundred percent even sure at that point.
Q. Okay. But you say you had his driver's license?

A. I believe so, yes, sir.
Q. Okay. So you weren't able to tell through his picture that it was him?
A. Sir, I'm a distance off. I don't have binoculars or a spotting scope or even a high-end camera. I saw a -- at the time a heavyset Hispanic individual that appeared to be consistent with Mr. Santana's image that I saw.
Q. Okay.
A. But I wasn't a hundred percent sure at that point.
Q. All right. Now, when did you conduct, if it was you, the investigation that revealed the five parcels?
A. It was me.
Q. It was you. Okay.
A. And it would have been sometime between the 12th, 13th of February, and after the controlled delivery. I don't remember exactly what day I was able to acquire those records.
Q. So it could have been after the controlled delivery of the 14th or after the controlled delivery of the 22nd?
A. Well, the 14th was not a controlled delivery, sir. The 22nd was a controlled delivery. But to your point, sir, I'm not sure. It could have been after the 22nd, yes, sir.
Q. Okay. So your investigation then was limited to trying to identify Mr. Santana. Correct? Trying to identify other residents of 35 Redwood Street to see if there's any other possible intended recipient of the parcel, and at some point

after the 22nd of February you did an investigation that determined that five other parcels had been sent to 35 Redwood Street. Is that correct?

A. No. Your first part of your question was, was our investigation focused on Mr. Santana, and it was not. He was a target of the investigation, but it was any and all involved potential persons. We don't just limit it down to one individual. That's pretty shoddy work. But we look --

Q. I'll --

A. I'm sorry.

Q. No, no, I'll let you finish. My apologies.

A. Thank you. What we try to do is see if we can figure out any and all people that are involved in this criminal activity.

Q. Okay. Just want to know what you did between the 13th and the 22nd in this investigation.

A. Without reviewing my reports, I wouldn't be able to answer that because I'm running -- like, at any one time -- I have 20 different investigations going at once. So I might have done some work on this one, I might have worked on that one. We have a lot going on.

Q. Certainly.

MR. ONGAY: Your Honor, may I approach Mr. -- I mean Inspector Corricelli? Your Honor, for the record, this is already one of the government's exhibits, but I will mark it as D2 for identification only.

(Counsel confer.)

MR. ONGAY: I apologize about that, it has not yet been marked by the government.

THE COURT: You've indicated it is marked for identification as Defendant's Exhibit 2, and if you could just briefly state what it is.

MR. ONGAY: Yes, Your Honor. This is -- I believe it's a United States Postal Inspection Service report dated August 14th of 2019. And I believe the author of the report is Inspector Corricelli.

THE WITNESS: Yes, sir, this is my report that we read.

BY MR. ONGAY:

Q. Okay. Will this report reflect what you did to investigate Mr. Santana?

A. Yes, sir, and others.

Q. And others. But I am asking you about Mr. Santana.

A. Yes, sir.

Q. Okay? I'm interested in knowing what you did to investigate Mr. Santana.

A. Okay.

Q. And whatever this report states what you did to investigate Mr. Santana, will that be accurate?

A. Yes, sir.

Q. Okay. Now, prior to that day, the 13th, you did not know

anything about Mr. Santana?
A. That is correct, sir.
Q. Prior to that date, you did not hear Mr. Santana speak?
A. No, sir.
Q. Prior to that date, you had never seen him?
A. Correct, sir.
Q. Prior to that date, you did not intercept a telephone call of Mr. Santana?
A. That's correct, sir.
Q. In fact, after that date and until he was arrested, you never intercepted a single phone call of Mr. Santana?
A. Phone call? No, sir.
Q. No, no phone calls? Correct?
A. No, sir.
Q. You did not intercept any text messages?
A. No, sir.
Q. You did not have any evidence that Mr. Santana was discussing drug deals with anybody?
A. No, sir, I did not.
Q. Okay. Now, your second mistake I believe you said was when you testified to the grand jury that an individual identified as Mr. Santana had accepted the parcel and had brought that parcel in. Is that correct?
A. That is correct. That was my mistake.
Q. And I just want to make sure -- I did not understand or

hear properly your explanation of that mistake, so I want you to please tell me, why did you make that mistake?

A. I believe I confused the events I witnessed on the 14th of February where an individual I believed to be Mr. Santana picked up the box from the porch that the postal, the real postal carrier dropped off, and brought it into his residence. I confused that with the events I was speaking of in grand jury for the events on the 22nd of February, sir, a week later.

Q. Was Mr. Santana charged for that offense individually as a count in the indictment?

A. The first one --

Q. Yes.

A. -- or the second one?

Q. The one that you explained was the basis of your confusion.

A. Not the very first one, no, sir, he was not.

Q. He was not?

A. No, sir.

Q. Okay. When you observed the maintenance worker, did you observe the maintenance worker actually pick up the parcel?

A. I did not, sir. I was listening -- I was down the street a piece. I was listening to it on our communication network.

Q. And did you -- were you the one who contacted the maintenance office?

A. I did not.

Q. You did not?

A. No, sir.
Q. And that was Trooper Nesbit?
A. I believe it was Trooper Nesbit.
Q. Okay. And just to be clear, the instruction, based on your direct testimony, was for the maintenance worker not to touch the parcel again?
A. Correct.
Q. Do you know, where was the maintenance worker when -- strike that. To your knowledge, isn't it true that the maintenance worker was at 35 Redwood Street when maintenance contacted him?
A. It's my understanding he was inside the residence when his manager, I think it's like a resident manager, his boss, called him and said --
Q. And your testimony is that -- I'm going to say you, and I don't know whether it was you alone or you and other officers, please explain, concluded that since the parcel was already inside and it was brought by a maintenance worker, that you were going to leave it inside the home?
A. It wasn't my singular decision, but I did have input on it, yes. And that was our collective decision, was since he routinely does that for all customers, then that was a normal business practice for them, so we don't want to take it back out and then reset, just it's been done, it's in, just leave it alone.

Q. Now, when you say "our collective decision," who did you discuss this with?
A. I believe it was Trooper Nesbit and Corporal Fidler. Corporal Fidler would have been the supervisory Pennsylvania state trooper on scene, I believe.
(Static noise.)
THE COURT: Just give us a moment. I'm trying to figure out where that interference is coming from. Go ahead and proceed.
MR. ONGAY: I'll proceed, Your Honor.
BY MR. ONGAY:
Q. Okay. Did you ever see, in your investigation, Mr. Santana deliver drugs to anybody?
A. I did not, sir.
Q. Did you see Mr. Santana carrying a firearm?
A. I did not, sir.
Q. Did you hear any conversations that Mr. Santana was a participant ever discussing drugs or firearms?
A. I did not, sir.
Q. You did not. Now, you are the affiant on two search warrants. Correct?
A. Yes, sir.
Q. And they were both for parcels?
A. That is correct, sir.
Q. And they were both federal search warrants?

A. Yes, sir.
Q. Okay. On your direct examination, you testified that -- in your explanation about the drug detection dog not finding -- not alerting for the presence of a controlled substance on the parcel that was intercepted on the 13th and delivered on the 14th of February.
A. That is correct.
Q. Do you remember that testimony?
A. Yes, sir.
Q. And you also testified and explained why all those other things, the carbon paper, the drying sheets, and other things, coffee, et cetera, sometimes interfere with the dog's ability to detect a controlled substance. Correct?
A. That is correct, sir.
Q. Okay. And you made it sound like this was common, that this could happen commonly. Am I correct in interpreting it that way?
A. I don't know if I'd say commonly because I don't have enough evidence to say that, you know, 20 percent where the dog doesn't alert. I just know that we've had a number of instances where the dog didn't alert. We put the parcel back into the postal mail stream for delivery, and then later we find out, either through suspects that we arrest or informants, that, hey, that parcel that was delivered last week actually had coke in it. So we have experience from that way, either

suspects self-admit or informants, so we know it does happen.
Q. So would you say this is anecdotal, or would you consider it to be frequently enough to be a concern?
A. I don't have enough scientific data to be able to say one way or another. I could just say that it happens.
Q. Okay. Now, if you thought it was a problem, would you include it in your affidavit of probable cause when you're using a positive alert and advise the judge that even though the K9 alerted for the presence of a controlled substance, please note that the results are not reliable, sometimes there are false negatives?
A. Can you rephrase that? You just confused me. I'm sorry.
Q. The question is simple. If it's a problem, then don't you believe that it should be part of your affidavit of probable cause so the judge who is approving or rejecting that warrant will know that these tests, these examinations by a drug detection dog are questionable?
A. Sir, you're talking about two separate things. You're talking about a positive alert that turns out to be a negative parcel with a negative alert by a K9.
Q. I'm only referring --
A. Those are two separate issues.
Q. I'm sorry, finish. I apologize.
A. You're confusing two separate issues. If the dog does not alert on the parcel, we generally do not carry it forward and

apply for a search warrant. If I apply for a search warrant, it's because I have reasonable, articulable suspicion that something is wrong with either the return address or the addressee and I get a positive alert from a K9.

The fact that sometimes a K9 does not alert is not relative to my probable cause statement that I believe the parcel I present forward is. So those are two separate issues you're speaking of, sir.

Q. That's correct. And you're misunderstanding my question, and that's my fault, not you, so let me try again. Okay.

You did not include in your -- in either of your affidavits, when you discuss the positive result of a drug detection dog alerting for the presence of a controlled substance, you did not put a footnote or a proviso explaining that sometimes the dogs do not properly detect, whether there are suppressants or not, a controlled substance, because we have found X number of situations where the result was negative, but we later found out that, in fact, the parcel had a controlled substance? That was not part of your warrant, of your application?

A. It was not, sir, no.

Q. It was not. So if it was not, then it should not be that much of a problem because otherwise you will be withholding important information from the judge who is making that determination of how reliable this drug detection dog system

is?

A. I think I'm confused by your question because we put relevant information for the judge to make a clear decision based on probable cause of what we present.

Inside our warrant is the statement that even says it is not all facts and information known at this time, it is limited to probable cause to decide is there reason to believe that there is contraband inside a parcel.

The fact that a dog has occasionally not alerted -- dogs are just like humans. They have bad days. So we don't keep statistics and track of when it happens. I just know that it does occasionally -- cocaine gets through.

Q. So it's an occasional problem?

A. Yes, but I don't have any statistical data to say what amount of time it happens. We just know it happens.

Q. That's fair. Thank you.

(Pause in proceedings.)

MR. ONGAY: I apologize for the delay, but these are questions that relate to his future testimony, and I don't want to waste the court's time. If I may have a second to speak to my colleague, Your Honor.

THE COURT: Yes.

(Counsel confer.)

THE COURT: Yes, Mr. Ongay.

MR. ONGAY: Yes, Your Honor, my apologies for the

delay. I just don't want to waste time asking questions that have not really been covered on direct. I am going to reserve the remainder of my cross to when Mr. -- I'm sorry, Inspector Corricelli testifies a second time.

THE COURT: Understood. All right. Any redirect on this portion of the inspector's testimony?

MR. FORD: No, Your Honor.

THE COURT: All right. So that concludes this portion of your testimony, Inspector Corricelli. You will be recalled, is my understanding, the government will recall you, and we'll re-administer an oath at that time. So at this point this portion of your testimony is concluded, and you can resume your seat.

THE WITNESS: Thank you, Your Honor.

THE COURT: Counsel for the United States, call your next witness.

MR. FORD: Yes. And so, Your Honor, our next witness is going to be Trooper Nesbit. He is going to be even more lengthy than Inspector Corricelli. I know the court wanted to stop -- it would be our preference that we start his testimony and then just finish it tomorrow. I don't think I'll be finishing his direct by 5 o'clock, but I just wanted to make sure that's what the court wanted to do.

THE COURT: I would like to continue now and we'll -- why don't you let us know when you're at a good breaking point

somewhere prior to 5 o'clock or in the vicinity of 5 o'clock. We'll stop at that point, and then the trooper will have to come back tomorrow.

MR. FORD: Great, Your Honor. Your Honor, the government calls Trooper Steven Nesbit.

THE COURT: Trooper, come forward and remain standing while we administer an oath.

STEVEN NESBIT, called as a witness, having been duly sworn or affirmed, testified as follows:

COURTROOM DEPUTY: Please state your first and last name and spell your name for the court reporter.

THE WITNESS: My full name is Trooper Steven P. Nesbit, N-e-s-b-i-t.

THE COURT: Thank you. You can have a seat, and you can keep your mask off while you testify.

THE WITNESS: Thank you.

THE COURT: Please proceed.

MR. FORD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. FORD:

Q. Sir, with whom are you employed?

A. I'm employed with the Pennsylvania State Police.

Q. And how long have you been with the Pennsylvania State Police?

A. My enlistment date was May 23rd, 2005, so a little over 16

years.
Q. And I want you to be careful with this, Trooper Nesbit, but if you could pull that microphone up a little bit. I'm having some problems hearing you.
A. How about now?
Q. I'll tell you what, if you could push that binder away, because I think that might be what's causing some of the -- sorry. There you go. Perfect. What's your current rank with the state police?
A. My current rank is trooper first class.
Q. So, Trooper Nesbit, what are your current duties with the state police?
A. My current duties with the Pennsylvania State Police is working in the drug unit, narcotics unit.
Q. And what's that called?
A. It is the -- I am currently assigned to the Bureau of Criminal Investigation, the Drug Law Enforcement Division, the Central Interdiction Unit. And that means that I cover Central Pennsylvania from Altoona to Reading to State College, down to the Maryland border.
Q. And where is your office located?
A. It's currently located in Harrisburg.
Q. Trooper Nesbit, how long have you been working in drug investigations?
A. I've been working drug investigations since July of 2015.

Q. And during that time, have you formed a bit of a specialty in parcel deliveries?
A. I have.
Q. And approximately how many parcel deliveries have you participated in?
A. So we do not keep a definitive count. Honestly, much like citations, we don't have a quota system, so it's not important for me to have the exact number throughout my career, but between 50 to 100 that I've either been the lead investigator or assisted, you know, not only our unit but like units across the State of Pennsylvania and other states.
Q. So I want to take you back to February 22nd, 2019. Did you participate in a controlled delivery on that day?
A. I did.
Q. And how did your participation in that controlled delivery begin?
A. My participation began when Inspector Corricelli -- between my corporal, Scott Fidler, and Inspector Corricelli notified me that I would be the lead investigator for this particular case.
Q. And approximately what time did Inspector Corricelli call you?
A. I'm not exactly sure what time that would have been, whether it would have been the -- well, it would have been at least either the previous day or that -- on the 22nd in the early morning hours because of the events that unfolded.

Q. And once he called and told you that he had a potential for a controlled delivery, what did you do?
A. Once we are notified, we then begin doing our research on addresses, individuals associated with the address, where the parcel is going to be delivered. I also work on the paperwork side of, as previously stated, the tracking order, court order, and the anticipatory search warrant for the address.
Q. And you were the one that drafted all of those documents?
A. I did draft those.
Q. And you obtained from a state judge the anticipatory search warrant, the tracker warrant, and, I'm sorry, what was the -- there was a third warrant?
A. There are only two. The same court order, it's called a court order because it's for electronic communication, that's what's captured with the GPS tracker and for the light sensor that's actually activated.

The search warrant is the anticipatory search warrant to give us the ability to search a residence once those facts are met within the course of the investigation.
Q. So ultimately, and we already heard from Inspector Corricelli, he obtained the search warrant for the package, opened the package, found cocaine. You got those warrants in place. Now walk us through the actual execution of the search warrant.
A. The actual execution of the search warrant, so we've done,

as I've stated, many of these, which all things that could possibly happen have sometimes happened. That means that once we make a delivery, the most ideal situation is that it gets delivered to an address, and once it gets delivered to that address, someone takes it inside that residence. We never are quite sure who that is just because of the way these cases unfold. But it doesn't always mean that that's what happens.

Sometimes someone from -- that we are not aware of is waiting on the street and they come and pick it up and put it in a car and drive away. Sometimes the neighbor comes out of a door beside the target residence, picks it up and takes it to another house.

We've had individuals that know that no one lives at the house come and kick the box down the street thinking that they're helping, but then they're kicking it down the street to their house and taking it into their house. So we're very --

THE COURT: Trooper, I'm just going to limit -- the question was actually what happened with the execution of this search warrant. So if we could just confine the testimony to this search warrant.

THE WITNESS: Well, just to say that that is always very typical of what -- we're not sure what can happen when we deliver it.

What particularly happened in this instance, we did the controlled delivery with the inspector. Once the

controlled delivery occurred -- it occurred at 1:17 hours. The maintenance for the particular residence that is -- where this occurred, they went -- two gentlemen exited their truck. We observed them exit the truck. We observed them walk up to the front door. One individual reached out, picked up the parcel, and walked it into the house.

He then walked through the house and opened the garage door, and that's where I observed both individuals then standing outside the residence in the garage area.

BY MR. FORD:

Q. And you believed that these individuals were there to conduct maintenance. Correct?

A. After watching them for several minutes, again, we don't know what -- or who is going -- what's going to happen, so we want to make sure that -- I wanted to make sure that I had enough intelligence from what I was observing to say that these individuals were probably not associated with that package and they were there just for maintenance. And by what I observed, that's what I concluded.

Q. And I'd like to bring up Government Exhibit 49. Could you tell us what that is?

A. Yes, this is the aerial shot of 35 Redwood and that development there.

MR. FORD: And I believe that should be -- and, Your Honor, this has already been admitted. I would ask that it be

republished to the jury.

THE COURT: It is admitted and may be published.

BY MR. FORD:

Q. All right. Where exactly were you located at?

A. If I could touch the screen and mark it, I was located in this approximate area here.

Q. And were you driving a vehicle?

A. I was driving a vehicle.

Q. And what type of vehicle was it?

A. I drive a Dodge minivan, and it is a PSP undercover vehicle.

Q. Great vehicle for an undercover drug officer?

A. Surprisingly, yes, it is.

Q. Why is that?

A. That vehicle allows me to fit into most any situation. My primary objective is to get as close as I can to the targets, whether this -- in any case. By me being in that vehicle, I'm allowed to position myself in ways for people not to be able to look in the vehicle and see me, and it allows for me to sit in there without being detected or look out of place.

Q. All right. So you see these two individuals. They approach the house. They take the package inside. The garage door comes up. It looks like they're doing maintenance work. What did you do?

A. Yeah, so these gentlemen were not acting as agents of the

Pennsylvania State Police or anyone that was associated with this case.

MR. ONGAY: Objection. Not responsive, Your Honor.

THE COURT: Sustained. The question was what did you do.

THE WITNESS: With that in mind, I walked over to the building where they are -- the office building to make contact with an office employee.

BY MR. FORD:

Q. And what happened once you made contact?

A. Once I made contact with her, I identified who I was, what I was doing there, and asked what -- you know, who was associated with 35 Redwood.

At that point the individual said that there was maintenance going on. So, of course, I'm not going to just go in and explain to them, hey, this is what's happening, I want to further obtain as much information to make sure that they aren't maybe criminally associated with the address.

So in questioning her, I further felt that I was able to tell her what was going on and then asked her about how long they were going to be there, what they were doing at the address.

Q. And did these individuals ultimately leave the house?

A. Yes. After it was determined that they were there for legitimate business, I asked them to come back to my location

and meet at the office.
Q. And did you ask them to do anything with the parcel?
A. At that point I said not to touch -- well, I didn't even go into that at that point. I just had them come back, and I spoke to the lead, Mr. Wagaman, at the office. And that's when I explained to him -- we started talking about what procedure should happen next.
Q. And what, if any, communications did you receive while you -- from your fellow law enforcement officers while you were talking to Mr. Wagaman?
A. So as we were talking and I was actively talking to him, I was informed by surveillance members that the defendant, Mr. Santana, was pulling into his driveway.
Q. And what did you do?
A. So at that point I terminated my conversation with the employees and proceeded to my minivan.
Q. You mentioned -- well, I'm not sure if you did, but I know Inspector Corricelli mentioned, were there aviation assets on hand?
A. There was.
Q. And was a video taken?
A. There was.
Q. I'd like to bring up Government Exhibit 40. And if we can -- if you can just play that, Ms. Reed, for about one second just so that we can actually bring it up on the screen

and pause it, please. *(Video played momentarily and paused.)* All right. Trooper Nesbit, so we've paused that video. Could you tell us what this video is?

A. Yeah, this was the video taken from the PSP helicopter. And, again, as we say, PSP, that's Pennsylvania State Police. This is the aerial surveillance video taken during this incident.

Q. And have you previously observed this video?

A. I have.

Q. And is it a fair and accurate depiction of what transpired during the execution of the search warrant?

A. It does.

MR. FORD: Your Honor, I offer into evidence Government Exhibit 40.

THE COURT: Any objection?

MR. ONGAY: No, Your Honor.

THE COURT: Government's 40 is admitted.

BY MR. FORD:

Q. All right. And, Ms. Reed, if we can go ahead and play. *(Video played.)* And if we can pause it. Trooper Nesbit, I probably should have done this from the beginning, can you identify 35 Redwood?

A. I can. Can I touch the screen again?

Q. Well, I think if you could -- would you agree with me it's the only red house that we see on the screen?

A. It is the only red house and the one that the white Expedition just pulled into.
Q. All right. And what's happening right now?
A. At that moment in time the Expedition has pulled in, and the defendant, Mr. Santana, is exiting the driver's side of the vehicle.
Q. We can go ahead and play. *(Video playing.)* And if you can narrate for us what's happening.
A. So he's walking into the residence of 35 Redwood, and his female daughter is exiting the passenger side and walking in.
Q. Pause, please. I'm sorry. Can you go ahead? I didn't mean to cut you off.
A. And she's exiting the passenger side and walking into the residence of 35 Redwood.
Q. And we're paused at 37 seconds, for the record. Trooper Nesbit, can you see your minivan on this?
A. I do.
Q. Where is it?
A. It is down on the far left corner within the green writing.
Q. Where it says 3955, is it behind the 55?
A. Yeah, it's right here.
Q. All right. And if I could ask Ms. Edleblute if we could clear that. Thank you. If we can go ahead and play. *(Video playing.)* And who is that individual walking towards the minivan?

A. That's me.
Q. Where were you coming from?
A. I was coming from the office.
Q. All right. We have a little bit of dead space in the video.

MR. FORD: Your Honor, for the court's knowledge here, for a couple minutes, there's a little bit of dead space. We're not going to jump ahead unless the court wants us to, because, again, it's just probably about two, three minutes at the most, and we can work through this.

BY MR. FORD:
Q. All right. So, Trooper Nesbit, what's happening right now?
A. Once I returned into my vehicle, Corporal Fidler was also in there. At this point in time we are waiting for the -- any alerts that may come from when the parcel, the target parcel that was taken into the residence, if it starts moving.

We're going to look at -- waiting for that communication, and we're also having our surveillance team really keep an eye out to make sure there's no movement coming from the house and also in communication with air surveillance.
Q. And who was on that surveillance team?
A. Many of the members between Pennsylvania State Police and the Franklin County Drug Task Force.
Q. And obviously Inspector Corricelli?
A. And Inspector Corricelli and another inspector.

Q. And where was everybody located at?
A. We were located in different areas surrounding this residence, some located for the determination -- some members had the back door and they wanted to -- we wanted to make sure they could see the back door, us in the front.

Other members were positioned to come in if the -- if it was determined that we would make entry into the house. There were other members associated around the area in case the parcel went into a vehicle and started to drive away.
Q. And once the -- what notifications, in particular, are you waiting for?
A. We're waiting for any movement. As previously stated in testimony, when the -- Mr. Wagaman took the parcel inside, it gave us an alert that it moved, then we watch it move.

Once he got inside, the box stopped moving, and then we saw him coming to the garage door, so we knew that the parcel most likely was immediately sat down close to the living room area or the entry door and not continued to be carried through. So we're -- it is that precise that it will tell us anytime the box is picked up and moved. So that's what we were waiting for.
Q. All right. And then once you received that notice, what was it your intent to do?
A. Well, once we receive the notice that it's moving, then we're looking for the light sensor. It's been testified to

that there is a light sensor capability in the GPS unit. I would like the light sensor to go off because the light sensor is secreted -- well, the GPS tracker is secreted inside the parcel in the kilogram. So I know, once the light sensor is tripped and I get alerted, that the person who is handling that parcel has made entry into it and has found that kilogram and exposed that kilogram to light.

Q. And then once you know that the parcel was opened, what were you going to do?

A. Once we know that it has been exposed to light, we know that the individual is handling those kilograms or kilogram, whichever the case may be, and typically we want to make entry into the home at that point in time.

Q. And how were you going to make entry?

A. By making entry, we do a formation. Obviously these things are very delicate. So we form up into a line where I have a shield, all of our members have bulletproof vests on, we all have our weapons out typically to -- and typically we have to use a -- what we call a ram to strike the door and physically open it up and make entry.

Q. And so you used that ram. What did you carry?

A. I carried the shield.

Q. Why?

A. I carry the shield because we have an expectation in these cases that the people on the other side of that door could be

in possession of any number of weapons to include firearms, knives. Obviously, this is a surprise event that's happening, and they don't or may not recognize that it's the Pennsylvania State Police. Now, we audibly say that, but in these fight or flight scenarios, they could pick up a weapon and fire at the members coming through that door.

Q. Is it common, in your experience in executing these search warrants, to encounter firearms?

MR. ONGAY: Objection.

THE COURT: Basis?

MR. ONGAY: Your Honor, he's asking him to testify as an expert. He hasn't laid a foundation.

MR. FORD: Your Honor, I'm asking him to testify based on his experience. He mentioned that he's been involved in 50 to 100 controlled deliveries. Additionally, he's discussing the shield that he's going to be carrying in and why he was carrying that shield.

THE COURT: I'm going to sustain the objection. He's already answered the question about why he carried the shield. You can move forward.

MR. FORD: Yes, Your Honor.

BY MR. FORD:

Q. *(Video played.)* And if we can pause. We're approximately at five minutes and 47 seconds. On that sidewalk in the top left corner, what do we see, Trooper Nesbit?

A. That is me carrying the shield.
Q. Why are you coming in?
A. At that point we did receive an alert that the light sensor was activated. Shortly after him coming home we received that the box moved, and then we got the light sensor.
Q. All right. If we can go ahead and play. *(Video playing.)* Walk us through. What's happening here?
A. At this point, you know, due to the -- we're trying to use concealment because of the location of the house to formulate the team. We have these members coming in from their various surveillance positions. You can see them all running in to stack up and make entry and approach the front door. We also have the other members coming in towards the back of the residence to cover the back door in case anyone were to flee.
Q. If we can pause. And, I'm sorry, I hope I don't -- I don't mean to keep cutting you off. I just want to make sure that we pause at the right location. All right. You mentioned that there are people coming in from the back?
A. Yes.
Q. Could you identify them in this video?
A. This video -- I do know who they were based on the positions. That is Trooper Donny Reid and Corporal Justin Long from the Pennsylvania State Police.
Q. And where are they in the video right now?
A. They are at the back corner of 35 Redwood coming from the

tree line.
Q. We can play. *(Video played.)* And if we can pause. All right. Who was that individual that came out in the red or orange sweatshirt?
A. That was the defendant, Mr. Santana.
Q. And you observed him that day?
A. I did.
Q. And can you positively identify the defendant sitting here today as the individual that came to 35 Redwood and then that was tackled?
A. I can. Yes, he is seated next to counsel with the white facemask.
Q. That door that we saw him run out, what door was that?
A. That is his -- his door at 35 Redwood, but specifically the entry and exit door for the garage.
Q. The rear?
A. The rear exit, yes.
Q. And we saw two small black objects go forward. What were those?
A. Yeah, the two objects that were thrown by the defendant were the sham kilos placed inside the parcel.
Q. So let's go through -- so was he arrested?
A. He was taken into custody.
Q. Were any other individuals found in the home?
A. There was one other female found inside the home.

Q. And who was that female?
A. That was a female identified as the defendant's ten-year-of-age daughter.
Q. Afterwards, did you process the scene?
A. We did.
Q. How did you process it?
A. At that point, once he was taken into custody, we conducted a search warrant by photographing the residence and any items of evidentiary value, and we conducted an interview with the defendant.
Q. And did you take photographs inside the residence?
A. Yes.
Q. I'd like to bring up Government Exhibit 50. Could you tell us what that is?
A. So this is the first photograph taken, and it was taken of the defendant's vehicle, the Ford Expedition, as it sat in front of his residence, 35 Redwood.

MR. FORD: And I would offer Government Exhibit 50 into evidence, Your Honor.

THE COURT: Any objection?

MR. ONGAY: No objection.

THE COURT: Government's 50 is admitted.

MR. FORD: And permission to publish.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you describe this for the jury now?
A. This particular photo?
Q. Yes, I'm sorry. And whenever you mentioned that earlier, it was not up before the jury.
A. I apologize. So this first photograph was taken -- again, this is his white Expedition that we observed him driving into and parking and the number 35 to indicate that this is 35 Redwood in Franklin County.
Q. Can we bring up Government Exhibit 51?
A. This is another picture of the full front of the residence. And, again, it's taken to match it up with aerial surveillance and the other diagrams that you observed.

MR. FORD: And I offer Government Exhibit 51 into evidence, Your Honor.

MR. ONGAY: No objection.

THE COURT: Government's 51 is admitted and may be published.

MR. FORD: If we can publish that.

BY MR. FORD:
Q. And, Trooper Nesbit, could you please tell the jury, describe this for the jury now?
A. This is the photo of the entire front of the residence to include the garage and the space above.
Q. Now, that door, that front door, is that the door that you entered?

A. That would have been the door that we entered.
Q. And when you executed the search warrant, was the garage door open?
A. It was not.
Q. I'd like to bring up Government Exhibit 39. If we can go to Page 2. Could you tell us what that is?
A. Yeah, this is the building floor plan for 35 Redwood.
MR. FORD: Your Honor, I offer into evidence Government Exhibit 39.
MR. ONGAY: No objection.
THE COURT: Government's 39 is admitted.
MR. FORD: May I publish it, Your Honor?
THE COURT: Yes, you may.
BY MR. FORD:
Q. And, Ms. Reed, if I can ask you to blow up that center section. And, again, Trooper Nesbit, if you could tell the jury, what exactly are we looking at?
A. So this is the first-floor plan to 35 Redwood.
Q. When you came in that front door, what did you do?
A. When I came through the front door, again, holding the shield and with a weapon exposed around the shield, my first encounter was with the defendant's daughter who was standing in the living room.
Q. And with your finger, could you kind of trace the route that you took?

A. So the route that I took through the whole house is, I made entry, encountered the daughter. I observed her not to be a threat, so I pushed passed her, and then I came through the kitchen area back into this breakfast/family room. And once I determined that there were no threats in that location, I then did hear yelling outside and observed this hallway with this door that you can see swinging open.

So I made my way into the garage and observed this door open, and that's when I observed that the defendant was outside and had been taken into custody, and I had not encountered any other individuals through that area.

Q. Okay. And with the court's permission, I want to do this as a group. If you could grab that binder. We're about to go through several of the photographs that were taken, Trooper Nesbit. If you could just flip through these and identify Government Exhibit 97. And I apologize, this actually might be faster. Ms. Reed, if you could pull up 97.

THE COURT: Well, before we move off of the screen, did you want to preserve the image with the trooper's markings or no?

MR. FORD: I don't believe it's necessary, Your Honor.

THE COURT: Mr. Ongay, did you want to preserve that? We can take a screenshot. If it's not necessary --

MR. ONGAY: It's not necessary, Your Honor.

THE COURT: All right. We'll clear the annotations.

MR. FORD: And just to lay the foundation, Your Honor, I'm just going to put these up for Trooper Nesbit very quickly and then to go through and -- and then we'll admit them. Government Exhibit --

THE COURT: May I make a slightly different suggestion to avoid redundancy for the jury? If you identify a range of photos to defense counsel, he may or may not have any objections, and we could admit them if there are no objections.

MR. FORD: Yes, Your Honor. And I'm going to be jumping around here, Mr. Ongay.

MR. ONGAY: Sure.

MR. FORD: But it's 97.

MR. ONGAY: Go ahead.

MR. FORD: 94, 98, 101, 100, 53, 55, 56, 59, 60, 61, 64, 145, 146, 133, 132, 69, 71, 77, 80, 83, 86, 96, 88, 89, 124, 122, 123, 53, 55, 127, 130, 128.

MR. ONGAY: I'm sorry, 130 you said?

MR. FORD: Yep.

MR. ONGAY: And 128?

MR. FORD: 128, 68, 129, 134, 137, 138, 139, 140, 141, 142, 115, 19 -- or, I'm sorry, 92, 93, 116, 117, 118, and 119.

MR. ONGAY: 118 and what?

MR. FORD: 118 and 119.

MR. ONGAY: 19 or 90?

MR. FORD: 119.

MR. ONGAY: 19.

MR. FORD: One one nine.

MR. ONGAY: I assume these are all pictures from the interior of the residence?

MR. FORD: Yes.

MR. ONGAY: We'll agree to their identification, Your Honor. No objection.

THE COURT: All right. So the list of exhibits just read by Mr. Ford are admitted and may be published.

MR. FORD: Thank you, Your Honor.

BY MR. FORD:

Q. If we can bring up Government Exhibit Number 97. Could you tell us what that is?

A. That is a photograph of the living room.

Q. And that was the first room that you encountered. Right?

A. Yes.

Q. All right. Is this where you encountered the daughter?

A. It is.

Q. Where was she?

A. She -- I remember just as soon as I opened the door, she was possibly coming to the door because we were knocking on it and announcing ourselves. So she was moving towards the front door.

Q. What did she do whenever you entered?

A. Obviously that's -- she froze. She did not move. And,

again, I just then moved past her.
Q. All right. And Government Exhibit 94, tell us what that is.
A. That's another picture of the living room.
Q. There's a refrigerator in it?
A. There is.
Q. Why is that?
A. That was also due to the flooring that was being placed, and the maintenance guys were there to put that back into its location because the floor was finished.
Q. So there was flooring being -- new flooring being put in the kitchen?
A. Yes.
Q. Ninety-eight, can you tell us what this is?
A. That is the kitchen and the dining room behind it.
Q. And as this photo is taken, then the living room would have been to your back?
A. That's correct.
Q. And we're going in the order that you just told us that -- as you went through the house. Correct?
A. That's correct.
Q. 101.
A. That is a dining room and the rear door of the dining room.
Q. If one were to walk out that door, would they be in the rear of the home?

A. Yes.
Q. The same general area of where we saw the defendant run out in the video. Correct?
A. That's correct.
Q. But that was not the door he went through?
A. That was not the door.
Q. 100, please.
A. This is the hallway that leads from the kitchen area. And the door that you can just see at the end of, that's the door to the garage.
Q. And Government Exhibit 53?
A. And this would be a picture of the garage.
Q. So we see a washer. We see -- it looks like a toilet. It looks like the dishwasher is in there. Why is that?
A. Again, that was because the maintenance guys were coming to put all those items back into the residence.
Q. So this photo gives us perspective of the garage, but the garage door was not open whenever you executed the search warrant. Correct?
A. We did not observe the door to be -- the front door was not open.
Q. The actual -- I should say the garage door that vehicles would go into the garage was not open. Is that right?
A. That is correct.
Q. Okay. Government Exhibit 55, can you tell us what that is?

A. That is a picture of the scooter, and the target box that -- parcel that was delivered is sitting on top of the scooter.
Q. So when you executed the search warrant, is that where the parcel was found?
A. That is where it was found.
Q. And Government Exhibit 56?
A. This is a photograph of the door that the defendant exited upon us coming in.
Q. So that's the door that he actually ran out, and that's where he encountered Trooper Long and Trooper Reid?
A. That's correct.
Q. Okay. If we can bring up Government Exhibit 59.
A. That is that door from the outside perspective.
Q. So we see two doors there. Which door is it?
A. It's the one on the left side.
Q. And that one on the right, is that for the townhouse next to it?
A. That is.
Q. So that's the door that he came out. And Government Exhibit 60?
A. This photo is the location where he exited and traveled to before being taken into custody and of the two kilo -- the sham kilos that were inside the parcel that he threw onto the ground at that location.

Q. So we see a lot of footprints there. Would you agree with me the footprints tend to end at those -- around the location of the two pipes on the left?
A. That's correct.
Q. Is that the approximate location of where he was taken into custody?
A. That's correct.
Q. All right. And Government Exhibit 61?
A. This is just a closer picture of the two fake kilograms, sham kilograms, that we placed and he threw. And that's their final resting location. We did not move them.
Q. Sixty-four?
A. This was a picture to show where the final resting location of the kilograms were and the amount traveled from the door where he exited.
Q. So, again, the general location of where he was taken into custody is where those two pipes are located. Correct?
A. That's correct.
Q. But then the sham kilos traveled that distance from whenever we saw him throw them in the video?
A. That's correct.
Q. Government Exhibit 145?
A. This is the sham kilo that was then picked up. Upon picking it up, I observed it to have been cut into, more than likely by a razor blade, to see what was inside it. So the

defendant did cut into the sham kilogram.
Q. So that slit that we see there on the right, that was not in the sham package whenever you delivered it. Right?
A. That was not.
Q. And 146?
A. That's another picture just to show that he was actively cutting into the kilograms to see if -- what was behind the tape.
Q. And if we can go to Government Exhibit 39.
A. And this is just the diagram of --
Q. I'm sorry, Page 2. I'm sorry, that was -- yeah, Page 2 is what I wanted to -- all right. After you went through the first floor, what did you do?
A. After going through the first floor with the shield, we had a member positioned at the stairway that goes up to the second floor, which is typical. I then come out, and with the shield, I travel up the steps. Again, just in case there's anyone up there that would have a weapon or fire upon us, I'd have the shield, and I'd go clear the rooms up on the second floor.
Q. If we can blow up that section to the right, Ms. Reed. Could you tell us what that is?
A. Yeah, this is the floor plan for the second floor of 35 Redwood.
Q. And using your finger, could you kind of guide us through the route that you took to clear that area?

A. This is the stairway that would have came up. I would have cleared this room first. Once I did not encounter anyone, I cleared the next bedroom and then went back towards the master bedroom, would have been my path of travel.
Q. And if we can bring up Government Exhibit 133. Can you tell us what this is?
A. This is a coat rack that was found at the bottom of the first-floor landing pad for the -- I guess the -- at the bottom of the steps. So just in that little area at the bottom of the steps between the first and second floor, this is the coat rack.
Q. 132?
A. Inside the coat rack, we observed this purse. Inside the purse, we observed a magazine containing ammunition.
Q. And do you know what type of magazine that is?
A. I don't recall. It's for a semiautomatic handgun, but I don't recall which handgun that was for.
Q. Sixty-nine?
A. This is just a photo from that coat rack looking up into the second floor.
Q. Seventy-one?
A. This would have been the first bedroom that I went into, and this was determined to be the daughter's bedroom.
Q. Anything of evidentiary value?
A. Nothing.

Q. Seventy-seven?
A. This was the second bedroom that I went into and, as it appears, looked more like a gaming room and not a bedroom.
Q. Eighty? And, I'm sorry, anything of evidentiary value in that second room?
A. Nothing.
Q. Eighty?
A. That is the bathroom that was located between that bedroom and the master bedroom.
Q. Anything of evidentiary value?
A. Nothing.
Q. Government Exhibit 83?
A. This is a photograph of the master bedroom.
Q. Eighty-six?
A. This is a photograph of the master bedroom, as well.
Q. So of particular note here, so it looks like the bed for the master bedroom is on the left side. Is that correct?
A. Yes.
Q. Did you find any indications of who slept on what side of the bed?
A. It appeared that the defendant slept on that side with the male clothing, the male shoes, the CPAP machine that was located and hanging off the bedpost, and some of the other items that were on that side.
Q. And I don't want to qualify you as an expert in sleep

apnea, but could you tell the jury generally, what's a CPAP machine?

MR. ONGAY: Objection. Relevance.

MR. FORD: Your Honor, just to describe what a CPAP machine is for members of the jury that might not know.

THE COURT: What is the relevance of the CPAP machine I think is the nature of the objection.

MR. FORD: Well, generally, Your Honor, that it shows who sleeps on which side of the bed. It shows indications that somebody is sleeping on that side of the bed because a CPAP machine is present. I think the jury can --

THE COURT: Well, I'm going to sustain the objection, Mr. Ford.

MR. FORD: All right.

THE COURT: Move on.

MR. FORD: Understood, Your Honor.

BY MR. FORD:

Q. All right. You found shoes on that side of the bed. Correct?

A. I did.

Q. What type of shoes were they?

A. Male shoes.

Q. And if we can now bring up Government Exhibit 96. What is that?

A. That is the dresser that you just saw in the previous

photo. That is the top drawer opened, and that is a semiautomatic handgun, specifically a Glock.

Q. And if we could blow up the handgun, please. Is that a standard magazine in the handgun?

A. It is not.

Q. What's different about that magazine?

A. Most magazines and handguns are flush with the bottom where you put your hand. This one is extended and is protruding below that level to increase the capacity of that magazine to fire more bullets from that weapon.

Q. What type of handgun is that?

A. That is a Glock.

Q. Do you know the model?

A. I do not recall the model.

Q. You have it here, though. Correct?

A. It is here.

Q. If we can zoom out. If we can go to Government Exhibit 88. Can you tell us what that is?

A. So that is the closet next to that dresser where the gun was found.

Q. And, again, that bed -- so that closet is to the right of the bed?

A. That is correct.

Q. The same location where we found the men's, the male shoes?

A. That is correct.

Q. Eighty-nine?
A. This photograph was taken to note several things, the amount of shoes that appear to be consistent with the defendant's size that he wore, plus the black bag that is next to the white shoebox.
Q. 124?
A. And that black bag contained two gun boxes, one being for the Glock that was previously shown.
Q. And 122?
A. That is a parcel addressed to 35 Redwood, and that was found inside the master bedroom, as well.
Q. And the shipping label is still on this parcel. Correct?
A. The shipping label is.
Q. And the shipping label is not destroyed. Correct?
A. That's correct.
Q. Government Exhibit 123?
A. The contents of the box that you previously saw that contained a digital scale.
Q. All right. During -- and you searched that closet?
A. I didn't specifically search that closet, but it was searched by members.
Q. And you came through and took photographs of everything of evidentiary value. Correct?
A. I did.
Q. And, again, the firearm cases were found there?

A. Correct.

Q. Did you find any other indications of firearm use, anything, a cleaning kit, targets, eye protection, ear protection?

A. I did not.

MR. FORD: At this point, Your Honor, it would probably be a good place to break.

THE COURT: All right. So a couple of instructions. First of all, Trooper Nesbit, you will remain under examination, under oath. And what that means is, we will be expecting you to return tomorrow, of course, and you should not speak with anyone about your testimony until your testimony is concluded.

THE WITNESS: Yes, Your Honor.

THE COURT: Jurors, we will be saying goodnight to you for the evening, and I will remind you of the instruction I've given you twice already today, but I'll just give you the brief version, which is that you should not confer with each other or anyone else about this case. You should not do any research or reading about this case. I'll just remind you generally -- you have the instruction in your binder -- that everything you should learn about this case you should learn in this courtroom while you're seated as jurors.

We are going to resume this trial tomorrow morning at 9:00 a.m. I know some of you have some travel distance, but if

you could all plan to arrive in Jury Deliberation Room Number 1 by no later than 8:45, that will allow us to make sure you're here and to get you in here, into the courtroom and started by 9:00 a.m.

Jurors, we thank you for your first day of service, and if we could all rise, our jurors will be excused for the day.

(Jury leaves courtroom.)

THE COURT: Thank you. Please be seated for just a moment. Trooper, you can go ahead and take your seat in the gallery.

If there are any other ranges of exhibits that could be discussed in advance with counsel, if there's no objection, you can simply provide a range, we can admit them.

MR. FORD: Yes, Your Honor.

THE COURT: It avoids the duplicative discussion of the exhibits before publication.

MR. FORD: Yes, Your Honor.

THE COURT: I just wanted to mention, there is a row -- the front row of the gallery seems to have exhibits spread.

MR. FORD: Yes.

THE COURT: Those exhibits are not in evidence but are, to some extent, displayed to the jury. I would prefer we not do that.

MR. FORD: Yes, Your Honor.

THE COURT: So you have carts, keep them in the carts. Until they get publication permission, they should not be displayed like that.

Also, members who are attending in the gallery, there is a cart, speaking of carts, that has cushions. Those are intended -- I realize the benches are hard. I can't really make them any more comfortable, but we offer those cushions for those of you seated in the gallery. They help a little bit with your back.

Those are the only items I wanted to cover before we say goodnight. Is there anything else on behalf of the United States?

MR. FORD: No, Your Honor.

THE COURT: On behalf of the defendant?

MR. ONGAY: No, Your Honor.

THE COURT: All right. We will bring the jury in at 9:00 a.m. I will be on the bench at 8:45. If there are any exhibits you can come to agreements on or any issues to address, I'll be happy to take those up at 8:45.

MR. FORD: Do you want us here at 8:45, Your Honor, or --

THE COURT: Yes. I find it works best that way so that we can take care of any issues and that way we --

MR. FORD: Yes, Your Honor.

THE COURT: -- stick to my promise to the jury that we have them in the door at 9:00 a.m. We have a long day tomorrow, and if you remember, I have limitations at the end of the day time-wise, so we need to make every minute count.

MR. FORD: Yes, Your Honor.

THE COURT: All right. I'll see everyone at 9:00 a.m.

(Whereupon, the proceedings were adjourned at 5:00 p.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, Federal Certified Realtime Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 5th day of July, 2022.

/s/ Lori A. Shuey
Lori A. Shuey
Federal Certified Realtime Reporter

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

UNITED STATES OF AMERICA	:	
	:	Criminal Case No. 1:19-CR-251
vs.	:	
	:	(Judge Wilson)
ADAM NEFTALI SANTANA,	:	
Defendant	:	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
DAY 2, PAGES 153 THROUGH 347

BEFORE THE HONORABLE JENNIFER P. WILSON
UNITED STATES DISTRICT COURT JUDGE
NOVEMBER 9, 2021; 8:50 A.M.
HARRISBURG, PENNSYLVANIA

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(The following proceedings were held in the courtroom in the absence of the jury:)

THE COURT: We'll go on the record. I know the defendant is not here yet, but I understand we have an agreement regarding some exhibits. I think we could make productive use of this time and simply have the exhibits admitted, if you don't object to proceeding before your client gets here. If you'd rather wait, we can wait.

MR. ONGAY: No, Your Honor, for this purpose, we can proceed.

THE COURT: All right. So then I have been provided with a list of exhibits that the government proposes to admit, and I understand there's no objection. Mr. Ford, would you like to just read the list of exhibits?

MR. FORD: Yes, Your Honor. It's Exhibit 134, Exhibits 136 through 142, Exhibits 150 through 158, Exhibits 160, 161, 162, Exhibits 190 through 208, Exhibit 211, Exhibits 215 and 216, Exhibits 220 and 221, 225 and 226, and 230 through 233.

THE COURT: Mr. Ongay, there's no objection to those exhibits?

MR. ONGAY: That is correct.

THE COURT: All right. Well, then the exhibits just identified by Mr. Ford are admitted and may be used. Mr. Ford, if you wish to put them up on the screen, just simply request

permission to publish them. They're eligible for publication to the jury.

MR. FORD: Thank you, Your Honor.

THE COURT: All right. Are there any other preliminary matters that any counsel wishes to discuss on the record?

MR. ONGAY: Not for the defense, Your Honor.

MR. FORD: No, Your Honor.

THE COURT: All right. We'll await the defendant, and then we'll check with the jury.

(Defendant enters courtroom.)

(Jury enters courtroom.)

THE COURT: Please be seated, everyone. Good morning, jurors. Welcome back. We are ready to begin right on time, and so we will simply pick up where we left off yesterday. We were in the middle of the government's case-in-chief, and I'll invite Trooper Nesbit to return to the stand.

And just to remind you, jurors, Mr. Ford was conducting the direct examination of Trooper Nesbit when we broke for the day yesterday. And, Trooper Nesbit, I'll just remind you as you get seated, you are under oath for the duration of your testimony. Please proceed.

MR. FORD: Thank you, Your Honor.

STEVEN NESBIT, having been previously duly sworn, resumed the witness stand and testified as follows:

DIRECT EXAMINATION (cont'd.)

BY MR. FORD:

Q. So, Trooper Nesbit, just to remind the jurors what we heard yesterday briefly, you were the lead person on the execution of the search warrant at 35 Redwood Street, Chambersburg, Pennsylvania, on February 22nd, 2019. Is that right?

A. That's correct.

Q. And we went through and we talked about how you cleared the first floor and the defendant ran out the back of the garage. Correct?

A. That's correct.

Q. And then we had talked about how you cleared the second floor and the firearm that you found in the bedroom?

A. That's also correct.

Q. And I think that's the point that we left off. So now I want to talk about the garage.

MR. FORD: Your Honor, permission to publish Government Exhibit 53.

THE COURT: Permission granted.

MR. FORD: Thank you, Your Honor.

BY MR. FORD:

Q. Could you tell us what that is?

A. That is the garage that the defendant ran from upon our entry.

Q. And, again, whenever you executed the search warrant, the

garage door was not open? The garage door that a vehicle would go in, what we're looking through, that door was not open. Is that correct?

A. That's correct.

Q. And, again, why is there -- it looks like a stove, a toilet, and a dishwasher, why were those in the garage?

A. Those were placed in the garage as the maintenance placed the new flooring on the first floor, and I guess that's where they put them.

MR. FORD: Your Honor, may I publish Exhibit 55?

THE COURT: You may.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what this is?

A. So this is the area, the scooter is the item of note here with the box, the parcel that was delivered on the seat and the defendant's cellphone.

MR. FORD: Your Honor, may I publish 127?

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. This is a closer picture of that parcel, and in this parcel, you can see we opened the flaps, we observed some items inside the parcel, the razor blade and the defendant's cellphone.

Q. How do you know it's the defendant's cellphone?

A. I believe, I believe that he or the phone number associated with that came back to the defendant.
Q. So, again, this is the parcel that was delivered, this was the subject of the controlled delivery?
A. Yes.
Q. And that's the exact location that you found it?
A. That is the exact location.

MR. FORD: Your Honor, permission to publish 130.

THE COURT: Permission granted.

BY MR. FORD:
Q. Could you tell us what that is, Trooper Nesbit?
A. Yeah, that was just a closer picture of the cellphone and the razor blade. That was the only razor blade that we found in that area. And as previously testified to, the cutting of the parcel or the -- not only the parcel, but the kilos we attributed to this razor blade.

MR. FORD: And, Your Honor, permission to publish 128.

THE COURT: Permission granted.

BY MR. FORD:
Q. Trooper Nesbit, could you tell us what this is?
A. This is a closeup of what was inside the delivered parcel. Obviously, as the picture dictates, you can see that the parcel label was cut and placed inside the parcel with the -- from outside the box.
Q. When the parcel was delivered, this label was intact.

Correct?
A. That's correct.
Q. So this was done after the parcel was delivered?
A. After the parcel was delivered.
Q. And off to the lower right, we see a cosmetic case. Could you tell us what that is?
A. That cosmetic case was what was originally in the parcel. Each one of those makeup bags contained a kilogram of cocaine, as previously testified to, and that was the one that was placed back into the parcel when we did the controlled delivery with the sham kilograms inside it.

MR. FORD: Your Honor, permission to publish 68. And actually, I'm sorry, if we could stay on this, Ms. Reed.

BY MR. FORD:
Q. Trooper Nesbit, there's one cosmetic bag there. Correct?
A. That's correct.
Q. What was delivered in the package?
A. Delivered in the original parcel, when it was delivered, there were two makeup bags looking the exact same as you previously saw. Each one of those makeup bags contained a kilogram each.

When we did the controlled delivery, for the controlled delivery purposes, as I've talked about, the light sensor and the GPS unit, if I put one sham kilogram in each of those bags, if the defendant or whoever opens that would grab

the one without the GPS sensor/light sensor in it and opened it and found out that the kilo was not real, then they may not -- we would never maybe know if they touched the other one with the light sensor in it. So to safeguard us, we contained both sham kilograms into the one makeup bag because it could fit, and that way we would know if they -- anyone opened that particular bag.

Q. So the package that Inspector Corricelli opened had two makeup bags, each makeup bag with a kilo of cocaine. Correct?

A. That's correct.

Q. And then what you guys delivered, you put the two sham kilos in just one makeup bag. Correct?

A. That's correct.

MR. FORD: Your Honor, if we could publish --

MR. ONGAY: Your Honor, before -- I just want to make sure, you were still only -- the last exhibit you mentioned was 128?

MR. FORD: Correct.

MR. ONGAY: And then you started talking about -- you mentioned 68, but you did not discuss 68?

MR. FORD: Correct.

MR. ONGAY: Okay. I apologize. Continue.

MR. FORD: Your Honor, permission to publish 68.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what this is?
A. Yeah. This is another closeup picture of the label that was cut up into, you know, multiple pieces.
MR. FORD: Your Honor, permission to publish 129.
THE COURT: Permission granted.
BY MR. FORD:
Q. Trooper Nesbit, what's this?
A. That is the makeup bag that had contained the two sham kilograms that were delivered.
Q. And, again, there was only one makeup bag. Correct?
A. Only one.
MR. FORD: Your Honor, permission to publish 134.
THE COURT: Permission granted.
BY MR. FORD:
Q. All right. Trooper Nesbit, could you tell us what this is?
A. That is the rear seat of the scooter, and inside that, underneath that rear seat, we located makeup bags that looked very similar to the one that was delivered.
MR. FORD: Your Honor, permission to publish 137.
THE COURT: Permission granted.
BY MR. FORD:
Q. Trooper Nesbit, could you tell us what that is?
A. This is, again -- well, we removed the bag that's cellophane wrapped that contained all the makeup bags. Underneath that, those bags, was this piece of carbon paper.

And it was noted because these -- this is the exact same carbon paper that the original kilograms were found to be wrapped in when Inspector Corricelli initially opened the parcel.

Q. So just to be clear, Trooper Nesbit, when you created the sham packages, did you put carbon paper on those sham packages?

A. I did not.

Q. Was there any carbon paper in the package that was delivered during the controlled delivery to 35 Redwood Street on February 22nd, 2019?

A. There was not. And if I could explain that. The reason why we don't put a carbon paper on the sham kilograms is, again, because that would interfere with the light sensor capabilities if I had it wrapped -- if I put that wrapping paper over it.

Q. So this did not come from the parcel. Is that correct?

A. It did not.

MR. FORD: Your Honor, if we could pull up Government Exhibit -- or, I'm sorry, if we could publish 138.

THE COURT: Yes, permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. So from the picture several pictures ago, when we first opened that scooter seat, there was that cellophane wrapping with all these bags inside. This was those bags being removed, the cellophane cut, and indicating that there were four new

makeup bags underneath that seat.

MR. FORD: Your Honor, permission to publish 139.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. So when we opened these -- each bag individually, we wanted to note for the -- as the picture notes what was inside them and whether they were consistent with the parcel and the makeup bags that we initially delivered, which they were because of the dryer sheets that you can see inside them.

That's what the picture is really notating. Especially the left side of this photograph, you see all those dryer sheets, which were consistent with the two original makeup bags that Inspector Corricelli found when he opened the parcel.

Q. When you put that parcel together with the two sham packages to conduct the controlled delivery, did you put dryer sheets in it?

A. I believe we left the dryer sheets inside.

MR. FORD: Your Honor, permission to publish 140.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what this is?

A. Again, it's opening the next makeup bag. Upon opening it, again, we observed the dryer sheets inside, inside the zipper

case. And the toys were also of note because as the original parcel that we delivered, it also had a toy or a similar item inside it being consistent with the delivered kilograms.

MR. FORD: Your Honor, permission to publish 141.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. Again, the same as before. Upon opening it, we observed the dryer sheets. The purple marking also indicated that there was probably carbon paper in this one, as well, and the random items that -- from that same tag with the -- I can't remember what it was as Inspector Corricelli testified to. However, it came from the same store.

Q. And, Ms. Reed, if I could ask you to blow up that orange price tag. Trooper Nesbit, could you read that?

A. I can't quite read it, but it does say the 99 cents.

MR. FORD: And, Your Honor, permission to publish 142.

THE COURT: Granted.

THE WITNESS: And this was the fourth and final bag that was found underneath the seat. It clearly looks exactly the same as the one that we had did the controlled delivery with. And, again, the items of note are all the dryer sheets inside them which, as one would imagine, are not found in typical makeup bags, dryer sheets, and then the other items that are consistent with the -- every parcel or every makeup

bag.

MR. FORD: Your Honor, permission to publish Government Exhibit 115.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what this is?

A. This is a parcel that was found in the dining room area near the kitchen. And it's just -- it's showing the label, not only the label, but who it is -- who it's addressed to, where it was coming from. And the impulse sealer is significant in our drug investigations. We often find these during --

MR. ONGAY: Objection, Your Honor, as to the opinion of the significance.

THE COURT: What is the basis for the objection?

MR. ONGAY: He has to be qualified.

THE COURT: As an expert?

MR. ONGAY: Yes.

MR. FORD: Your Honor, it's relevant as to why the picture was taken.

THE COURT: Overruled. You may answer, Trooper Nesbit.

THE WITNESS: Thank you, Your Honor. Vacuum sealers we often find in drug investigations where traffickers will use the vacuum sealer to reseal their drugs once they break it down or, as we saw, all the plastic that is wrapped on them to

conceal odors, that is used to, again, conceal that odor.

MR. FORD: And, Ms. Reed, if we could blow up the label.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us, who was this shipped to?

A. Jaritza Santana Perez.

Q. And was this label cut up like the parcel that you received?

A. It was not.

MR. FORD: Your Honor, if we could publish Government Exhibit 92.

THE WITNESS: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what these are?

A. These are the -- Mr. Santana's identification cards.

Q. Why do you take photographs of these?

A. We take photographs of these for multiple reasons, just to make sure that we've identified the individual properly, we've identified and have his name with the address, which is always important when we do these things.

Plus, sometimes with multiple identifications, you'll see other addresses which may become important later on in followup investigations. So we're just trying to document name, addresses, and the photographs and any other relationship that he may have with other addresses or other names associated

with this investigation.
Q. Do you take photographs of -- regarding any indicia of the people that might live in that house?
A. Yes.
Q. So any type of -- if you come across any type of identification materials, cards, you know, driver's license, credit cards, anything along those lines?
A. Yes.
Q. And why would you do that?
A. We do that especially in these parcel delivery cases. As this parcel was addressed to Carmen Diaz, we're trying to make sure, if there is a name matching that, that name within the residence, obviously that may lead to further suspects if there is a Carmen Diaz that's in the house, and for followups, like I said, for address purposes to see if there could be other addresses associated with the trafficking organization.

MR. FORD: Your Honor, permission to publish 93.

THE COURT: Permission granted.

BY MR. FORD:
Q. Trooper Nesbit, could you tell us what that is?
A. That is the defendant, Mr. Santana's permit to carry.
Q. Permit to carry what?
A. Permit to carry a concealed weapon.
Q. So he was licensed to carry a firearm?
A. He was.

MR. FORD: And, Your Honor, if I could bring up 116.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. That is the defendant's passport.

MR. FORD: 117, Your Honor, permission to publish.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. That was another passport found inside the residence.

Q. And who is that a passport for?

A. Adam Javier Santana Flores.

MR. FORD: Your Honor, permission to publish 118.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, what are we looking at?

A. That's another passport found inside of the residence for Ana Marie Flores, I believe it's Lopez.

MR. FORD: And, Your Honor, permission to publish 119.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. That is another passport, and I believe this is the daughter that was located inside. Her last name is Santana Flores.

Q. Did you find any indicia of a Carmen Rivera living at the residence?
A. I did not.
Q. A Madelinee Diaz?
A. I did not.
Q. A Juan Rivera?
A. I did not.
Q. A Carmen Diaz?
A. I did not.
Q. A Damariz Rivera?
A. I did not.
Q. A Manuel Ortiz?
A. I did not.
Q. Trooper Nesbit, you mentioned that you -- and we previously saw a photograph, you found a firearm in the house. Is that correct?
A. That's correct.
MR. FORD: Your Honor, I'm showing Mr. Ongay Government Exhibit 150. Permission to approach the witness, Your Honor.
THE COURT: Permission granted.
BY MR. FORD:
Q. Trooper Nesbit, could you tell us what that is?
A. It is the Glock 19 that was found in the master bedroom in the dresser.

MR. FORD: Your Honor, permission to publish to the jury.

THE COURT: Permission granted.

MR. FORD: Your Honor, would you like me or Trooper Nesbit to?

THE COURT: You, Mr. Ford.

MR. FORD: All right.

BY MR. FORD:

Q. Before I do that, Trooper Nesbit, could you tell us the model of the Glock?

A. It's a Glock 19.

Q. And the serial number?

A. The serial number is S as in Sierra, Y as in Yankee, K as in kilo 946.

Q. And, Trooper Nesbit, again, could you remind us where that was found?

A. That was found in the master bedroom, top dresser drawer, on what we believed to be the defendant's side of the bed.

MR. FORD: Your Honor, permission to publish, to put Exhibit 96, it's already been admitted, back on the screen.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. Yeah, that is the original picture that was taken of the Glock 19 as it was found inside the master bedroom.

MR. FORD: Your Honor, permission to publish 86.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you remind us what that is?

A. Yeah, that's the detailed picture of the master bedroom, again, as I previously just stated, indicating what we believed to be the defendant's side of the bed with the clothing, CPAP machine, and other items, shoes.

Q. Was that firearm loaded whenever you found it?

A. It was. It had ammunition in the magazine.

Q. Okay. And additionally, you also found a magazine on the stairwell going up the steps. Is that correct?

A. That's correct.

Q. And how many rounds was in -- was located in that magazine?

A. I believe there was only one round located in that magazine.

Q. And how many rounds were in the magazine that was loaded into the Glock?

A. I can't remember if it was a 15- or 17-round magazine.

MR. FORD: And, Your Honor, I'm showing Mr. Ongay Government's Exhibits 151 and 152. I'm also showing Mr. Ongay Government Exhibit 153. Your Honor, permission to approach the witness.

THE COURT: Granted.

MR. FORD: And I'm giving the witness 151, 152, and

153.

BY MR. FORD:

Q. All right. Trooper Nesbit, could you tell us what Government Exhibit 150 is? I'm sorry --

MR. ONGAY: 151.

MR. FORD: -- 151.

THE WITNESS: 151 is the Glock magazine. It's a 17-round magazine that was found inside the Glock 19.

BY MR. FORD:

Q. And could you tell us what Government Exhibit 153 is?

A. 153 is a SIG Sauer nine-millimeter magazine. This was found in the purse that was located on the coat rack on the first floor leading up to the second floor.

MR. FORD: Your Honor, permission to publish Government Exhibit 131.

THE COURT: 131 I do not have as in evidence, not yet admitted.

MR. FORD: My apologies, Your Honor. Your Honor, if I could ask Ms. Reed to bring up 131 just to Trooper Nesbit.

THE COURT: Certainly.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. That is the picture of where the SIG Sauer magazine was located inside the purse.

Q. Inside the purse.

MR. FORD: Your Honor, I offer into evidence Government Exhibit 131.

THE COURT: Mr. Ongay?

MR. ONGAY: No objection, Your Honor.

THE COURT: 131 is admitted.

MR. FORD: And, Your Honor, permission to publish.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell the jury, what's Government Exhibit 131?

A. 131, again, is the picture of this magazine from the SIG Sauer located in the purse which was hanging on the coat rack on that first floor leading up to the second floor.

MR. FORD: And, Your Honor, permission to publish 132.

THE COURT: Granted.

THE WITNESS: And that was the closeup version of this magazine. And as you can see, it indicates that there was one round in this magazine.

MR. FORD: And permission to publish 133, Your Honor.

THE COURT: Granted.

BY MR. FORD:

Q. Trooper Nesbit, what is that?

A. That is just a different view of the coat rack and the purse.

Q. And, Trooper Nesbit, you have Government Exhibit 152 up

there in front of you. Could you tell us what that is?
A. This is the nine-millimeter ammunition, 18 total rounds, 17 removed from the Glock magazine that was inserted into the weapon and the one round that was found in the SIG Sauer magazine.

MR. FORD: Your Honor, permission to publish that to the jury.

THE COURT: Yes.

MR. FORD: All three exhibits, 151, 152, and 153.

THE COURT: Permission granted.

BY MR. FORD:
Q. Trooper Nesbit, did you find any other ammunition in the house?
A. Yes.

MR. FORD: Your Honor, I'm showing Mr. Ongay Government's Exhibits 154, 155, and 156. Your Honor, permission to approach the witness.

THE COURT: Granted.

MR. FORD: And I'm giving Trooper Nesbit Government's Exhibits 154, 155, and 156.

BY MR. FORD:
Q. Trooper Nesbit, let's start with Government Exhibit 154. Could you tell us what that is?
A. These are Glock nine-millimeter magazines, 15-round, 15-round, and a 31-round magazine.

Q. Trooper Nesbit, are you familiar with Glock weapons?
A. I am.
Q. Do you carry a Glock?
A. I do.
Q. When you received your Glock -- and did you receive that from the Pennsylvania State Police?
A. I did not.
Q. Have you received a Glock from the Pennsylvania State Police?
A. I have.
Q. And when you received that firearm, did it come with a 31-round magazine?
A. It did not.
Q. How many round magazine did you receive?
A. Typically they are -- for our weapons, they are 15-round magazines. The personal one that I carry, it is a 10-round magazine.
Q. And where were those magazines recovered?
A. These were recovered, I believe, from the bag that was in the master bedroom closet.
Q. And Government Exhibit 155, could you tell us what that is?
A. This is ammunition that was located within these magazines.
Q. And Government Exhibit 156?
A. 156 was the box of nine-millimeter ammunition that was found inside the bag that contained the gun cases in the master

bedroom closet.

MR. FORD: Your Honor, permission to publish to the jury.

THE COURT: Granted.

BY MR. FORD:

Q. So, Trooper Nesbit, you recovered those firearms, you recovered those magazines. Did you recover any hearing protection?

A. I did not.

Q. Did you recover any eye protection?

A. I did not.

Q. Did you recover any targets?

A. I did not.

Q. Did you recover any cleaning kits?

A. I did not see any cleaning kits.

Q. Okay. I'm showing Mr. Ongay Government Exhibit 157. Trooper Nesbit, can you tell us what that is?

A. This is the parcel located inside the residence addressed to the last name Santana and the digital scale that was contained inside it.

MR. FORD: Your Honor, permission to publish 122.

THE COURT: Permission granted. Just to be clear, the exhibit you placed in front of Trooper Nesbit was Government's 157. Is that correct?

MR. FORD: Yes, Your Honor. I apologize.

THE COURT: Certainly. And you said Government's 122 you'd like to publish?

MR. FORD: Yes, Your Honor.

THE COURT: Permission granted.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. Yeah, that's the location where Item 157, Exhibit 157 was located.

MR. FORD: And, Your Honor, permission to publish 123.

THE COURT: Permission granted.

THE WITNESS: That is the picture indicating -- that the digital scale was inside this parcel.

BY MR. FORD:

Q. Okay. And, Trooper Nesbit, with 122, you said that that's the photo of where it was located. In what room was that photograph taken?

A. That was located in the master bedroom, as well.

MR. FORD: Permission to publish 157, Your Honor.

THE COURT: Yes, permission granted.

MR. FORD: And, Your Honor, I'm showing Mr. Ongay Government Exhibit 158. Your Honor, may I approach the witness?

THE COURT: Yes.

MR. FORD: And I'm giving Trooper Nesbit Government Exhibit 158.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. This was a bag located within the master bedroom closet and the two gun cases that were located inside it.

MR. FORD: Your Honor, permission to publish 158 to the jury.

THE COURT: Yes, granted.

MR. FORD: Your Honor, I'm showing Mr. Ongay Government Exhibit 160. Your Honor, may I approach the witness?

THE COURT: Yes.

MR. FORD: And I'm providing the witness Government Exhibit 160.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. This was the delivered parcel that we conducted the controlled delivery with and the makeup bag and, as you can see, the area that we would have placed the two kilograms of cocaine inside this makeup bag.

MR. FORD: Your Honor, permission to publish to the jury.

THE COURT: Granted.

MR. FORD: Your Honor, could I give this to the jury to pass?

THE COURT: Certainly.

THE WITNESS: And one item to note is that we did tape the label back up. Obviously the pictures indicated that it was cut up. We had taped it back up in this manner just to show that this was, in fact, the parcel that we delivered.

MR. FORD: Your Honor, I'm now showing Mr. Ongay Government Exhibit 161.

THE COURT: I'm sorry, what was the number?

MR. FORD: I'm sorry, Your Honor?

THE COURT: What was the number?

MR. FORD: 161, Your Honor.

THE COURT: All right.

MR. FORD: Your Honor, may I approach the witness?

THE COURT: Certainly. You have ongoing permission to approach this witness.

MR. FORD: Thank you, Your Honor. And I'm providing the witness with Government Exhibit 161.

BY MR. FORD:

Q. Trooper Nesbit, could you tell us what that is?

A. Yes. These were the makeup bags that were located underneath the scooter seat and just as they were found with the dryer sheets that you can smell even through the plastic.

MR. FORD: Your Honor, permission to publish.

THE COURT: It may be suitable to just hold it up to the jury. Maybe the trooper could just stand up and display it to the jury.

MR. FORD: Yes, Your Honor.

THE WITNESS: And I think not only the makeup bags, but this was the carbon paper that was also found, now that I see it, the carbon paper and the cellophane wrap that these things were wrapped around. But that is the carbon paper that was located underneath the seat, as well.

BY MR. FORD:

Q. And if you could flip it around, Trooper Nesbit, to show the other side.

A. *(Witness complies.)*

Q. Thank you. Trooper Nesbit, that Glock 19 firearm -- or, I'm sorry, it's a Glock 17, nine-millimeter firearm that you found. Correct?

A. Correct.

MR. ONGAY: Sorry, did you say 17 or 19?

MR. FORD: It's a Glock -- I'm sorry, it is a Glock 19, nine-millimeter handgun.

BY MR. FORD:

Q. Is that correct, Trooper?

A. That's correct.

Q. Was that a firearm in that it was designed to or may readily be converted to expel a projectile by the action of an explosive?

MR. ONGAY: I'll stipulate to that, Your Honor. It's a pistol.

THE COURT: All right.

BY MR. FORD:

Q. And did it appear to be working?

A. It appeared to be working, functioning.

MR. FORD: Your Honor, if I could have one second. Your Honor, I'm going to recover that exhibit and pass the witness.

THE COURT: All right. Mr. Ongay, cross-examination.

MR. ONGAY: I'm sorry. Your Honor, I apologize, I need to take a personal recess if --

THE COURT: Okay.

MR. ONGAY: Without more details.

THE COURT: Understood. Jurors, we will take a brief recess. It's now 9:40. We'll be in recess until 9:50. Please rise.

(Jury leaves courtroom.)

THE COURT: Thank you. Please be seated. Trooper Nesbit, you'll remain under oath until your testimony is concluded. So we'll be in recess until 9:50.

(Recess taken.)

THE COURT: Please be seated. Mr. Ongay, we are to the point of your cross-examination. Are you prepared to proceed?

MR. ONGAY: I am ready to proceed, Your Honor.

THE COURT: All right. Please do.

MR. ONGAY: And I will take my mask -- and just to check, can the court reporter hear me well?

COURT REPORTER: Yes.

MR. ONGAY: Thank you.

CROSS-EXAMINATION

BY MR. ONGAY:

Q. Good morning, Trooper Nesbit. How are you?

A. Good morning. I'm well. Thank you.

Q. Thank you. You ordered a trace of the Glock 19. Is that correct?

A. I did.

Q. And what did happen as a result of the trace?

A. I believe that, without it sitting in front of me, it did come back to either Mr. Santana or someone else. And we checked -- I believe it was this case we checked into the last owner who said it was sold --

Q. Okay.

A. -- if it didn't come back to Mr. Santana.

Q. And it's not -- it did not come back as stolen. Is that correct?

A. It did not.

Q. Okay. Now, just before you concluded your cross -- I'm sorry, your direct examination, you said that the firearm appeared to be working?

A. It appeared functional from --

Q. Functional. What that means, I gather that you, in fact, did not test the firearm to determine whether, in fact, it's operable or was operable?
A. I did not test-fire it, no.
Q. And do you know if there is a report in the case that established that the firearm was operable?
A. I did not have it sent to be test-fired, no.
Q. Okay. Now, there were two gun cases, I sometimes call them boxes, I apologize, recovered in this case. Correct?
A. That is correct.
Q. And would you agree that it is safer to transfer a firearm inside a gun case than to put it on your waist?
A. If you're asking me personally, I carry one on my waist every day in a gun holster.
Q. So your testimony is that it's not safer to put a firearm -- lock it in a box and transport it than to carry it on your waist. Is that your testimony?
A. Well, I'll give you my personal opinion. I feel that it's more comfortable being with me. As you put it in a case, it still has the ability to be stolen from your vehicle. My personal opinion is the safest -- my gun is safest with me on my hip in a holster. That way I always know where it is.
Q. But that is a good -- would you agree that it is a good way of transporting a firearm, inside a case?
A. I will say it is also a good way to do it, just not my

personal preference.
Q. There's nothing illegal, however, right, in possessing one, two, three gun cases? Is that correct?
A. That is correct.
Q. Okay. Now, did you find the gun cases?
A. I don't think I specifically found them, but I did photograph them.
Q. You photographed them. You were the officer in charge of the search. Is that correct?
A. I was.
Q. So I assume that everything that was found was eventually shown to you and reported to you?
A. Yes. If I may explain, typically what happens, as I take the photographs -- once someone finds an item, they try not to disturb the item. I then walk up to the item, I see where it was found, I note that, and then photograph it.
Q. Okay. But my question was not what you do. My question is whether, in fact, you then become responsible for every item that is found during the search and seizure.
A. I am.
Q. And as part of your responsibility, I assume you, at some point -- did you place those two boxes, gun cases, in a property receipt?
A. They do then get --
Q. Not "they," did you?

A. So this is -- we work as a team.
Q. Okay.
A. So I won't personally, you know, physically do every step of this, but I will be present when it's being done. So I won't physically put everything into property. As a team, we do it, but I am present for it, signing off on all the evidence, if it's needed to be signed off on, but I was present for it.
Q. Okay. And I assume you opened the gun cases. Right?
A. I did, in fact, open the gun cases.
Q. And there was documentation about the two firearms involved -- related to two firearms inside the gun cases. Is that correct?
A. I do believe in this particular case the receipts, I believe for where the defendant purchased them, I believe they were in the gun case.
Q. Okay. Now, you're familiar with gun ranges?
A. I am.
Q. And that is a place, correct, where people go to shoot their firearms, rifles? I assume it's firearms. Is that correct?
A. That is correct.
Q. Okay. And isn't it also correct, Trooper Nesbit, that when you go to one of those locations, one of those places, they will also provide you eye protection and they will also provide

you hearing protection so that when you are firing the firearm, you can protect your hearing and your eyesight?
A. I would say that's not correct.
Q. That's not correct?
A. In the gun ranges that I am familiar with and I personally go to, I must bring my own.
Q. Okay.
A. There are some ranges, depending upon which ones you go to, that may be applicable to, but not the ones that I specifically -- or I have seen.
Q. But you recognize that there are ranges that do, in fact, provide that equipment to the shooters?
A. I have not been to one, so I can only personally say I believe that to be true, but I've never done that myself.
Q. Okay. And would you also agree that a gun enthusiast who frequents gun ranges, it's also normal and not unexpected that they will, in fact, have ammunition?
A. You would need ammunition to fire the gun, so I would say that is --
Q. That is correct?
A. That is accurate.
Q. Okay. And all of the ammunitions that you found were the type of ammunition that could be fired with a Glock 19. Is that correct, also?
A. That's correct.

Q. I believe -- I'm sorry, yes, Exhibit 152 -- and you don't have to raise it -- contained the 17 bullets that you removed, I assume it was you, or that were removed from the magazine that was in the Glock 19. Is that correct?

A. I believe in that exhibit, if you're talking about the bag of ammunition, it's a total 18 rounds.

Q. That is correct.

A. Seventeen rounds were in the Glock magazine and one round from the SIG magazine.

Q. And you are precise, they were, in fact, in the Glock magazine, they were not loose?

A. They were in the Glock magazine, that's correct.

Q. And that also means that there was no bullet in the chamber, the gun was not cocked. Is that correct, also, Officer?

A. In the firearms, there was not one in the chamber, that is correct.

Q. That is correct. So while the Glock 19 was, in fact, holding a clip which contained 17 bullets, the Glock 19 needed to be cocked before it could be fired. Is that correct?

A. Yes.

Q. Okay. Now, the dresser where you found this firearm, that is the only dresser in that bedroom. Is that correct?

A. I believe there's another dresser on the left side or the opposite side of the bed.

Q. Okay. Let me change the subject to the scale. The scale, the exhibit was 157, and it had a box in it and then a very small item that was described as the actual scale. Is that correct, that's what the exhibit had?

A. Yes.

Q. Okay. Now, that was inside a box, correct, when you found it?

A. That's correct.

Q. So would you agree that that was unused?

A. It appeared to be unused.

Q. And would you also agree that there was no appearance of any kind of residue of a controlled substance on it?

A. I did not observe.

Q. And if you had observed that, you would have immediately sent that to the lab for trace analysis to find out if what you thought was drugs would be determined whether or not it was, in fact, a drug substance. Correct?

A. That would be the standard procedure.

Q. And that was not done?

A. It was not.

Q. Okay. And let's go now, jump to the sealer. The sealer was also found inside a box?

A. That is correct.

Q. And also that sealer appeared to be unused?

A. That is correct.

Q. And you also, just like with the scale, did not send that sealer to a lab or remove some trace samples that you thought were a controlled substance for analysis to determine whether, in fact, they were a controlled substance or not. Is that correct?

A. That is correct.

Q. Okay. Now, when you entered the home, correct me if I'm wrong, you had already been alerted that the parcel had been opened?

A. Yes.

Q. And so when you entered the home -- and you entered through the front door. Correct?

A. That's correct.

Q. At no time did you see the defendant trying to reach the second floor?

A. As I made entry --

Q. Yes, as you made entry, did you see the defendant trying to reach the second floor?

A. I did not. It should be noted, the front door --

MR. ONGAY: Objection, Your Honor. I did not pose a question to the witness.

THE COURT: Sustained.

BY MR. ONGAY:

Q. You also found the defendant's cellphone?

A. That is correct.

Q. And, again, when I say "you," maybe you didn't yourself, but since you are the officer in charge of the search, I'm assuming that it ultimately comes to you. And a warrant was obtained for that cellphone. Is that correct?
A. That's correct.
Q. And correct me if I'm wrong, no evidence upon the execution of the warrant was determined to be incriminating that you would be using in this case. Is that correct?
A. That is also correct.
Q. How long were you, if you recall -- I understand it's been a while -- inside the home conducting the search? And if you don't recall exactly, if you could please give an approximation of the length of time.
A. From the time of delivery until the time we would have exited, I'm guessing it would have probably been at least two hours.
Q. Two hours. And once you secured the property, you had unrestricted access to that property. Would that be fair to say?
A. That is correct.
Q. And you were able to thoroughly search that property?
A. That is correct.
Q. And you found no additional controlled substance in that property?
A. We did not.

Q. And you found no money in that property?
A. We did not.
Q. And, in fact, you asked my client, the defendant, on multiple occasions, where was the money? You don't remember that?
A. If you're saying that we did, it is possible that we would have in these investigations, but your defendant did not cooperate with our interview, so I'm not sure --
Q. No, my question is not --
A. -- if that was said or not.
Q. I apologize. Did you finish?
A. I did.
Q. Okay. I'm sorry. I didn't want to interrupt you. Now, I understand my client exercised his right to remain silent. My question is, did you ask him, where is the money?
A. I don't recall.
Q. You don't recall?
A. Because it wasn't a very long interview.
Q. Okay.
A. And there was a language barrier, so I would have had to have asked that through an interpreter.
Q. So everything that you listed in the inventory sheet -- do you recall the inventory sheet, Trooper Nesbit?
A. I do recall it being completed, yes.
Q. And do I need to show it to you, or do you remember it

well?
A. I will not say that I remember every item taken, but we covered most of those items.
Q. Okay. The question that I'm going to ask -- if you need me to show you the document because you don't recall, I will be more than glad to give you an opportunity and show you something. But the question is this, is it fair to assume that anything you found of an evidentiary value regarding the charges in this case, it's in this document listed?
A. Yes.
Q. Okay. Thank you, Officer. Now, your first involvement in this case began on the 22nd of February. Is that correct?
A. That is correct.
Q. You had no idea who Adam Neftali Santana was before the 22nd of February?
A. It is possible that -- these investigations, as they come in, sometimes we do discuss them with the postal inspector. I won't say that I know -- I know when we conducted the ops plan and prior to the search warrant, it was believed that he was the resident and the most likely suspect of this investigation. However, I don't recall how that came about and how much discussion was had prior to the 22nd.
Q. Correct. But you first were contacted about this case on the 22nd, that is the question.
A. Well, this particular box and parcel --

Q. Right.
A. -- that is when we were notified that this case would be going forward. There probably was some talk prior to that because of what the inspector had already conducted.
Q. Okay.
A. I would have been privy to some of that, I just don't recall what all information I had.
Q. And before the 22nd, you personally had never seen Mr. Santana?
A. Personally in person, I had not met him, no.
Q. And do you recall if you had seen a photo of him before the 22nd?
A. I don't recall if I did or not. Again, he was the suspect, and we listed him that morning as one, so I'm guessing I would have had some intel from Inspector Corricelli.
Q. Do you recall receiving a report that you read where his status as a suspect was documented?
A. I don't.
Q. You don't. In fact, there was no such report. Is that correct?
A. I did not produce a report on that, no.
Q. No. And you never read one, either?
A. I --
Q. It's a yes or no answer, Officer.
A. Well, I don't have that information because I don't recall.

Again, what Inspector Corricelli conducted, his investigation had determined, I don't know if I had that information prior to the 22nd or I obtained it all on the 22nd. However, we do know that Mr. Santana was listed as a suspect from the prior investigation conducted by -- surveillance conducted by Inspector Corricelli.

Q. Okay. Now, you never heard a conversation on the phone involving Mr. Santana?

A. That would be correct.

Q. And you never heard Mr. Santana even discuss a drug transaction?

A. That's correct.

Q. And you never observed Mr. Santana involved in a drug transaction?

A. I did not, that's correct.

Q. And you don't know anything about who was sending those parcels to 35 Redwood Street?

A. I do not.

Q. You do not. And you never investigated that. Is that correct?

A. That is correct.

Q. You have no idea who that person or persons may be?

A. I do not.

Q. You have no idea if, in fact, there was an agreement and what terms, what price, et cetera? You don't know anything

about that?
A. I do not, of this particular case.
Q. Did you find ink pads?
A. I did not find any ink pads.
Q. Did you find the actual stamps that are placed on the ink pad to then lift the brand on a package?
A. You mean -- I'd have to see -- you'd have to be more specific. Is that meaning --
Q. Go ahead.
A. If you're talking about the kilograms, the kilograms are pressed in a machine.
Q. No, no, I did not ask you whether the kilograms were stamped. I was very clear in my question.
A. Well, that's what I was confused with.
Q. Did you find a stamp, the actual seal stamp that you place and that you use that to put something on something else, to label something, to give it your imprint, brand?

They're generally made out of rubber. Sometimes you use that when mail is received. You stamp it received mail and the date. Did you find any stamp with a brand name for a controlled substance?
A. Well, that's why I was confused, because typically we don't -- there is not a stamp on a cocaine investigation other than a stamp on the kilogram as testified to. And any stamp, I don't know --

Q. My question is not what you found, Officer. My question is -- let me ask you a separate question.

So your testimony is that in your experience conducting searches and seizures in drug cases, you have never searched a home where you found a stamp that is the brand that that drug dealer places on their cocaine or on their heroin to distinguish it from other sellers? You have never found those stamps in your searches. Is that your testimony?

A. No. And that's why I was confused, because a heroin investigation I would be looking for those stamps. In a cocaine investigation, a stamp, as we talk about the stamp, is usually located on the brick of cocaine pressed in by a metal container. A heroin investigation would typically have an ink stamp, and the baggies may be stamped.

We weren't conducting a heroin investigation. This is a cocaine investigation. So that's why -- my confusion was your reference to a stamp, because your reference to a stamp in this investigation pertains to the cocaine, not to a heroin wax paper bag.

Q. Officer Nesbit, I'm not asking you what the cocaine had actually, I'm asking you whether you found something else. The question is simple, and you could say yes or no. And I want to know this question: Did you find a stamp to stamp a bag --

A. I did not find --

Q. -- of a controlled substance for sale? Did you find that

type of stamp?
A. Again, I did not find a stamp, as you were saying it, with ink.
Q. Okay. Thank you. Now, you also did not find a stash of 2,000 ziplock bags, small quantities that are generally used to package controlled substances. Is that correct?
A. That's correct.
Q. If you did, you would have placed them on that inventory receipt. Correct?
A. That's correct.
Q. Did you find a press?
A. I did not find --
Q. Would you like to explain to the jury what a press is?
A. So that was the confusion of the last question. In cocaine investigations, it's typical --
Q. Please, I apologize, I have to object. The question that I asked you is, can you explain to the members of the jury what a press is? That is all I'm asking you. If you cannot do that, then I'll rephrase the question.
A. Well, it is specific to a cocaine investigation. Correct?
Q. Let me ask you a different question.
A. Okay.
Q. Isn't it true that a press is a mechanism that is used to compact cocaine into kilo quantities? Yes or no?
A. That is correct.

Q. Did you find that in the place?
A. I did not.
Q. Thank you. If I asked you these questions already, I apologize. But it would be correct for you to say that you never saw Mr. Santana with a firearm on his hands?
A. That would be correct.
(Pause in proceedings.)
THE COURT: Mr. Ongay, do you have any further questions for this witness?
MR. ONGAY: I do, Your Honor. I'm just going through this very lengthy list. I just want to make sure that I don't miss anything. I apologize for the delay. I'll try to be faster. Just a couple more questions, Your Honor.
THE COURT: All right.
MR. ONGAY: I apologize for the delay. I'll try to be brief. This will be quicker.
BY MR. ONGAY:
Q. Okay. You already testified about this, so I just want to clarify this. So once you see the maintenance person go into the home and you determine that he's not, in fact, associated or a suspect, you stated that you went to the maintenance office?
A. That's correct.
Q. But you didn't call the maintenance office before you went to the maintenance office?

A. No, I did not.
Q. You did not. And then you got to the maintenance office, and that's when contact was made with the gentleman who was inside 35 Redwood Street. Is that correct?
A. Yes.
Q. Okay. And communication took place with the gentleman, and then the gentleman left the home and came towards the office?
A. Yes.
Q. And then you left, and as you left, you learned that Mr. Santana was somewhat about to arrive?
A. The actual events that happened, I was inside still and was informed that he was coming home. That's when I exited and walked out to my vehicle.
Q. And at that point you had already -- the maintenance person had already left 35 Redwood Street. Is that correct?
A. That is correct.
Q. Okay. So when Mr. -- when you are notified that Mr. Santana had arrived or was in the process of arriving, I believe his name is Mr. Wagaman had already left 35 Redwood Street. Correct?
A. Yeah, he had left, and we were physically speaking inside the office.
Q. Okay.
A. At that time.
Q. Okay.

A. So, again, I walked out just as -- as I was still in the conversation with Mr. Wagaman.
Q. Right. And he never went back to 35 Redwood Street, Mr. Wagaman, at that point?
A. No.
MR. ONGAY: I don't have any other questions for Agent Nesbit -- I'm sorry, Trooper Nesbit.
THE COURT: All right. Any redirect?
MR. FORD: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. FORD:
Q. Trooper Nesbit, Mr. Ongay asked if you observed the defendant try to reach the second floor.
A. That is correct.
MR. FORD: Your Honor, if I could bring up Government Exhibit 39.
THE COURT: You may.
MR. FORD: If we can go to Page 2, please, Ms. Reed, and if we can blow up that middle section.
BY MR. FORD:
Q. Trooper Nesbit, we spoke about this yesterday. What are we looking at, though? Please remind the jury.
A. That is the floor plan diagram for the first floor of 35 Redwood.
Q. And with your finger, draw a line for the door that you

came in.
A. This door here.
Q. And what's to the left?
A. The left is the stairway to the second floor.
Q. And remind us, when you went in that door, what did you have?
A. I had a shield.
Q. What type of shield?
A. It's a ballistic, bulletproof shield.
Q. And what hand were you carrying that in?
A. Left hand.
Q. What was in your right hand?
A. My right hand, I held my pistol.
Q. And so if Mr. Santana had tried to get to the second floor, what would he have faced?
A. He would have faced me.
Q. He would have had to go through you in order to get to --
A. He would have had to go through me and my team.
Q. And remind us, where did Mr. Santana go?
A. He went out the back door of the garage.
Q. Thank you. Additionally, Mr. Ongay asked you about the cellphone. You got a search warrant for the cellphone, for Mr. Santana's cellphone. Correct?
A. That's correct.
Q. And you searched it?

A. That's correct.
Q. From the return, were you able to find any captured oral communications, meaning if Mr. Santana had called somebody in Puerto Rico, would you have gotten that?
A. I would not have gotten that.
Q. And if you wanted to capture a phone call, all right, if I picked up Mr. Haugsby's phone and I dialed somebody in Puerto Rico and I wanted to -- and you wanted to hear that, how would you have to go about obtaining that?
A. We would have to go through a very detailed process with the district attorney's office. They're called T3s. It's very invasive because obviously we're listening to your phone calls. So that requires a lot, a lot of paperwork, and it requires probable cause that I would already know who the suspect is, that they are, in fact, committing a crime to be able to obtain that.
Q. And would it have to be captured in realtime?
A. It would have to be captured in realtime.
Q. Is that commonly referred to as a wiretap?
A. That is a wiretap.
Q. And if you're going to run a wiretap, isn't it true that you have to have a subject first?
A. That is correct.
Q. When did you first become involved in this case?
A. After the 14th, but primarily on the 22nd.

Q. And on the 22nd, you conducted a controlled delivery?
A. That's correct.
Q. Why did you guys conduct a controlled delivery on February 22nd?
A. Because we found a parcel containing two kilograms of cocaine.
Q. And what information did you want to find out about that parcel?
A. We -- our job and what my specific job is, to conduct these controlled deliveries. Once we do that controlled delivery, the idea is then to make contact with the first individual and try to work up the ladder to the criminal organization as a whole. So we have to start with, you know, going to the house and moving from there.
Q. And who was the first individual that you encountered associated with that parcel?
A. The defendant, Mr. Santana.
Q. And then real briefly, there were some discussions about stamps and presses. Could you describe for the jury what the difference is between those two items when it comes to drug investigations?
A. That's why I was a little confused, because stamp means many different things in the world that we live in. To you, a stamp could be on an envelope or a stamp that you do place on an envelope with an ink pad.

Stamps in cocaine investigations are specifically the kilogram, as Inspector Corricelli had testified to, it's pressed into the brick, some sort of label. That could be anything. They pick whatever they want.

A stamp in a heroin, as I think was being talked about, is not -- in this investigation, heroin baggies are wax, little glassine baggies, wax paper that are stamped with a more ink stamp.

And that's what was the confusion for me, because this wasn't a heroin investigation, and that stamp means something totally different than a cocaine investigation and the stamp that I'm used to.

Q. And you didn't find a cocaine press in this case?

A. I did not.

Q. But you found bricks of cocaine that had been pressed. Correct?

A. That's correct, with what looked like a half stamp placed on them.

MR. FORD: Thank you. If I could have one moment, Your Honor.

THE COURT: Yes.

MR. FORD: No further questions, Your Honor.

MR. ONGAY: Just a few on recross.

THE COURT: All right.

RECROSS-EXAMINATION

BY MR. ONGAY:

Q. Now, iPhones -- and this was an iPhone 8. Is that correct?

A. I believe so.

Q. Okay. And iPhones retain a call history. Is that correct?

A. They can.

Q. And you know what a call history is. Right?

A. I do.

Q. And that basically tells you the history, the numbers, the times, the dates of the calls until you delete them. Correct?

A. That's correct.

Q. And iPhones also contain emails, and you could delete them as you receive them and have no history, or, like most human beings, we have a gigantic in-box full of emails. Is that correct?

A. That's correct.

Q. And also iPhones have text messages, and they are also stored if not deleted?

A. That's correct, right. But you can delete them in multiple ways, having them --

Q. I understand.

A. Whatever the phone is set up for.

Q. And so you would agree with me that you can, in fact, sometimes -- and I'm not saying you did in this case -- obtain information from a phone that does not, in fact, require a Title III interception of that phone. Is that correct?

A. That's correct.
Q. Okay. And I'm going to touch again on the stamp. I'll be very brief. Let me see how I could phrase this question and make only one question.

So your testimony today is that you have never heard of drug dealers who, when they package their cocaine, right, for retail sales, for lack of a better word, those drug dealers have never placed a label, a brand on their package to distinguish it from their competitors? That is your testimony, that that does not happen at all whenever the substance is cocaine? Is that your testimony?
A. That is not my testimony. I can speak to what it means to me when you say "stamp."
Q. My question is not what it means to you, the question that I just asked you.
A. Well, that's -- that can happen.
Q. It can or it cannot?
A. In other investigations, I'm sure it has happened. It does not happen in the investigations that we conduct within my unit and for what my specific detail is for.
Q. So just to make sure I understood your answer and so I don't have to ask you any more questions, so first your answer is that in the type of investigations you conduct, you have never encountered stamps that are going to be placed on bags for small amounts of cocaine that are going to be selling

retail?
A. I have not seen it.
Q. You have not. But you do admit that, in fact, sellers of cocaine who sell them at the retail level have, in fact, placed stamps to distinguish their product from other drug dealers?
A. I am sure that it can happen and has happened.
MR. ONGAY: All right. If I may have a second.
THE COURT: Yes.
MR. ONGAY: Just two more, Your Honor.
BY MR. ONGAY:
Q. First, you were the affiant on the famous anticipatory search warrant. Correct?
A. I was.
Q. And you recall the contents of the affidavit of probable cause well, I assume, since you wrote that affidavit?
A. I do.
Q. And you would agree with me that that affidavit states that once an individual accepts --
MR. FORD: Objection, Your Honor. Relevance.
THE COURT: Your response?
MR. ONGAY: Your Honor, it's basically to confirm what the warrant states that relates to Officer -- I'm sorry, Inspector Corricelli's statement that the warrant said that once the parcel --
THE COURT: Counsel, I don't need you to testify.

Thank you. The objection is relevance, Mr. Ford?

MR. FORD: Yes, Your Honor.

THE COURT: Okay. I'll overrule the relevance objection. You can ask the question.

BY MR. ONGAY:

Q. Very briefly, the warrant did include a condition that an individual had to accept the package and bring it into the apartment -- the home, 35 Redwood Street, before the warrant could be executed. Correct?

A. An individual --

Q. Correct? Did it state that literally?

A. The way it is stated to refer to is --

Q. I'm not asking you your interpretation. I asked you if it stated that.

A. Well, that's -- I'm not sure how to then properly answer.

Q. Either does it state that or it doesn't?

A. Well, it does state that in the interpreted language.

Q. Okay.

A. It --

Q. Fine. The second question --

A. The individual taking it --

Q. I have a second question.

THE COURT: Counsel, you cannot speak over the witness. Let him answer and then ask your next question.

MR. ONGAY: Well --

THE COURT: He was in the middle of answering.

MR. ONGAY: Well, Your Honor, I would like the court to instruct the witness to answer my question when it's a yes or no question. If the government thinks that they need to redirect to give the witness an opportunity to explain, they could do that, but I want the witness to answer my question and not give me his spin. I apologize. I don't mean any disrespect.

THE COURT: I'll allow you to rephrase your question.

MR. ONGAY: I will.

BY MR. ONGAY:

Q. The question is, did the warrant state -- and I'm going from memory as close as I can recall -- that an individual had to accept the parcel, bring that parcel inside 35 Redwood Street before that warrant could be executed, yes or no?

MR. FORD: And, Your Honor, I again would object to relevance.

THE COURT: Counsel approach.

(The following discussion occurred at sidebar:)

THE COURT: Can you both hear me?

MR. FORD: Yes, Your Honor.

THE COURT: Mr. Ford, you're objecting on the basis of relevance, but we are on recross. And I'm giving you significant --

MR. ONGAY: I know, Your Honor.

THE COURT: -- latitude, Mr. Ongay. This is not a proper recross. Mr. Ford, on his redirect -- and, I'm sorry, it's a re-recross. On his redirect, he didn't ask any questions about the affidavit of probable cause. So I'm loathed to pose an objection and sustain it myself, but we are well beyond the scope. Moreover --

MR. ONGAY: I will withdraw the question.

THE COURT: Moreover, if Mr. Ford is not objecting to the scope, you can simply show him the affidavit. We are taking up an extraordinary amount of time with parsing the language of a document that's not in front of him.

So how would you like to proceed? Mr. Ford, what is your objection?

MR. FORD: Outside the scope of redirect, Your Honor.

THE COURT: Sustained.

MR. ONGAY: I will withdraw the objection -- I mean the question.

THE COURT: Yes.

MR. ONGAY: Thank you.

(The discussion at sidebar was concluded.)

THE COURT: The objection is sustained. Mr. Ongay, do you have any further questions on this recross-examination?

MR. ONGAY: If I could have a second to explain to my client.

THE COURT: You may, yes.

(Mr. Ongay and the defendant confer.)

MR. ONGAY: Your Honor, after discussing the matter with my client, we have no further questions for this witness.

THE COURT: All right. Very well. Mr. Ford? No further questions, right?

MR. FORD: No, Your Honor.

THE COURT: Trooper Nesbit, your testimony is concluded. You can restore your mask, and you are excused. Thank you. Or you are excused to your seat in the courtroom, if you wish. Next witness, Mr. Ford.

MR. FORD: Yes, Your Honor. The government calls Eric Wagaman.

THE COURT: All right. Mr. Ford, were there any remaining items at the witness stand?

MR. FORD: I don't believe so, Your Honor, but I'll check.

THE COURT: All right. Mr. Wagaman, you can come forward. You'll come up to the witness stand, which is to my left, and I'll invite you to remain standing when you get to the witness stand so that we can administer an oath. Right up here.

ERIC WAGAMAN, called as a witness, having been duly sworn or affirmed, testified as follows:

COURTROOM DEPUTY: Could you please state your first and last name and spell your name for the court reporter.

THE WITNESS: Eric Alan Wagaman.

THE COURT: And just spell your last name for us, sir.

THE WITNESS: W-a-g-a-m-a-n.

THE COURT: Very good. You can have a seat, and you can feel free to remove your mask for the duration of your testimony. And, Mr. Ford, you can proceed.

MR. FORD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. FORD:

Q. Sir, in what city and state do you live? We don't need the address, just city and state.

A. Chambersburg, Pennsylvania.

Q. And, sir, how old are you?

A. Thirty-nine. Well, I'll be 39, so 38.

Q. And, Mr. Wagaman, if I could ask you, if you could pull that microphone a little bit closer to you. I'm having some problems.

A. Okay.

Q. Thank you. And what do you do for a living, Mr. Wagaman?

A. I do maintenance.

Q. And who is your employer?

A. Luminest Community Development.

Q. And how long have you worked for Luminest Community Development?

A. Twelve and a half years.

Q. And during those twelve and a half years, was it always called Luminest Community Development?
A. No. Originally it was Franklin County Housing Authority, and then it changed to Valley Community Housing Corporation, and then we changed our name to Luminest.
Q. And I want to take you back to February of 2019. Were you working for that entity that you just mentioned, either Luminest or Valley, again, for that company?
A. Yes.
Q. All right. And on February 22nd, 2019, were you working that day?
A. Yes.
Q. What were you doing?
A. I was doing a work order for repairing the floor. There was some floor replacement done in unit 35 Redwood, and I was going back in to make some repairs.
Q. Who owned 35 Redwood Street?
A. Hands owns Redwood, the property located at 35 Redwood Street. We actually are a management company for that property. It's a rent-to-own type property.
Q. Okay. So Mr. Santana did not own it, he was leasing it or renting to own. Is that correct?
A. Correct.
Q. And what type of work were you doing on the property?
A. Just maintenance repair. I'm pretty sure it was trim,

replacing trim that was damaged during the floor install inside of a closet.

Q. And what time did you begin your work that day?

A. I always started at 8 o'clock in the morning. We didn't enter units until 9 o'clock unless it was an emergency.

Q. Do you remember specifically what time, and it's fine if you do not, but do you remember -- and I should ask this, do you remember the approximate time of day that you entered 35 Redwood Street?

A. No, I don't. It was -- I'm pretty sure it was in the morning.

Q. Did anything out of the ordinary happen whenever you entered the house?

A. No.

Q. Did you observe a package?

A. Yeah.

Q. All right. Tell the jury about that, please.

A. Well, anytime I go into a unit, I always leave a notice of entry. And it was asked by my property manager that we pick up a package and set it inside if the resident likes us to do that. So I picked up the package, I set it inside as soon as I walked in. And when I leave, I leave a notice of entry so they know I was in there.

Q. All right. So there are a couple of things you said there, and I want to unpack that a little bit. Notice of entry, could

you explain to the jury a little bit more, what is a notice of entry?

A. It's just a piece of paper that lets the residents know that we entered their unit that day, what we were doing there to -- while we were in their unit, and the date and time that we were in there.

Q. And your supervisor had asked you to move parcels into units. Is that true?

A. At the time there were a lot of packages getting stolen, and, you know, it was common that we could let them inside with a notice of entry.

THE COURT: One moment. Mr. Wagaman, do you have your cellphone on you?

THE WITNESS: Yes.

THE COURT: Could you silence it or turn it off?

THE WITNESS: It is on silence. Sorry.

THE COURT: Well, turn it off. We have a microphone system in the courtroom that's pretty sensitive.

THE WITNESS: Sorry about that.

THE COURT: No worries. I'll give you a moment to make sure.

THE WITNESS: It's off.

THE COURT: Very good. Thank you.

BY MR. FORD:

Q. So was this common practice for you to move these packages

inside?
A. It was.
Q. Is it now?
A. No.
Q. Okay. Why not?
A. Because of this situation we're in right now.
Q. All right. So, Mr. Wagaman, back in February of 2019 -- well, first let me ask you specifically for this. For this incident at 35 Redwood Street, do you remember specifically where you put that package?
A. Yes, right inside the door to my right as soon as you walk in the door.
Q. And what did you leave with the package?
A. Left a notice of entry.
Q. And you just placed the notice of entry on top of the package?
A. Correct, yep, always. That way they know that I was the one who set the package inside.
Q. Did you open the package?
A. No.
Q. Did you move the package after you set it in any way?
A. No.
Q. All right. Once you entered the house and you placed the package, what happened next?
A. I received a phone -- I took my tools inside and then

received a phone call to go to the community center at Redwood.
Q. What happened when you -- and did you go to the community center?
A. Yes.
Q. What happened when you arrived?
A. I got briefed on what was happening.
Q. Who briefed you?
A. I don't know his name, but --
Q. Was it somebody from your company?
A. No.
Q. Was it law enforcement?
A. It was an officer, yeah.
Q. And what did the officer tell you?
A. He told me that they were watching the unit and asked me if I picked up the package and what I did with it when I went in.
Q. And what did you tell him?
A. The same thing I told you.
Q. And what happened after that?
A. They had to change their plan since I intercepted the package.
Q. When you say "they," you mean the law enforcement officers?
A. Law enforcement, yeah.

MR. FORD: If I might have one moment, Your Honor.

THE COURT: Yes.

BY MR. FORD:

Q. The last thing I'll ask you, Mr. Wagaman, did you see the officers enter the house?

A. No.

MR. FORD: Thank you. No further questions, Your Honor.

THE COURT: Cross-examination.

MR. ONGAY: Yes, Your Honor, just one or two questions.

CROSS-EXAMINATION

BY MR. ONGAY:

Q. So you left the home, 35 Redwood Street, and never returned. Correct?

A. I returned after the --

Q. I apologize, I didn't ask you the question properly. It's my fault. On the 22nd of February, after you received a call from maintenance and you went into the office, did you, at that point, go back to the property?

A. No. My tools were in there, so I eventually, at the end of the day, I went back in to get my tools.

Q. But not immediately?

A. No.

Q. And when you -- if you recall, when you received the call, do you recall who called you?

A. To go back to the community center?

Q. Yes.

A. That was my property manager.

MR. ONGAY: Your property manager. Okay. I have nothing further, Your Honor.

THE COURT: Any redirect?

MR. FORD: None, Your Honor.

THE COURT: All right. Mr. Wagaman, that concludes your testimony. You can restore your mask, and you are excused. Thank you.

MR. FORD: Your Honor, the government calls Trooper Justin Long.

THE COURT: All right. Trooper Long, feel free to come forward to the witness stand. Please remain standing while we administer an oath.

JUSTIN LONG, called as a witness, having been duly sworn or affirmed, testified as follows:

COURTROOM DEPUTY: Could you please state your first and last name for the record.

THE WITNESS: First name Justin, last name Long, L-o-n-g.

THE COURT: Thank you. You may have a seat, and you can remove your mask.

DIRECT EXAMINATION

BY MR. FORD:

Q. Sir, with whom are you employed?

A. Pennsylvania State Police.

Q. And what do you do for the Pennsylvania State Police?
A. I'm currently the vice narcotics supervisor for Troop H.
Q. What's your duty title?
A. It's a corporal.
Q. So, Corporal Long, how long have you been with PSP?
A. Going into my sixteenth year.
Q. And how long have you been a corporal?
A. A little over six years.
Q. And I believe you already said this, you're the Troop H vice narcotics supervisor. Is that right?
A. Correct.
Q. What do those duties include?
A. Not only managing my own personal caseload with narcotics investigations, but also supervising members under me with their narcotics investigations.
Q. Is Trooper Nesbit one of those troopers that you supervise?
A. I do not supervise him directly. He's in another drug unit.
Q. Okay. Where is your office located?
A. It's on Bretz Drive in Harrisburg.
Q. Were you involved in the controlled delivery of a parcel to 35 Redwood Street, Chambersburg, Pennsylvania, on February 22nd, 2019?
A. Yes, sir.
Q. What was your involvement?

A. My involvement was to assist with the controlled delivery. My specific duties were rear security, slash, containment of the residence.

Q. So where were you located in relation to the residence?

A. When we started out, for surveillance purposes I was -- if you were to the north side but able to view the rear of the residence.

MR. FORD: Your Honor, I would ask to publish Government Exhibit 40. That's the video.

THE COURT: Permission granted.

MR. FORD: And if I could ask Ms. Reed, if we could start the video at 5:40, but please don't play it. Just bring it up. And, Ms. Reed, if we can go ahead and play it. And, Your Honor, the video is beginning at five minutes and 40 seconds. *(Video played.)* And if we can pause it. We're paused at 5:55.

BY MR. FORD:

Q. Trooper Long, where are you in relation to the house in the video that we're watching right now?

A. So at this point I'm going to be -- down to your lower left of the screen, you'll see a bunch of trees or wooded area, wooded line. I am with another trooper on foot at this point making my way, making our way through this wooded tree line to get a better angle at the rear of the residence.

Q. And what was your function?

A. Containment and rear security.
Q. Ms. Reed, we can go ahead and play. *(Video played.)* And if we can -- if we can pause it. Your Honor, I have the video paused at 6:15.
Trooper Long, with your finger, could you circle -- well, first, do you see yourself in the video?
A. Yes, yes.
Q. With your finger, could you circle --
A. So we were moving in this direction.
Q. And, Your Honor, also for the record, we also have blown up at this portion of the video the rear of the house to include the rear garage door, the man door to the garage. If we can play. *(Video playing.)* And was that you moving across the snow there, Trooper Long?
A. Yes, yes, that is Trooper Reid, and that's -- yes, that's us.
Q. And if we can pause it. What just happened in the video, Trooper Long?
A. So as the defendant came out of the rear man door, commands were given to the defendant to get on the ground. He refused commands, at which point I noticed he had what appeared to be bricks of cocaine in his hand that were thrown. He continued to run down the edge of the building, at which time I took him into custody and put him in handcuffs and got him up.
Q. How was he carrying those bricks?

A. Within his hands.
Q. One in each hand?
A. Correct.
Q. All right. And would you agree with me that where he was ultimately taken into custody appeared to be right next to those two drainpipes coming out of the townhouses?
A. Yes.

MR. FORD: Your Honor, permission to publish Exhibits 59 through 64.

THE COURT: I'm sorry, did you say 59 through 64?

MR. FORD: Yes, Your Honor.

MR. ONGAY: Fifty-nine through sixty-four?

MR. FORD: Yeah. I'm just going to bring those up and have -- I just wanted to do it as a group. Again, I believe all five exhibits have already been admitted. I just wanted to publish those to the jury. If you'd like, Your Honor, I can do them one at a time.

THE COURT: My records reflect that 59, 60, 61, and 64 are admitted; however, 62 and 63 are not yet admitted.

MR. FORD: Yes, Your Honor.

THE COURT: Would you like to give Mr. Ongay an opportunity to review 62 and 63 and then perhaps --

MR. ONGAY: Yes, Your Honor, we'll do that right now.

THE COURT: Okay.

MR. ONGAY: It won't take me long. Sixty-two and

sixty-three, correct?

THE COURT: Yes.

MR. ONGAY: Certainly, Your Honor, no objection.

THE COURT: So Government Exhibit 62 and 63 are now admitted, and all five exhibits may be published in whatever order you would like, Mr. Ford.

MR. FORD: My apologies, Your Honor.

BY MR. FORD:

Q. If we could bring up Government Exhibit 59. Trooper Long, can you tell us what this is?

A. So we're looking at the rear of the residence and the rear garage door that -- the man door that the defendant came out of.

Q. And Government Exhibit 60, please, could you tell us what that is?

A. So you're looking at two black kilos of cocaine laying in the snow.

Q. And, again, remind us, what's the location which you arrested the defendant, where he actually went to the ground?

A. So it would have been by these pipes that came out, somewhere around there.

Q. Government Exhibit 61, please. Trooper Long, can you tell us what that is?

A. The same two bricks of cocaine.

Q. And Government Exhibit 62?

A. The same thing.
Q. And 63?
A. Looking at a different angle, but the same thing.
Q. And, again, that drainpipe is where he went down. Correct?
A. Correct.
Q. And 64?
A. Just a different angle, but the same thing.

MR. FORD: Thank you. I have no further questions for Trooper Long at this time, Your Honor.

THE COURT: Any cross-examination?

MR. ONGAY: Yes. Could you keep that exhibit up for me, please?

THE COURT: Are you referring to Government 64?

MR. ONGAY: Yeah. Actually, go to the last section where Trooper Long gets close to the defendant.

THE COURT: Are you referring to the video, Mr. Ongay?

MR. ONGAY: Yes. I apologize, yes. I just have one or two questions, very straightforward, but I want you to have the benefit of seeing that. Maybe 6:15, around that area. I think that's the point.

THE COURT: And just for the record, this is Government's Exhibit 40.

MR. ONGAY: Okay, Exhibit 40, yes. *(Video playing.)* I'm going to tell you when to stop. Stop there. Okay.

CROSS-EXAMINATION

BY MR. ONGAY:

Q. You observed that, correct, Officer Long?

A. Yes.

Q. And obviously I cannot hear what is said, but I accept your testimony that when you saw him, you directed him to stop.

A. Correct.

Q. And then you said that you had to take him down or stop him. But correct me if I'm wrong, it appears that he stopped before you actually got to him and did not move again.

A. Is that a question?

Q. Yeah. Is that correct, that's what the video shows?

A. No, he was running along the back side of the housing unit.

Q. So your testimony is that he did not stop at all until you physically made him stop?

A. Correct.

MR. ONGAY: Can I play that again, Your Honor?

THE COURT: Certainly.

MR. ONGAY: Yes. Can you go back a few and play it again, please?

BY MR. ONGAY:

Q. Please pay attention, Officer. *(Video played.)* Would you say that he had already stopped or still --

A. Did you see he stopped, and then as soon as I got closer to him, he continued on?

Q. He appears to have taken a step, yes.

A. Correct.
Q. I see.
A. Correct.
MR. ONGAY: Okay. I have nothing further, Your Honor.
THE COURT: Any redirect?
MR. FORD: No, Your Honor.
THE WITNESS: Your Honor, may I be excused?
THE COURT: Yes, Corporal Long, you're excused, and you can just return your mask as you make your way out. Thank you. Counsel, we're going to take a brief recess. It's now 11 o'clock, and we will recess until 11:15.
MR. FORD: Thank you, Your Honor.
(Recess taken.)
THE COURT: Please be seated. Counsel for the United States, you can call your next witness.
MR. FORD: Yes, Your Honor. The government recalls Inspector Corricelli.
THE COURT: Inspector Corricelli, I think where we left off was that I told you you were no longer under oath or examination, so we will re-administer an oath just to be clear.
THE WITNESS: Yes, ma'am.
MICHAEL CORRICELLI, called as a witness, having been duly sworn or affirmed, testified as follows:
THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MR. FORD:

Q. So, Inspector Corricelli, yesterday you testified that just a little after midnight on February 22nd, 2019, two parcels arrived in the Harrisburg Post Office. Correct?

A. Yes, sir.

Q. And the one, what we were calling package two, ended in 4884, that's the one that went on the controlled delivery. Correct?

A. Yes, sir.

Q. And package -- what we're calling package three, ends in 6795, that's the other parcel that came in?

A. Yes, sir.

Q. All right. What happened with that parcel?

A. Based on the -- the same information was on or similar information was on the 884 as 95, meaning the name associated with the return address was no good, the name associated with the address was no good, so I ran both parcels at the same time by a drug detection K9.

The K9 alerted to both parcels separately that there was coke -- or a contraband or a foreign substance, controlled substance in there. But in the interest of time management, I only worked up 884, submitted a warrant on Friday the 22nd.

The other one I locked up and secured until Monday when I was not as busy, basically, and then I applied for a search warrant for that third box ending in 95.

Q. And when did you apply for the search warrant?
A. I believe it was Monday the 25th.
Q. And did you obtain the search warrant?
A. I did, sir.
Q. And did you open the parcel?
A. I did.
Q. And what did you find?
A. I found cosmetic bags and two kilograms of cocaine.
MR. FORD: Your Honor, permission to publish Exhibits 190 through 207.
THE COURT: Permission granted.
MR. FORD: If we could bring up Government Exhibit 190.
BY MR. FORD:
Q. Inspector Corricelli, could you tell us what that is?
A. Yes, sir. This is the third parcel ending in Serial Number 95.
Q. And what's that document below it?
A. That would be the search warrant issued out of this court or this courthouse ending in 118.
Q. And Exhibit 191, please?
A. The same parcel without the warrant.
Q. 192?
A. Underside of the same parcel.
Q. 193? And, I'm sorry, if we could go back to 192. I'm

sorry, 191. What's the return address on this parcel?
A. P.O. Box 2819, Juncos, Juncos, Puerto Rico, 00, it looks like 777.
Q. And the name?
A. Juan Rivera.
Q. And the addressee?
A. Carmen Diaz.
Q. And, again, there's a little bit of glare, but what's the address?
A. 35 Redwood Street, Chambersburg, Pennsylvania. Well, it just says Chambersburg, 17201.
Q. Did you find anything associated with Juan Rivera at that P.O. box?
A. I did not. I was not able to associate anybody with that name belonging to that box.
Q. And any association with Carmen Diaz to 35 Redwood Street?
A. No, sir.
Q. If we could go to 193. What's this, Inspector Corricelli?
A. This is the box, the first picture when we opened it, you know, opened the flaps. This is the first picture we found.
Q. 194?
A. This is -- we started pulling the containers out, and this is one of the cosmetic bags.
Q. 195?
A. This is what's left in the parcel. It's tchotchkes, you

know, dryer sheets, children's toys, or, you know, cheap, inexpensive contents.

Q. And, Ms. Reed, if we could blow up that price tag.

A. All Ways 99 and 99 cents.

Q. If we could go to 196.

A. These are the two bags that were contained within that parcel.

Q. 197?

A. These are the same two bags opened up.

Q. 198?

A. The contents, each with bricks wrapped in carbon paper.

Q. 199?

A. The same thing a little closer up.

Q. 200?

A. The same bricks.

Q. And what are those bricks wrapped in?

A. Carbon paper that was consistent with what we found in the first parcel we opened on the 22nd and the same carbon paper. At least it's consistent with the same carbon paper we found in the scooter on the 22nd at the house.

Q. And that number 1010, was that found on all three samplings of carbon paper?

A. Yes, sir, it appears consistent.

Q. When I say "all three," I mean what was found in package two, what was found in package three, and also what was found

in the scooter.
A. Yes, sir.
Q. All right. 201?
A. One of the bricks with the carbon paper, starting to cut it off.
Q. And 202?
A. Both with the carbon paper mostly off.
Q. 203?
A. Both with the over-wrapping, which is heat, vacuum-sealed bags, layers and layers of plastic wrap down to as low as we can safely get.
Q. 204?
A. The same bricks on the side. We found that putting them on the side reduces the glare so we could actually see what appears to be a brick stamp.
Q. And does that brick stamp appear similar to the brick stamp that you found on package two?
A. Yes, sir, it appears to be consistent with a similar brick stamp.
Q. 205?
A. The first brick was weighed, and it weighed 1,026 grams or just over a kilogram.
Q. And, again, this is the weight that you did. Correct?
A. Yes, sir.
Q. This was not done at the lab?

A. No.
Q. 206?
A. The second brick, weighing 1,028 grams, or just over a kilogram.
Q. And 207?
A. Both bricks in a sealed container.
MR. FORD: And, Your Honor, I'm showing Mr. Ongay Government Exhibit 164. Your Honor, may I approach the witness?
THE COURT: Yes.
BY MR. FORD:
Q. And I'm providing the witness with Government Exhibit 164.
A. Thank you, sir.
Q. Inspector Corricelli, could you tell us what that is?
A. Yes, sir. This is the two bricks of cocaine that I recovered from the third parcel that we were just looking at. You'll note that the bricks are not quite square or rectangular anymore.
When we send them to the lab -- and you can see the blue tape. That is, as I mentioned or testified yesterday, that's consistent with laboratory analysis. That's the tape they use. Sometimes the bricks come back less than solid because of the laboratory analysis. So when it's not quite solid, it just -- we had it through the lab.
MR. FORD: Your Honor, might I approach the witness

again?

THE COURT: Yes.

MR. FORD: And I'm providing the witness with Government Exhibit 162. I'm sorry, 163.

THE WITNESS: Yes, sir.

BY MR. FORD:

Q. Could you tell us what that is?

A. These were the first two bricks that we recovered from parcel 884 on Friday the 22nd.

Q. And 164 is a little bit broken up. Correct?

A. Yes, sir.

Q. And, again, that's from the lab. Would you be able, though, to point out the brick stamps on both packages for the jury, please?

A. Your Honor, may I stand?

THE COURT: Well, why don't we move -- are you moving 164 into evidence before we publish it to the jury?

MR. FORD: Yes, Your Honor.

THE COURT: Any objection to 164?

MR. ONGAY: No, Your Honor.

THE COURT: Government's 164 is admitted, and, Inspector Corricelli, you can stand up if you need to.

THE WITNESS: Thank you, ma'am. I have this in about four layers of plastic for everyone's safety. You can't really see the brick stamp, but you can certainly feel it. And it's

consistent with that mark that would be found on the brick stamp.

MR. FORD: All right. So now I'm going to Government's Exhibit 160. Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. FORD:

Q. And I'm bringing you Government's Exhibits 160 and 162.

A. Yes, sir.

Q. Or, I'm sorry, let me read these.

A. That's 161, sir.

Q. 160 and 161. And I'm retrieving 163 and 164. All right. Inspector Corricelli, could you tell us what government -- remind us what Government Exhibit 160 is.

A. 160 is the package that ended in 884 that I recovered on the 22nd, obtained a search warrant and found two kilograms of cocaine in, as well as two of these makeup bags. And it's also the parcel we used for the controlled delivery minus one of the makeup bags.

Q. Okay. And 161?

A. 161 are the makeup bags, plastic wrap, what we consider drug wrapping material, as well as carbon paper that was found on the 22nd after the controlled delivery inside the scooter in the garage.

MR. FORD: Your Honor, might I approach?

THE COURT: Yes.

BY MR. FORD:

Q. I have 162.

A. Thank you, sir.

Q. Could you tell us what 162 is?

A. Yes, sir. 162 is the third parcel that I obtained on the 22nd and executed a search warrant on the 25th. It also contained two makeup bags, one multi-colored floral and one dark, and each had a kilogram of cocaine.

MR. FORD: And, Your Honor, if I could ask to have that published to the jury.

THE COURT: Certainly.

BY MR. FORD:

Q. Could you just stand up and show that to them?

A. *(Witness complies.)*

Q. And that's package three, Inspector Corricelli?

A. Yes, sir.

MR. FORD: All right. And, Your Honor, I'm showing Mr. Ongay Government Exhibit 189. This was not listed on the exhibit list, Your Honor.

MR. ONGAY: Okay, the third parcel.

MR. FORD: Your Honor, might I approach the witness?

THE COURT: Yes.

BY MR. FORD:

Q. Inspector Corricelli, I'm providing you Government Exhibit

189.

A. Thank you, sir.

Q. Tell us what that is.

A. Yes, sir. Exhibit 189 is the contents of the third parcel, a dark-colored makeup bag, a floral makeup bag, carbon paper, and, like, little budget, cheap toys from a dollar store.

MR. FORD: Your Honor, I offer into evidence Government Exhibit 189.

THE COURT: Any objection?

MR. ONGAY: No, Your Honor.

THE COURT: Government's 189 is admitted.

MR. FORD: And may I publish it, Your Honor?

THE COURT: Yes.

BY MR. FORD:

Q. If you could go ahead and stand up and --

A. *(Witness complies.)*

Q. Inspector Corricelli, could you compare 189, 162, and 161 for the jury?

A. I'll do my best.

MR. FORD: Your Honor, might I come up and hold, as well, to help?

THE COURT: Yes.

BY MR. FORD:

Q. And, Inspector Corricelli, what are some of the similarities here?

A. It appears to be the same type of makeup bag throughout. The parcels that were used are the same exact parcels. You can get those free from postal, but it's the same exact size box. The handwriting appears to be consistent. The postage appears a consistent type.

Some of the carbon paper is consistent throughout. The dryer sheets, the cheap toys are all consistent in all three locations, both parcels as well as the scooter.

Q. Let's go through and do -- look at this. We have the same flower cosmetic bags. Correct?

A. That is correct, sir, for some.

MR. FORD: Your Honor, if I could publish 194.

THE COURT: Yes, permission granted.

BY MR. FORD:

Q. Inspector Corricelli, could you tell us what that is?

A. Yes, sir. That was the cosmetic bag inside the third parcel.

MR. FORD: And, Your Honor, if I could publish Government Exhibit 15.

THE COURT: Yes.

BY MR. FORD:

Q. Could you tell us what that is?

A. I believe those are the two cosmetic bags in the very first parcel, the one on Friday the 22nd ending in 884.

Q. When you say the very first parcel, we're calling that

package two. Correct?
A. I'm sorry, the first search warrant of a parcel that I did, package two.
MR. FORD: And, Your Honor, if I could publish 134.
THE COURT: Yes, permission granted.
BY MR. FORD:
Q. Could you tell us what that is?
A. Yes, sir. This was the Suzuki scooter found in the garage during the search warrant. The seat has been raised, and inside is a bunch of these makeup type bags wrapped in plastic wrap.
MR. FORD: And, Your Honor, if I could publish 138.
THE COURT: Permission granted.
THE WITNESS: The same bags taken out of the plastic wrap and displayed on the seat.
BY MR. FORD:
Q. And that cosmetic bag is similar to the bag found in package two and three?
A. Yes, sir, it appears consistent.
MR. FORD: Your Honor, if I could publish Government's Exhibits 195, 16, and 140, 141, 142.
THE COURT: Yes.
MR. FORD: If we can bring up 195.
BY MR. FORD:
Q. Inspector Corricelli, what's this?

A. Those are toys found in the parcel.
Q. And Government Exhibit 16, what's this?
A. Another toy found in the parcel, the first parcel -- second parcel, excuse me, ending in 884.
Q. And 140?
A. Similar items found in the scooter.
Q. 141?
A. More items found from the scooter.
Q. 142?
A. And more items found in the scooter.

MR. FORD: Your Honor, if I could publish Government's Exhibits 197, 15, and 16 and then 139 through 142.

THE COURT: Permission granted.

BY MR. FORD:
Q. If we can bring up 197.
A. These are the cosmetic bags found in the third parcel ending in 95.
Q. And what's that white material in it?
A. On the center or the two on the ends, left and right? Left and right appears to be mostly like dryer sheets. The stuff in the center is plastic wrap, or appears to be.
Q. Okay. But there are dryer sheets in both?
A. Yes, sir.
Q. And 15?
A. Dryer sheets in cosmetic bags.

Q. And what package is this?
A. The first one -- second box, 884.
Q. 139, please. What package is this?
A. I don't believe this was a package. I believe this was from the scooter, sir.
Q. Okay. These were the bags that were found in the scooter?
A. Yes, sir.
Q. And what did you find in there?
A. Plastic wrap and dryer sheets and some -- I believe it had some elements of carbon paper, as well.

MR. FORD: Your Honor, if I could publish 200, 22, 134, 136, and 137.

THE COURT: I'm sorry, 200, 22, and then what followed 22?

MR. FORD: 134, 136, and 137. To be clear, Your Honor, it was Exhibit 200 and Exhibit 22, not 222.

THE COURT: Yes, understood. And all have been admitted and may be published.

MR. FORD: Thank you, Your Honor.

BY MR. FORD:
Q. If we can bring up 200.
A. I believe these are the two bricks from the third parcel ending in 95 with carbon paper wrapped on them.
Q. And what's the number on that carbon paper?
A. 1010.

Q. 22?
A. I believe these would be the bricks from the second parcel ending in 884 with carbon paper wrapped on them.
Q. And the numbers on those?
A. 1010.
Q. We'll bring up Government Exhibit 134.
A. The scooter with the seat opened and the cosmetic bags wrapped in plastic.
Q. 136?
A. The cosmetic bags have been removed. There's a helmet to the top of it, and the bottom has a piece of -- at least a piece of carbon paper, possibly more than one piece, with the numbers 1010 on it.
Q. And 137?
A. The same, same image.
Q. All right. So now, Inspector Corricelli, we've got package one that was delivered on February 14th --
A. Correct.
Q. -- 2019. All right. So you see that one, it makes it through. Then on February 22nd, 2019, you get package two, package three.
A. Yes, sir.
Q. So now you're armed with this information. What do you do?
A. Well, we spoke already and testified about the controlled delivery. But another thing I did, sometime between those two

periods -- and I don't exactly have the date. My report says "on or about," because, again, we're working about 20 different operations at any time, so we work a little here, a little there.

But by virtue of my employment as a postal inspector, I have access to certain postal records. Specifically, I can see for about a 12- to 18-month period what parcels an address might have received through the United States mail. I can't see FedEx or UPS, only the U.S. mail. And I was able to pull that historical data to see other parcels that might have been delivered to 35 Redwood Street in Chambersburg.

Q. If we could bring up Government Exhibit 211 just to Inspector Corricelli.

MR. FORD: Actually, Your Honor, might I publish this to the jury?

THE COURT: 211 has been admitted and can be published.

BY MR. FORD:

Q. Inspector Corricelli, could you please tell the jury, what is this?

A. Yes, sir. This is another example of that internal postal document that provides me tracking information on a parcel. This particular parcel ended in 6905, and it shows me that it was accepted in Las Piedras, Puerto Rico, on 10/30/2018 at 8:04 a.m. destined for 35 Redwood Street.

Q. When was it delivered?
A. Can you scroll down, please? It was delivered on 11/3/2018 at 12:31 p.m.
Q. That's November 3rd, 2018?
A. Yes, sir.
Q. And how much did it weigh?
A. 3.625 pounds.
Q. Inspector Corricelli, do you have a photograph of the shipping label of this package?
A. I believe I do not.
Q. And, well, let's go to the next -- if we could bring up Government Exhibit -- or if I could publish Government's Exhibits 215 and 216, Your Honor.

THE COURT: Yes, those exhibits are admitted and may be published.

MR. FORD: If we could bring up 216, please.

BY MR. FORD:
Q. Inspector Corricelli, could you tell us what that is?
A. Yes, sir, again, a postal record for Parcel Number 8510, which was accepted on January 2nd, 2019, in Juncos, Puerto Rico, destined for 35 Redwood Street. This parcel weighed 5.25, 5 pounds and -- 5.25 pounds.
Q. If we can go to the next page. When was it delivered?
A. It was delivered on January 5th, 2019, at approximately 2:29 p.m.

Q. If we could bring up Exhibit 215. Inspector Corricelli, what is this?

A. This is a computer image of the same parcel I just spoke of. The postal service, when these parcels of this size and shape are moved, they're all moved in automation. It's robots and computers that basically move this. People don't move them by hand, for the most part.

As part of the postal process, they take an image of the label and the parcel, and it's designed not for law enforcement purposes, it's designed to help postal move the mail, because the computer reads the barcode, it reads certain pieces of this mail. We often can gain access to these images within a small period of time.

It's not indefinite because the postal service moves roughly five hundred billion pieces of mail. It's somewhere -- it's not exactly that number, but it's an incredibly large number, so their servers can't hold it forever. It's not indefinite. But if we try to pull that data relatively soon, 60 days, maybe, we can often get these kind of images. And what this is, this is an image of the box as it processed through the postal service.

Q. All right. And, again, this is package 8510?

A. Yes, sir.

Q. And the package we just talked about, 6905 --

A. Yes, sir.

Q. -- you don't have an image for that?
A. I do not.
Q. Why?
A. There's a time limit. Basically as the server fills up, it kicks out the old stuff and makes room for new images. So there's only a limited time span that I can gain them.
MR. FORD: Your Honor, if I could publish 220 and 221.
THE COURT: Permission granted.
MR. FORD: If we can bring up 221, please, Ms. Reed.
BY MR. FORD:
Q. Inspector Corricelli, could you tell us what this is?
A. Again, internal postal document for parcel 5486. It was accepted in Las Piedras, Puerto Rico, on January 16th, 2019, at 11:17 a.m. It weighed approximately 6 pounds, 20 -- 6.25 pounds, and it was destined for 35 Redwood Street, Chambersburg, Pa.
Q. If we could go to Page 2.
A. It was delivered on January 19th, 2019, at 11:32 a.m.
Q. And if we could bring up Exhibit 220, please.
A. And this is an image of that same parcel ending in 5486.
MR. FORD: And, Your Honor, if I could publish 225 and 226.
THE COURT: Permission granted.
BY MR. FORD:
Q. If we can bring up 225. Inspector Corricelli, could you

tell us what this is?
A. This is acceptance info in postal for a parcel ending in 6750. It was accepted on January 22nd, 2019, in Las Piedras, Puerto Rico. It weighed 8.875 pounds, and it was destined for 35 Redwood Street, Chambersburg.
Q. If we can go to Page 2.
A. This parcel shows it was delivered on January 25th, 2019, at 10:49 a.m.
Q. And I might have missed it. Did you mention, how much did this parcel weigh?
A. 8.875 pounds.
Q. And if we could bring up 225.
A. This is the image for the parcel ending in 6750 I just spoke of.

MR. FORD: And, Your Honor, if I could publish 230 and 231.

THE COURT: Yes, permission granted.

BY MR. FORD:
Q. And if we could bring up 231. Thank you. What is this, Inspector Corricelli?
A. The postal record for the parcel ending in 4068. It was accepted in Juncos, Puerto Rico, on February the 5th, 2019, at approximately 10:09 a.m. It weighed 4.875 pounds and was destined for 35 Redwood Street, Chambersburg.
Q. If we can go to Page 2.

A. It was delivered on February the 7th, 2019, at 10:47 a.m.
Q. And if we can bring up Exhibit 230.
A. This is the image for 4068, the parcel I just spoke of.
MR. FORD: And, Your Honor, if I could publish 232.
THE COURT: Permission granted.
BY MR. FORD:
Q. All right. Inspector Corricelli, what is this?
A. This is a spreadsheet. It's just a -- all the parcels I just spoke of, this is a spreadsheet that just lays it all out on one layer.
Q. So if you could walk us through that first -- the first column is the exhibit number. Correct?
A. Yes, sir, the exhibit number.
Q. The second is the parcel number?
A. The last four digits of the postal tracking number, when it was accepted, when it was delivered according to postal records, if I was able to gain an image of it. So you have some that say image unavailable. That means we could not get it. Image available -- sorry.
Q. No, I'm sorry, I didn't mean to cut you off, but if we can stay on that, the comment section.
A. Yes, sir.
Q. All right. So that first one, it says, Image unavailable.
A. Yes, sir.
Q. What does that signify?

A. That means I was not able to recover an image of that parcel from postal records.
Q. All right. And then the next four?
A. I was able to gain an image of that parcel.
Q. And then the next one, it says, Surveillance, and it says it was accepted 2/11/2019 and delivered 2/14/2019.
A. Yes, sir.
Q. What parcel is this?
A. That is the first one that initiated this whole investigation. That's the one I received notice on from Puerto Rico that I received and I did not get a dog alert, I put back into the mail stream and I watched that parcel be delivered.
Q. All right. And then the next one?
A. Was the parcel ending in 884 that I did obtain a search warrant for, found it to contain two kilos of cocaine, and did the controlled delivery using that particular parcel.
Q. And then our final parcel on there?
A. The parcel I also gained on the 22nd that I entered with a search warrant on the 25th of February containing two more kilos of cocaine.
Q. And then if you can go ahead and walk us through those other columns.
A. Yes, sir. The weight is pretty self-explanatory. You see from 3.62 pounds down to 8.75. One was 8.88. Obviously a kilogram is 2.2 pounds, so if it's -- you know, if it's less

than four pounds, we don't expect it to be more than a ki. For the ones that had two kilos each, they were eight pounds.

You can see that they were accepted in two different parts of Puerto Rico, Las Piedras and Juncos. And the names that it was addressed to, the first one because I wasn't able to gain an image of, I don't know who it was addressed to, I don't know who it was sent from. I have no further information on it.

The next two parcels were return address -- or the addressee was Damariz Rivera, and the sender name was Manuel Ortiz, and those P.O. boxes, 2589. I do know that I was not able to find a Damariz Rivera associated with 35 Redwood, couldn't find that name. And I also could not find a Manuel Ortiz associated to P.O. Box 2589.

And that's why that column says, Valid name. Valid name would be if someone actually reported to that address. All these names that we have listed we could not find associated with the addressee or the sender.

Q. Now, under sender city, we have Juncos for all of the parcels except the first, which is unknown.

A. Correct.

Q. How is that different than the acceptance city?

A. Juncos might be the address on the handwritten label, but where it was accepted into the postal service might be different. For example, you know, if you live in Chambersburg

but you work in Waynesboro, you might put your mail into Waynesboro, but the return address is going to be Chambersburg. So that's why it could be different.

MR. FORD: And, Your Honor, may I publish Government Exhibit 233?

THE COURT: You may. It's admitted.

BY MR. FORD:

Q. Inspector Corricelli, could you tell us what this is?

A. Yes, sir. These are the three parcels. At the top, the color photos are the ones that I actually was able to put my hands upon. The first in the top left corner is the very first parcel that the dog didn't hit and we put back into the mail stream.

The second one in the middle, top middle, is the controlled delivery parcel with two kilograms of cocaine. And the one to the far right is the third parcel that also contained two kilograms. The four images below are the four images I was able to gain postal records on to show the comparison.

Q. And if we can go to Page 2 of this document. Inspector Corricelli, what's this?

A. This is just a closeup of the same information but just the address labels, the handwritten labels.

Q. And what are some of the similarities?

A. We have Carmen Rivera sending one. We have Carmen Rivera

receiving one, two, three, four.
Q. I'm sorry, you said that you have Carmen Rivera?
A. Carmen Rivera, if you look at the top left corner --
Q. She's sending one?
A. He or she is sending one parcel that we know of. And then received, the addressee is Carmen -- excuse me, I apologize, I'm completely wrong.

Carmen Rivera is the name on the first parcel that was sent. Madelinee Diaz was the first name received. Juan Rivera, Juan Rivera, and Carmen Diaz, Carmen Diaz are on the next two, which would be Parcel 884 and Parcel 6795. And then we have the names Manuel Ortiz, Manuel Ortiz, and Damariz Rivera, Damariz Rivera, and then Juan Rivera, Juan Rivera, Carmen Diaz, Carmen Diaz. So we have four addressed to Carmen Diaz.

Q. Again, Inspector Corricelli, you've never found -- with regard to the names of any of the senders, you've never found those names associated with the return addresses. Correct?
A. No, sir, I have not.
Q. And the same with the recipients and 35 Redwood?
A. That is correct, sir.
Q. And did you find any indications of Carmen Diaz, Madelinee Diaz, Damariz Rivera, or even Juan Rivera or Manuel Ortiz or Carmen Rivera ever being associated with 35 Redwood Street?
A. Not to the best of my knowledge, no, sir.

MR. FORD: Thank you. Pass the pass, Your Honor.

THE COURT: Cross-examination.

MR. ONGAY: Certainly.

CROSS-EXAMINATION

BY MR. ONGAY:

Q. Let's talk about the investigation you conducted about the prior parcels that may have been sent to 35 Redwood Street. That is a database contained within the postal service?

A. Yes, sir.

Q. And your search found five additional parcels besides the one that you intercepted on the 14th and the two that you intercepted on the 22nd. Is that correct?

A. Yes, sir.

Q. You did not find any other parcels?

A. I think I limited my scope to a twelve-month period.

Q. Okay.

A. And that's -- for the purpose of this report, sir, that's what I found, yes.

Q. And you don't recall when you did this for sure, but you believe that it probably was between the 14th of February and the 22nd?

A. My report specifies on or about the 13th.

Q. Okay.

A. So it would be sometime between then and the time I published the report to the U.S. Attorney's Office.

Q. So you went twelve months back?
A. Yes, sir.
Q. So you went to February the -- of 2018?
A. Approximately, yes.
Q. Approximately. Okay. And this is, I assume, something that you conduct a search on a database and you give the parameters and it spits out a report?
A. Yes, sir.
Q. Okay. Now, you testified that when the parcels were received, that is from whatever is on that database. Correct?
A. Yes, sir.
Q. That has been inputted into the computer prior to you conducting that search?
A. Correct.
Q. Into the database. And how is that inputted?
A. When you --
Q. If you know.
A. Yes, sir, I'm very familiar with it. When you bring a parcel to the postal service to mail, when you present it to the window clerk, they'll affix -- once you pay for it, they'll affix a label to that parcel, and that label will contain a tracking number.

If it's Priority Mail, Express Mail, Certified, or Registered Mail, any kind of trackable mail, they put that tracking number onto the parcel and then they scan it with one

of those laser scanners. That immediately uploads that scanned barcode with the number into the system.

And also they weigh it at the same time, so we get the weight. And usually they manually enter the address it's going to to make sure it's a valid address.

Q. But how did you know the time and the date that it was delivered, that's when it's received?

A. So when the postal employee, the letter carrier goes with these kinds of trackable mail items, they carry a hand scanner, and they will scan the parcel so it uploads to their system to show postal records that it was received at this post office, it went from this point to this point to this point, all the way to delivery, and it's scanned multiple times.

For example, when it went from Juncos, it would go naturally to a processing facility in San Juan. When it gets to San Juan, it gets scanned again, so it updates the record to show that it arrived in San Juan at a certain time. When it leaves San Juan, it gets an outgoing scan.

When it arrives in Harrisburg, it gets an incoming scan to that processing facility. When it leaves that facility, it gets another scan. When it gets to Chambersburg, it gets an arrived at unit scan. And then when it goes on the truck and the carrier delivers it, the carrier is supposed to scan with their hand scanner. And that's what those entries are, sir.

Q. So a letter carrier will carry a scanner that will scan the parcel as he -- before or after he hand-delivers it to 35 Redwood Street?

A. They are supposed to, yes, sir.

Q. They're supposed to do that. Okay. Now, those parcels do not have, do not have a required sign acceptance receipt. Correct?

A. Correct, sir.

Q. They do not. And it does not state in that database whether they were actually left on the porch or hand-delivered to someone?

A. That is correct, sir.

Q. And it doesn't state who actually accepted those parcels?

A. That is correct, sir.

Q. Okay. And did you contact the different letter carriers and confirm that the information contained in the database was, in fact, correct and those parcels were, in fact, delivered on the dates and times that the report states?

A. I did not, no, sir. And there are a multitude of reasons why we don't.

Q. Okay. Now, when -- I think I'll ask you this question, but I have a question right next to it, so I ask the court's indulgence.

You testified yesterday that you did not, in fact, follow Mr. Santana on the 14th when you observed the controlled

delivery and observed that he came out -- I don't know whether he came out or arrived and brought the parcel into the home. And when he then came out, you did not follow him. Correct?

A. That is correct, sir.

Q. Okay. I apologize if I repeated it. And I apologize for this, we're going to talk about -- you mentioned this. But so on the 14th -- on the 13th, you are notified about this suspected parcel. Correct?

A. 12th or 13th.

Q. 12th or 13th.

A. I think I was notified on the 12th, and I received it on the 13th, sir.

Q. And that's when you first became aware of this problem with 35 Redwood Street?

A. Yes, sir.

Q. And then you obtained some sort of information about a driver's license belonging to Mr. Santana?

A. Yes, sir.

Q. And you had that before you went to observe the controlled delivery?

A. I'm not sure if I -- excuse me, I'm not sure if I had it at that point or afterwards.

Q. Okay. That's fair.

A. Because I would have needed to talk to the postal service representatives responsible for mail delivery to figure out who

all is receiving mail at that address. And that would have identified that, as well as some other databases would have identified who the occupants at least listed are. It doesn't mean they live there, but it might be that they list.

Q. Okay. And then you -- I don't know when you place an alert on the address of 35 Redwood Street. Can you tell me when, approximately, you did that?

A. I would --

Q. Do you understand my question?

A. I do, sir.

Q. Okay.

A. I'm just trying to get you the right answer.

Q. Okay.

A. The honest answer is, I'm not quite sure when I did the alert, but after I watched the behavior from the delivered parcel and saw the movements of the individual that accepted the parcel and looked around the neighborhood, between that and the parcel itself was enough suspicion for me to believe that we have a narcotics trafficking issue, and I would have put the alert on at that point.

Q. And just to be clear, the behavior that you observed is that he picked up the parcel, he looked around, and he got on the phone. At least it appears that he was using his phone. Is that correct?

A. Yes, sir, in a simplified form. But I would say from my

years of experience -- and I know I'm not testifying as an expert, but to answer your question properly, sir, when an individual picks up a parcel, looks at it, and then immediately starts scanning the environment and then picks up a phone and starts scanning the environment, that, to me, is suspicious behavior. Could it be simple? Yes. But it's indicative of suspicious behavior, and that alerted my concerns.

Q. Yeah, I understand. That's how you -- and you have the right -- that's how you interpret it.

A. Yes, sir.

Q. But the bottom line is, what I described is what you observed. Correct?

A. Yes, sir.

Q. Okay. Now, you do not know who sends these parcels?

A. I do not, no, sir.

Q. Have no idea. You do not know whether it's more than one person?

A. I do not know.

Q. You do not know if there's -- the terms, if there's an agreement? Strike that. You do not know whether there is an agreement, in fact, between the sender and the recipient?

MR. FORD: Objection, Your Honor. Speculation.

THE COURT: Overruled. He can answer the question.

THE WITNESS: People don't send cocaine that's worth that much money unless there is some type of agreement to

engage in a receipt issue. They don't do it for free, and they don't send that much cocaine. That's a lot of money.

BY MR. ONGAY:

Q. Okay.

A. So there is -- generally, in my experience, there is an agreement and an understanding of that parcel being inbound, and there are notifications of same.

Q. So if I understand your testimony, the way you interpret this is that this was not sent incidentally -- and I did not try to imply that -- and that there has to have been at least an understanding that cocaine was going to be sent and that someone was expecting it and that someone was going to pay for it. Correct?

A. Yes, sir.

Q. Okay. Now, you do not know what the actual terms were, for example, was it on credit, was it fronted, was it paid partially on credit, partially cash?

A. I do not.

Q. Do you know any of those terms?

A. No, sir, I do not.

Q. Okay. And just -- this has been covered, but just to be clear, you were the officer that applied for the search warrant for the cellphone of Mr. Santana. Correct?

A. Yes, sir, I did.

Q. And out of the eight parcels, only two, in fact, were found

to contain a controlled substance totaling four kilos of cocaine. Is that correct?

A. That is correct, sir.

Q. Okay. Would you say, sir, that if for some -- if Mr. Santana's teenage son or Mr. Santana's spouse had arrived earlier that day, had entered through the home and opened the parcels, that you would have had to execute the warrant and arrest them?

A. We would have. Mr. Ongay, may I clarify my last answer?

Q. Certainly, by all means.

A. You had asked would I have executed the warrant and arrested them, and I think a better response would be we don't always arrest people when we do these deliveries; however, if somebody from the residence ran out the back and threw two, what appears to be bricks of cocaine, that would have been indicative of the need for an arrest.

Q. So your testimony is that if Mr. Santana had remained seated in the garage and not run, you would have not arrested him?

A. I'm not saying I wouldn't have. We've had situations where we have arrested people under those circumstances and we have not. It depends on several other factors.

Q. Understand.

MR. ONGAY: Your Honor, I'm going to go through my prepared schedule of questions so I don't waste the court's

time anymore. I just have a couple more questions, Your Honor.
BY MR. ONGAY:
Q. I believe I asked you this yesterday, but just to be sure, so you never saw Mr. Santana engaged in a drug transaction?
A. No, sir, I did not.
Q. Never saw him with a firearm?
A. No, sir, I did not.
Q. And you never observed -- I'm sorry, heard any telephone conversation where he was discussing drug transactions or possession of a firearm. Correct?
A. I did not, sir.

MR. ONGAY: If I may have a second.

THE COURT: Yes.

MR. ONGAY: I believe I don't have any additional questions, Your Honor.

THE COURT: All right. Any redirect?

MR. FORD: Yes, Your Honor. Your Honor, if I could publish 232.

THE COURT: Permission granted.

REDIRECT EXAMINATION

BY MR. FORD:
Q. Inspector Corricelli, all of these packages that are listed on Government Exhibit 232, were they all sent Priority Mail?
A. Yes, sir, they were all Priority Mail.
Q. What's the difference between Priority Mail and regular

mail?
A. Priority Mail is basically one step above First Class. First Class is like you would put on a greeting card or a stamp. Priority Mail is intended to be delivered within three days. That's the postal's goal. Express Mail is overnight service, so Express Mail is obviously a lot more money.

This is Priority Mail, and one of the reasons people use Priority Mail is, one, the three-day alleged guarantee, but also because it provides tracking and you could track this number if you so choose.

Q. And with regard to all of these postal records that we discussed here this morning, when you obtained these records, did you find any indication that any of these parcels were returned to sender, anybody indicated to the postal service this is the wrong location, these need to go back, anything along those lines?

A. No, sir. And I did speak with the postal manager at that facility and asked if they had gotten anybody kicking boxes back. You know, most of us have received a parcel at some point in time that's not for us, it might be for a neighbor.

Good, honest people give it back to the carrier or bring it to the post office. Maybe not so honest people open it up and see if there's something cool inside to keep. There was no evidence that anything was ever returned back in this case.

MR. FORD: Thank you. No further questions, Your Honor.

MR. ONGAY: None on recross.

THE COURT: I'm sorry?

MR. ONGAY: No questions, Your Honor.

THE COURT: All right. Very well. Inspector Corricelli, that concludes your testimony, and you can restore your mask and return to your seat.

THE WITNESS: Thank you, Your Honor.

THE COURT: I understand the United States has an additional witness. What is the approximate length of your direct examination?

MR. FORD: It's our expert, Your Honor. I'm guessing probably 30 to 45 minutes. We also have stipulations that will take just two minutes, if the court would want to do that now.

THE COURT: Certainly. Why don't we take care of the stipulations, then we'll take our lunch recess, and we'll pick up with the testimony after our lunch recess.

MR. FORD: Perfect, Your Honor. And, Your Honor, may I publish Government Exhibit 45, Your Honor, which is the stipulation, and then it would be my intent to read it, unless the court has a different practice.

THE COURT: That's fine. Let me just -- Mr. Ongay, you agree that Government's Exhibit 45, which is marked as a -- indicated to be a stipulation, is to be admitted?

MR. ONGAY: Yes, Your Honor. Let me double-check.

THE COURT: Okay.

MR. ONGAY: It's blank here. Is that the stipulation regarding the seizure analysis?

MR. FORD: Yes.

MR. ONGAY: Yes, I have stipulated to that.

THE COURT: All right. Government's 45 is admitted. And, Mr. Ford, you can feel free to read that and publish, if you'd like.

MR. FORD: Thank you, Your Honor. And, Your Honor, it reads, Stipulation. The government and the above-captioned defendant, Adam Neftali Santana, stipulate to the following testimony and evidence:

If called to testify, Gabriel Llinas would testify that he is currently employed as a Forensic Scientist 2 at the Pennsylvania State Police Regional Laboratory in Harrisburg, Pennsylvania. As a result of his education, training, and experience, Mr. Llinas is an expert in the field of forensic chemistry.

Cocaine hydrochloride. Mr. Llinas would testify that he examined two sealed plastic bags, each containing a rectangular plastic wrapped package containing a white substance, respectively identified as Government's Exhibits 163 and 164.

Mr. Llinas would testify that he completed a report

regarding his findings on April 12th, 2019, and Mr. Llinas determined, (a), the substance in Government Exhibit 163 weighed 2,003 grams, plus or minus nine grams, and contained cocaine hydrochloride, a Schedule II controlled substance, and the substance in Government Exhibit 164 weighed 2,002 grams, plus or minus nine grams, and contained cocaine hydrochloride, a Schedule II controlled substance.

A copy of Mr. Llinas's report is attached as Government Exhibit 46, and the parties agree that it should be admitted into evidence without objection. And then it's signed by Mr. Ongay, myself, and the defendant, Mr. Santana.

And, Your Honor, at this point I would offer into evidence Government Exhibit 46, as well.

THE COURT: Any objection?

MR. ONGAY: No, Your Honor.

THE COURT: All right. Government's Exhibit 46 is also admitted into evidence.

MR. FORD: And, Your Honor, may I publish it?

THE COURT: You may.

MR. FORD: All right. Your Honor, this is -- it states, Drug identification case, Drug, Device and Cosmetic Act, Lab Report H19-03703-1.

Date: February 22nd, 2019. Report date: April 12th, 2019. Place: Chambersburg, Franklin County, Pennsylvania. Incident Number: 2786219-PMN from U.S. Postal Inspector.

Subject: Commonwealth of Pennsylvania as the victim; Santana, Adam, as the accused.

Submission: Items 1 and 2 were submitted by Michael J. Corricelli on April 3rd, 2019. Items: 1, one sealed plastic bag; 1.1, one sealed plastic bag containing two rectangular plastic wrapped packages each containing a white substance. 2, one sealed plastic bag; 2.1, two rectangular plastic wrapped packages each containing a white substance.

Conclusions: The substance in Item 1.1 weighed a total of 2,003 grams, plus or minus nine grams, and contained cocaine hydrochloride, Schedule II; two, the substance in Item 2.1 weighed a total of 2,002 grams, plus or minus nine grams, and contained cocaine hydrochloride, Schedule II.

All reported weights are net weights unless otherwise indicated. Weight uncertainties are reported at a minimum coverage probability of 99 percent. Please arrange for the disposition of the remaining evidence within 30 days.

And then that's signed Gabriel Llinas, Forensic Scientist 2, Harrisburg Regional Laboratory. Attention: Michael Corricelli. Thank you, Your Honor.

THE COURT: Thank you, Mr. Ford. All right. We will now take our lunch recess. Jurors, it's 12:20.

MR. ONGAY: Your Honor.

THE COURT: Yes.

MR. ONGAY: I guess I could do my stipulation during

the defense case? Is that the more appropriate --

THE COURT: Well, we haven't -- the government has not yet rested.

MR. ONGAY: Okay.

THE COURT: I think we can wait.

MR. ONGAY: We'll do that later. Okay. Sorry.

THE COURT: No problem. So, jurors, we will take our lunch recess from 12:20 to 1:30, so an hour and ten minutes, and we'll plan to have you back in at 1:30.

During the recess, I'll just remind you, don't deliberate, don't confer with each other or anyone else about the case, don't do any research, and remember that everything you're to learn about this case is in the confines of the courtroom. We'll see you back at 1:30. Court stands in recess.

(Jury leaves courtroom.)

THE COURT: Thank you. Please be seated for just a minute. Briefly off the record.

(Discussion held off the record.)

(Luncheon recess taken.)

THE COURT: Please be seated. So just off the record for a moment.

(Discussion held off the record.)

(Jury enters courtroom.)

THE COURT: Welcome back from lunch, jurors. We are

going to pick up with the government's case-in-chief, so, government counsel, please call your next witness.

MR. HAUGSBY: Thank you, Your Honor. The government calls Corporal Scott Fidler.

THE COURT: Corporal Fidler, please come forward to the witness stand and then remain standing while we administer an oath.

SCOTT FIDLER, called as a witness, having been duly sworn or affirmed, testified as follows:

COURTROOM DEPUTY: Please state your first and last name and spell your name for the court reporter.

THE WITNESS: Scott, S-c-o-t-t, Fidler, F-i-d-l-e-r.

THE COURT: Corporal, you can have a seat. Feel free to remove your mask while testifying. Mr. Haugsby, you may proceed.

MR. HAUGSBY: Thank you, Your Honor.

DIRECT EXAMINATION ON QUALIFICATIONS

BY MR. HAUGSBY:

Q. Corporal Fidler, where are you employed?

A. I'm currently employed with the Pennsylvania State Police.

Q. And I've been identifying you as corporal. That's your current rank?

A. It is.

Q. And how long have you been with the state police?

A. Since 2003.

Q. And what about before that?
A. I was a patrolman in Prince George's County, Maryland, for six years.
Q. And what is your present assignment with the Pennsylvania State Police?
A. So currently I supervise the Central Interdiction Unit, which is essentially five guys or five people that cover from New York to Maryland, from Berks County to Bedford County. Those capacities are for my team to intercept large amounts of contraband and/or money.
Q. When you're talking about contraband, in the course of your work, are you largely talking about narcotics?
A. I am.
Q. Now, you mentioned Berks to Bedford County. Does your geographic territory also cover Harrisburg and Franklin County?
A. It does.
Q. And how long have you been in that capacity with the Central Interdiction Unit?
A. I started in -- my undercover days in 2008 working with Troop H vice, narcotics, gambling. From 2008 to 2012 was my vice stint. In 2012, I transferred to the Central Interdiction Unit where I worked as a trooper for four years, promoted in 2016 and came back as a supervisor of the unit in 2016.
Q. And that's what you're doing right now. Right?
A. It is.

Q. Okay. And can you talk a little bit about -- you started to hint at it, but talk a little bit more about some of the duties and responsibilities you have with the Central Interdiction Unit.

A. So, like I said, our job is to intercept large amounts of contraband and money. We work with federal agencies, local agencies. Basically planes, trains, automobiles, any way that you can smuggle contraband into or through the Commonwealth, we investigate those crimes.

Q. And am I right to understand that since 2012, you've worked pretty much exclusively in the area of narcotics investigations?

A. Interdiction investigations, yes.

Q. Interdiction. Okay. Can you talk a little bit about the training you've received as a state police trooper and in your current role in this area of narcotics interdiction and drug trafficking?

A. Starting from just as a policeman and a trooper, you go through the basic academy. From there you go to narcotics schools hosted by various agencies, DEA, Homeland Security, local agencies, Northeast Counterdrug, go through various schools that would cover and educate us on how drugs are packaged, how much they are, how do you buy them, how do you sell them, interviewing techniques.

Q. Now, in addition to your -- the training you've received

from others, do you also provide training?
A. Yes.
Q. You act as a teacher of other law enforcement personnel?
A. I do.
Q. Can you summarize that?
A. I instruct at our State Police Academy in Hershey, right here locally, as well as conduct other trainings to educate our members and other members locally.
Q. And just to drill in a little bit on that, what kind of training are you providing? Is it in the area of drug enforcement?
A. Narcotics identification and how to conduct undercover operations.
Q. And can you estimate approximately how many hours of training you've received during your career in this field?
A. Thousands.
Q. And in terms of continuing training and classes, do you receive updates in this area?
A. I do. We go through annual in-service training, as well as attend various other trainings throughout the United States.
Q. And during your service as a law enforcement officer, have you received any awards or other recognition?
A. I have. I've received several commendations for various jobs ranging from seizures to Title III and wiretap investigations.

Q. And would I be right to understand that that's in the area of drug investigations and interdiction?
A. It is.
Q. Okay. Have you participated in investigative activities where you've had to go undercover?
A. I have.
Q. Approximately how many times?
A. I've personally been undercover hundreds of times acting as users, sellers, low-level, street-level investigations, as well as mid-level trafficking.
Q. And in addition to your work undercover, have you otherwise participated in undercover operations?
A. Yes.
Q. Approximately how many times?
A. Just in participation, probably thousands. That would range from actually doing the undercover job to surveillance, to managing, to monitoring wiretaps, active surveillance on wiretaps.
Q. Have you participated in the street purchase of narcotics?
A. I have.
Q. Have you supervised the purchase of narcotics by others?
A. I have.
Q. Can you estimate about the number of times you've been involved in those kinds of purchases?
A. Thousands.

Q. Are you familiar with conducting field testing on suspected controlled substances?
A. I am.
Q. Have you actually done that?
A. Yes.
Q. Have you participated in the execution of search warrants during your work?
A. I have.
Q. Approximately how many times would you say?
A. Probably thousands.
Q. Have you also participated in the execution of arrest warrants?
A. Yes.
Q. Again, about how many?
A. Probably hundreds. They're a little bit fewer than search warrants and the other operations just because we hand our warrants off to, you know, the marshal's service or the sheriff's office.
Q. So am I right to understand that your work mostly focuses on search warrants?
A. Correct.
Q. During the course of your work in this area, have you spoken to individuals who are engaged in illegal narcotics activities?
A. I have.

Q. Approximately how many times would you say you've done that?
A. Hundreds.
Q. Hundreds. And have you specifically spoken to these individuals about narcotics importation and distribution?
A. Yes. So that's how we learn from these folks, right? When we do investigations and cases, we debrief them after we take them into custody and we kind of pick their brain as to the new techniques and trends that both they're doing to counteract our proactiveness, as well as to kind of learn what the new trends are.
Q. And I'm looping back just a little bit here, but have you also been trained specifically with respect to narcotics distribution networks?
A. Yes.
Q. Now, are you familiar with how drugs are typically packaged for distribution in Pennsylvania and elsewhere?
A. I am.
Q. And have you been trained and are you familiar with how drugs get to the United States?
A. Yes.
Q. And are you familiar with how drugs are distributed once they are within the United States?
A. I am.
Q. Now, have you testified previously in any court of law as

an expert witness?
A. Yes, at the state level, County of Lebanon, and here in the Middle District, as well.
Q. And you were qualified in those cases as an expert in narcotics trafficking?
A. I was.
MR. HAUGSBY: Your Honor, at this point I would pass the witness if defense has any questions.
THE COURT: Any questions?
MR. ONGAY: Certainly, I do. First of all, I just want to clarify, what is the expertise that the government was trying to establish his qualification specifically?
MR. HAUGSBY: Your Honor, I am going to be asking for Corporal Fidler to be qualified as an expert in drug importation and drug trafficking.
THE COURT: All right.
MR. ONGAY: I understand.
THE COURT: Mr. Ongay, any questioning?
MR. ONGAY: I do have one question.

CROSS-EXAMINATION ON QUALIFICATIONS

BY MR. ONGAY:
Q. I just want to make sure I heard you correct. You said that you have been qualified eleven times as an expert? Is that what you said? I wasn't hearing you.
A. I couldn't hear the question, sir.

Q. My apologies. Can you hear me better now?
A. I can. Thank you.
Q. Thank you. I wasn't certain if I heard your answer correctly. Did you say that you have been qualified to testify in state cases as an expert eleven times?
A. Lebanon County is where I testified.
Q. Eleven what?
MR. HAUGSBY: Lebanon County.
MR. ONGAY: Oh, in Lebanon County.
MR. HAUGSBY: Lebanon County.
BY MR. ONGAY:
Q. Okay. And how many times have you actually been qualified to testify as an expert?
A. Twice in Lebanon and I believe twice here.
Q. So two times in Lebanon County and two times in federal court. And those times that you were qualified as an expert, what expertise were you qualified as?
A. Basically the area of trafficking and distribution as far as how the drugs come into the Commonwealth, how they're packaged, how operationally we do things as far as interdiction jobs, and --
MR. ONGAY: Okay. Your Honor, I don't have any further questions regarding his qualifications, but I have questions on whether this is relevant testimony on this case and how will that relate to the elements of the conspiracy and

the second count.

THE COURT: Counsel approach.

(The following discussion occurred at sidebar:)

THE COURT: So, Mr. Ongay, I just want to make sure I understand. You're not necessarily objecting to the corporal's qualifications to testify as an expert, but you are objecting to his testimony as an expert because you are not clear on the fact that it's relevant to the issues in the case. Is that --

MR. ONGAY: That is correct.

THE COURT: Okay. So then let me allow Mr. Haugsby to respond to the relevance objection.

MR. HAUGSBY: Certainly, Your Honor. There's been considerable testimony in this case already about packages sent from Puerto Rico to the Commonwealth that contain narcotics, suspected narcotics.

Corporal Fidler has substantial experience in the area of drug interdiction and precisely this area and can speak to the way in which drugs tend to be produced, sent to Puerto Rico, then sent through the mails and private carrier to the Commonwealth and how that business operation works in terms of how drugs are packaged, roles within a drug trafficking organization, and pricing, among other indicia of drug trafficking.

And I understand further, Your Honor, that the issue of the defendant's intent and his role has been placed in issue

through some of the cross-examination questions that have been asked. I would expect Corporal Fidler to be able to speak to some of the issues that have come up during the testimony and fact witnesses in those areas.

THE COURT: All right. Mr. Ongay, did you want to make any further argument?

MR. ONGAY: Yes, Your Honor. On the charge of conspiracy, I don't see how this witness -- this helps establish any of the elements, the agreement, the existence of the conspiracy, the terms. There's no evidence that the government has about that. So he's just going to say that generally this is what happens.

MR. HAUGSBY: Well, Your Honor --

MR. ONGAY: So I don't think that's relevant.

THE COURT: Go ahead, Mr. Haugsby.

MR. HAUGSBY: I'm sorry, Your Honor. I didn't mean to speak over either you or Mr. Ongay. I apologize, sir. I actually think that it goes substantially to the issue of whether there's an agreement.

I would expect that Corporal Fidler is going to speak to some length regarding the packaging and shipment of large quantities of cocaine, including the value of that cocaine, agreements that are typically struck within drug trafficking organizations regarding the delivery and distribution of those drugs, which, again, there's been testimony, I expect there's

going to be testimony that these packages could be worth in the neighborhood of $70,000 each, $35,000 a kilo, and how those drugs move from Puerto Rico to Pennsylvania and the roles that people play, including those that we are alleging Mr. Santana played within a drug trafficking organization.

THE COURT: All right. I will overrule the relevance objection and allow the testimony. And just so I'm clear then, I think what you indicated in the hearing of the jury was that you do not object to the admission of Corporal Fidler as an expert. You raised a relevance objection.

MR. ONGAY: Right, based on that he appears to be qualified.

THE COURT: All right. Very well. We'll pick up from there then.

MR. HAUGSBY: Thank you, Your Honor.

MR. ONGAY: Thank you.

(The discussion at sidebar was concluded.)

THE COURT: The objection is overruled, and I will admit Corporal Fidler as an expert in the fields of drug importation and drug trafficking. And you may proceed with your questioning, Mr. Haugsby.

MR. HAUGSBY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HAUGSBY:

Q. Corporal Fidler, I want to talk to you about a number of

different areas and ask you questions in those areas, starting with really the process with how cocaine is manufactured and how it moves from manufacturer to the marketplace. Okay?

A. So cocaine is produced predominantly in South America moving towards Mexico through the coca plant. The leaves are --

Q. Corporal, I hate to interrupt you, but we're having a little trouble hearing, so if you can pull that mic a little closer to you.

A. How about now?

Q. That is much nicer.

A. So the coca leaves are produced in South America, Mexico. From there, there's a process to convert that into coca paste. The coca paste gets converted into kilogram quantities for sale, for wholesale, basically pressed down there and they're branded, the branding that you see on kilos of -- it's like anything, right? It's like Coke or Pepsi, it's how they sell things.

So that gets concealed in various capacities, freight, planes, trains, automobiles, submarines, in kilo quantities. That's kind of the gold standard of drug trafficking. That's how you order large quantities. Once it's manufactured and packaged, sealed, it gets transported, like I said, via freight or up the border or by water.

We see -- the Central Interdiction Unit here in the

Commonwealth, we see a lot of our cocaine, our kilo quantities coming from the Dominican, from the Dominican to Puerto Rico, and Puerto Rico to here. Obviously you can't drive to Puerto Rico, so most of our stuff comes through third-party shippers to include the postal service.

Q. And would that also include sometimes UPS and Federal Express, other carriers?

A. Yes.

Q. Okay. Do you find that these packages are often sent by priority shipment or otherwise?

A. Yes. For ease of tracking for all parties, typically you'll have the sender in Puerto Rico checking on the tracking number and relaying that to the receiver up here. That gives a level of security knowing that if we find the person who tracked or the IP address that tracked the package, they're in Puerto Rico, so basically they're untouchable for us here in the Commonwealth.

There will be some communication between the receiver and the shipper via various capacities, but the attractiveness for the postal service is the shipping for the tracking numbers, as well as usually anywhere between one- and three-day shipments.

And the reason the traffickers do that is because you want that contraband to get through to your final destination as quick as possible because the bad guys know that we work in

these shipping facilities and we look at packages and we run dogs on them to get search warrants.

So the faster that the contraband gets here, the less contact or the less probability with contact with law enforcement is kind of the reason that they do it.

Q. All right. Now, you said that your work is primarily in the area of interdiction. Is that right?

A. Yes.

Q. And interdiction is a big word that's really used for sort of intercepting and preventing -- you know, stopping it, stopping the trafficking midway. Is that right?

A. Correct.

Q. Now, can you talk a little bit about your work in this area and how you and others focusing on interdiction go about determining that a package moving from Puerto Rico to, let's say, the Commonwealth of Pennsylvania is suspicious?

A. So you're looking at the box in general. You're looking at how fast it's getting shipped, where it's destined for, and then you want to try and do some homework as far as who lives at those addresses, who sent the boxes, do those people exist. Typically you'll find variations of names for people that live at residences or totally fictitious names.

The one thing that we consistently see is that the destination address is always correct because they always want that contraband to get to where that house is because they

picked that house for a reason. So that's usually the only legitimate thing on the box.

Q. Now, you said that, I believe the expression was the gold standard in the industry, drug trafficking, cocaine trafficking, is the kilogram. Is that right?

A. Correct.

Q. So in these packages, is it typical to find kilo-level quantities of cocaine?

A. Yes.

Q. And you said that some of the other -- so the weight of a box would be relevant to you?

A. Yes.

Q. Okay. What else have you found that's contained within those boxes? Let me first ask you this question. During the course of your work in interdiction, have you had occasion to examine boxes found to contain cocaine?

A. Yes.

Q. And do those boxes tend to contain similar items in addition to cocaine?

A. So a kilo of cocaine -- you folks already saw it earlier. A kilo of cocaine looks like a block like that, right? So they try and conceal -- the traffickers try and conceal that shape and that feel in these boxes.

So what they'll do is, they'll throw in blankets or they'll throw in toys or they'll throw in whatever they can

throw in there to kind of cover up the shape of the box as far as feeling the kilo inside of it and as well as the weight. We look at the weight, too.

You'll find various things like dryer sheets to throw off the odor of the cocaine because they know that we use K9s to alert on the boxes to get the search warrants. You'll find carbon paper because they think, you know, that's going to affect an X-ray or that's going to affect the scent. None of that works, but these guys think it does. So we see coverup and masking of scents like that, as well.

Q. Now, during your work, have you also had occasion to intercept packages that you know or believe to be sent by the same organization?

A. Yes.

Q. Now, are those packages, do they sometimes bear similar hallmarks to one another? In other words, do they -- there's been testimony in this case, for example, that kilograms of cocaine were packaged within makeup bags that look substantially the same. Does that have any significance to you?

A. We see organizations that they find -- they find their own patterns, and they kind of stick with them as long as the patterns work, right?

So if a trafficking organization is using small metal gun safes to ship kilos, they're going to keep doing that

until, you know, we find the kilos and disrupt that organization.

In this same situation with the makeup bags and the tchotchkes and the dryer sheets, it just shows the pattern, that that's kind of the MO of the organization.

Q. Okay. Now, you said that one of the hallmarks of a suspicious package is a dummy return address or addresser?

A. Right.

Q. And also a dummy addressee, at least the person is not identifiable?

A. Right.

Q. And I think you also said that the receiving address is, in your experience, always legitimate?

A. Yes.

Q. And the reason for that is because of the value of what's contained within the package?

A. Correct.

Q. Okay. Now, there have been a number of exhibits introduced in this case as evidence. I just want to show you a few images. Ms. Reed, could you call up Exhibit 1.

MR. HAUGSBY: And may it be published, Your Honor? These have all been admitted.

THE COURT: Yes.

BY MR. HAUGSBY:

Q. I'm showing you here what's been marked and introduced into

evidence as Government Exhibit 1. This is the outside of the box that we've been referring to as package number two in this case that was used for a controlled delivery on February 22nd, 2019, at 35 Redwood Street. Have you seen this before?

A. I have.

Q. And can you tell the jury whether there's anything on this package that for you, as somebody who specializes in interdiction, is suspicious?

A. So we kind of look at where it's coming from, where it's going to. That part of Puerto Rico is known for trafficking cocaine to Pennsylvania. We'll look at the weight of the box. And then, for example, if we would see this box on a shipping line somewhere, we would research who Carmen Rivera was, we would research who Madelinee Diaz was, and we'd also research the addresses to see if they're legitimate.

Q. And could you show Exhibit 13, please.

MR. HAUGSBY: Your Honor, do you want me to ask if each of these may be published? I'm sorry, I can tell you which ones I'm going to ask Corporal Fidler about.

THE COURT: Just identify the exhibit so I can verify that it's been admitted.

MR. HAUGSBY: Certainly, Your Honor.

THE COURT: I just like to verify that. And then as long as it's been admitted, it can be published.

MR. HAUGSBY: Would you like me to run through them

now, Your Honor?

THE COURT: One at a time is a little bit easier.

MR. HAUGSBY: Certainly.

BY MR. HAUGSBY:

Q. Now, I'm just showing you what's marked as Government Exhibit 13. Are these the addresses you say you would want to examine further if you believed the package was suspicious?

A. Yes.

Q. Now, is there anything about the way that a package is taped or boxed that would further arouse suspicion on your part?

MR. ONGAY: I have to object. It's leading, Your Honor.

MR. HAUGSBY: I just asked if that was the case.

THE COURT: The objection is sustained -- I'm sorry, overruled. The objection is overruled, so I'll read it back: "Now, is there anything about the way that a package is taped or boxed that would further arouse suspicion on your part?"

THE WITNESS: So all of these organizations, whether they're shipping methamphetamine, cocaine, heroin, it doesn't make a difference, what they're trying to do is keep the scent inside the box, right, to work around our K9s that are working through these shipping facilities.

So what they do is, they'll conceal it, the contraband, in vacuum seal, they'll wipe their fingerprints off

of it. They'll vacuum seal it again, they'll wipe their fingerprints off it, and then they'll vacuum seal it one more time. That's to keep the odor from coming out of the box.

And then how they'll prepare the box is, they'll overly tape the edges, and then they'll glue the seams. They'll go to that extreme where we've seen glue, silicone, anything that can keep the odor from that box coming out.

MR. HAUGSBY: Your Honor, I'd like to publish Exhibit 14, if I may.

THE COURT: Yes.

BY MR. HAUGSBY:

Q. Corporal Fidler, on the screen in front of you is Government Exhibit 14. That is the underside of package number two. You were just speaking a moment ago about seams and taping and glueing. Can you take a look at this image and tell the jury whether there's anything about it that you think is significant in terms of the packaging?

A. I would research this box a little more if I just saw it on the line getting shipped. You can see the taped edges. Typically you see the tape just along the seam. Our smugglers will tape literally the whole box. You'll see them just try and tape the whole thing.

Q. So in and of itself it's not incriminating, but it would just further your suspicion. Is that right?

A. Right.

Q. Okay. Now, you were speaking about drug trafficking organizations using what works for them, and we were talking about some of the evidence in this case being the use of makeup bags.

MR. HAUGSBY: May I publish for the witness and the jury Government Exhibit 17?

THE COURT: Yes.

BY MR. HAUGSBY:

Q. Do you see what's on the screen in front of you?

A. I do.

Q. Government's 17. That's an image of two makeup bags recovered from package two in this case. Are these the kinds of articles that you find used in shipping of kilo-level quantities of cocaine?

A. They are.

MR. HAUGSBY: May I publish Government Exhibit 16, Your Honor?

THE COURT: Yes.

BY MR. HAUGSBY:

Q. Corporal, you were talking about the use of other articles and items within boxes. Can you see what's marked as Government Exhibit 16 on the screen in front of you?

A. I do.

Q. And it looks like there is a toy still in the package. Do you see the white articles that are on the bottom of the box?

A. They appear to be dryer sheets. And I do see the toy.
Q. And you said that the use of dryer sheets is used for a particular purpose?
A. It's to mask the scent of the contraband so the K9 won't alert on the box.
MR. HAUGSBY: And could we show Government Exhibit 22, Your Honor?
THE COURT: Yes.
BY MR. HAUGSBY:
Q. I'm showing you what's marked as Government 22. Do you see what's on the screen there?
A. Yes, the same thing, carbon paper, masking agents, all to conceal what is ultimately the cocaine inside.
Q. And the use of carbon paper, you said, is to try and keep the odor inside?
A. Right.
MR. HAUGSBY: Your Honor, may I show the witness Government Exhibit 23?
THE COURT: Yes.
MR. HAUGSBY: And have it published.
BY MR. HAUGSBY:
Q. Corporal Fidler, do you see the image of the two bricks of white substance on the screen in front of you?
A. Yes. That's typically what we'll see. We call them bricks, that's what they're termed on the streets, of cocaine.

But the proper term is a kilo or a kilogram. This is how we see them coming up from Puerto Rico routinely.

They'll be vacuum sealed, like I said, wiped down for fingerprints, vacuum sealed again, taped. They use various kinds of tape. This is the clear stuff that you can see over top of the heat seal. This is kind of routine for what we see.

And the longer that this would sit in a box, the more the odor is going to come out of the box. So that's the reason that they're shipping it up here so quick, is because they want the odor that's inside to stay inside.

MR. HAUGSBY: And lastly, Your Honor, may I show the witness and the jury Government Exhibit 29, please?

THE COURT: Yes.

BY MR. HAUGSBY:

Q. Corporal Fidler, I'm showing you Government Exhibit 29, which appears to be the other side of the two bricks that were in package two. And directing your attention to the top part of the brick on the left and the right-hand side of the brick on the right, do you see a sort of raised area there within the packaging?

A. That's what we refer to as the stamp, the kilo stamp. Basically it's the brand. It's the Coca-Cola or the Pepsi. Whatever cartel is producing the cocaine at that time or that shipment, that's their brand.

MR. HAUGSBY: Your Honor, there is one other image I'd

like to show the witness. It's Government Exhibit 18.

THE COURT: Yes, permission granted.

BY MR. HAUGSBY:

Q. Corporal Fidler, I'm showing you Government Exhibit 18, which is a closeup of one of the makeup bags that was in package two. Do you see it?

A. I do.

Q. And there's been testimony regarding the use of zip ties on the zippering. Does that have significance to you?

A. It doesn't hold the scent like a traditional, like, heat seal would. That would just be more to keep the actual kilogram inside and secured inside that makeup case.

Q. And just one followup question regarding the toys that are in the box. In your experience, why would articles like those small toys, those cheap tchotchkes, be included within the box with the cocaine?

A. They take up the filler space. So if you throw two kilos of cocaine inside of a big postal -- or a bigger postal box, you still have that vacuum -- or that void inside around the kilos. So what they'll try and do is throw a bunch of stuff around the kilo to kind of keep it stable so it's not rattling around inside for shipment.

Q. All right. So we've been talking a little bit about what makes a package suspicious and the kinds of articles that are found within it. Once you and your investigative team have

identified a suspect package, what steps do you take?
A. In instances with postal, when we work with postal, we'll use one of our state police K9s. We'll deploy it on the box to see if it alerts to the box.

In the event of an alert, the postal service will secure or apply for and then secure a search warrant through the federal magistrate. After that, we'll open the box, discover what's inside of it -- ultimately, here, it was cocaine -- and then from there we'll field-test it.
Q. All right. Well, let's back up just a smidge. There's been some talk in this case, some testimony regarding the use of drug detection dogs. Are you familiar with the use of K9s?
A. I am.
Q. And these are K9s that, in your experience, are trained in the area of drug detection?
A. They are.
Q. Now, in your experience, are K9s trained in the area of drug detection infallible?
A. No.
Q. So they will sometimes not alert to a package?
A. Dogs have bad days, too.
Q. Okay. Well, in addition to having bad days, might there be other reasons why a dog doesn't alert to a particular package?
A. Sure. If it's super-secreted and sealed up, that odor, that contraband, is not coming out of the box, so the dog is

not going to alert. That's the reason that they try and ship it so fast, is so that those gases don't come out of that box.
Q. So if you intercepted a package that you believe is suspicious and you've run a drug dog on it and the dog doesn't alert, do you abandon your investigation?
A. Typically, no.
Q. What do you do next?
A. We'll put it back in the mail stream and then watch the delivery to see who picks it up, where it goes, how it gets picked up.
Q. And are you doing that because you're trying to continue your investigation?
A. Yes.
Q. So you said that if a drug dog alerts, you typically -- do you test drugs after that? Do you test suspected drugs?
A. Yes. We have several ways of testing it. We call it field testing. It's a presumptive positive. So we have these small, little pouches with chemicals in it. We'll get some of the cocaine or contraband, whatever it is at the time, and we'll put some of that in the envelope, mix it with these chemicals, and it will come back with a -- depending on the drug you're testing for, with a color. For cocaine, the color changes to light blue.
Recently the state police and the postal service, we have another electronic method where we can just basically

shoot the cocaine with a laser, and it will tell us what it is.
Q. And in addition to that kind of field testing, do you often have drugs, suspected drugs, lab tested?
A. Yes.
Q. And is that typical in your investigations?
A. Yes.
Q. Now, you've spoken a couple times during your answers to the jury regarding fingerprints and wiping packages. Do you typically request fingerprint analysis in these kinds of investigations?
A. We don't.
Q. And why not?
A. Because these organizations, they know better. The people shipping these kilos, they know better. What they'll typically do -- and we learn this from debriefing, you know, the bad guys that we arrest. They'll tell us that they'll wrap it, wipe it off, heat seal it again, wipe it off. Sometimes they'll throw the kilos in dishwashers and they'll put a cycle in for the dishwasher, and then they'll heat seal it again. So we never have any success at lifting prints off of that.
Q. Okay. So you've talked about suspect packages, examining those packages using a drug detection dog. If you find -- if the drug dog alerts, you apply for a search warrant?
A. Yes.
Q. And if you find suspected drugs in there, you field-test

them?
A. Correct.
Q. And at that point what do you do next in your investigation?
A. So then it comes to the surveillance aspect of it. We'll research the address, the geographic location of it. We'll research who lives there, what cars are associated there. Generally, there will be a surveillance team sent out to research the address to see, get physically eyes on. We use other capabilities, electronics, helicopters, as you all saw, to surveil the location where the box is going to.
Q. Now, there's been testimony in this case regarding the use of sham kilos. Can you talk about why you use sham kilos?
A. Some of our investigations, we've learned, don't go always according to plan. So kilos can get discarded, thrown in the general public, into the population. We prefer to not have a kilogram of cocaine thrown into a city street, so we use sham kilos that are packaged identically to the contraband.
Q. All right. I want to talk a little bit now about what typically happens when kilos are actually delivered within the Commonwealth of Pennsylvania. In your experience, what do drug traffickers do with a kilogram-level quantity of cocaine once it has arrived in Pennsylvania?
A. Do you want to go through the entire controlled delivery, or do you want to go through pre-surveillance aspects, counsel?

Q. Well, we can talk about the controlled delivery, and then we can move to this. If we're building up to the actual execution of the warrant, why don't you carry us through that, and then we'll speak about what happens to the kilo when it arrives in the hands of a drug trafficker.

A. So on the state side, if the state police are assisting with the postal service, we'll apply for what's called an anticipatory warrant.

What that means is, we'll do the controlled delivery, and if a certain set of factors occurs at the execution of that search warrant, we can make entry into that house if the package goes in. It's called anticipatory. That's done after -- on the state side, after we have surveillance, helicopters, and then we'll execute the search warrant if the job goes as we think it would.

Q. So once the condition that allows you to make entry into the house occurs, that's when your team would enter?

A. Right.

Q. And at that point you would try to do what?

A. So then we'll detain everyone in the house, lock everything down, and then specific team members are delegated duties, surveillance, photographs, debriefings, and then the regular search team. We'll do a systematic search of the whole house.

Q. Okay. Now, I would like to turn to what actually happens with kilos of cocaine when they arrive in Pennsylvania so the

jury has some idea of what happens with this product once it's here.

You've been talking about branding and the production of drugs and the shipment of those drugs, and your testimony makes this sound like a hierarchal business. Can you describe for the jury what that business looks like from start to finish?

A. So if you're buying large quantities of anything, you're going to have profit margins along the way. By the time it comes to Pennsylvania, you're going to have the largest margin on it for charge. So if you have a contact in Puerto Rico that's selling you kilogram quantities for $20,000 a kilo, right, it's going to be -- increase the price as it comes north because it has to cover the travel costs.

So by the time that we see the prices up here in Pennsylvania, back in -- what was that, '19? We see the prices going from $20,000 in Puerto Rico for a kilo, well, now that same kilo is worth thirty to thirty-five thousand dollars. So you're talking about a markup just to get it up here to the states.

Q. Okay. And could you speak a little bit about the different roles within the organization, terms like "wholesale" and "courier"?

A. Sure. I mean, you have cartels like -- cartels run like a business, right, except their business is cocaine and heroin.

So they'll produce whatever contraband they're making, and then they'll designate couriers to ship it. They'll contract with trucking companies to truck it, airlines, you name it. Whatever they can fit it into, they're going to try and work their way through it. All of those people within that organization have their own role.

So if I'm in Pennsylvania here and my job is to move money back to Mexico, I might only know that role. I don't know anyone else that's actually delivering the cocaine to anywhere else because that is done to prevent, in the event that I get arrested, my cooperation with law enforcement. I really don't know anything. I know my role, but I don't know the bigger aspects of who is controlling the trucking routes, who is controlling the shipping routes, how the money is getting laundered across the border. That's not my role. I only have one specific function.

Q. And would this go all the way down to the street level?

A. Yes.

Q. Okay. We're going to talk about that in a minute. You were talking about examples of pricing. Am I right to understand your testimony that in February of 2019, the retail price for a kilogram of cocaine was in the neighborhood of thirty to thirty-five thousand dollars?

A. Right.

Q. Just incidentally, about how much would it cost now?

A. Various aspects control the pricing market and the shipping aspect. So right now we're at about, on the retail side, about 41,000 for a kilo.

Q. And is it really supply and demand?

A. Yes.

Q. Now, in your experience, do users of cocaine typically buy in bulk? In other words, do they order a kilogram of cocaine?

A. No.

Q. Why not?

A. Because if you're just using cocaine, you're not going to use a thousand grams of it. You're going to buy -- and I've posed as a street buyer in the past. You're going to buy whatever your habit is at that time. If I snort two or three grams over the weekend, then I'm buying two or three grams or an eightball, which is three and a half grams. That will get me through whatever my personal usage is. It's just like alcohol.

Q. You mentioned an eightball, and you started explaining that. Could you just complete that educational process for the jury and talk a little bit about what kinds of quantities are sold to users?

A. Can I start with a kilo and just work my way down?

Q. Sure can.

A. So if you have a thousand grams of cocaine, you also have the ability to put anywhere up to 300 grams of cut on that.

What cut is, is just a filling agent, right? It's like you're making mashed potatoes, you're just throwing butter into it and making it more.

So if I pay just, say, $30,000 for a kilo but now -- that's a thousand grams, so now I put 300 grams of cut on it, that takes me to 1300 grams of cocaine that I can now sell. That kilo gets broken down into multiple ounces, typically several ounces at a time or ounce quantities.

You get just about 36 ounces out of a kilo, so depending on what the street sales are at that time, that trickles down to multiple ounces, and it gets broken down through various other guys in the organization to grams, ultimately street grams.

Q. Okay. And the typical price -- I think you said an eightball. That's an eighth of an ounce or a gram. What would the street price for a gram of cocaine or an eightball be?

A. Depending on the market supply, anywhere between a hundred and fifty to three hundred dollars.

Q. So that's what a street-level quantity would cost, and you said that the cost of the entire cocaine kilo would be thirty to thirty-five thousand dollars?

A. Right.

Q. Okay. Now, when you execute search warrants on suspected drug traffickers, do you typically find large amounts of money and drugs together?

A. No. So the organizations are typically compartmentalized like I talked about earlier. You're going to have one guy that runs the cocaine to wherever, Point A to Point B.

And then you're going to have another guy, who I may or may not know, is going to pick up money from a different house or a different set of circumstances and run that money. That's going to be my job. These two guys might not know each other, so it stays compartmentalized.

And we rarely find money and cocaine or drugs at the same house just because if we do execute a search warrant on it, the traffickers don't want to lose both loads. They don't want to lose their money, and they don't want to lose their cocaine.

Q. Are you familiar with the expression "fronting"?

A. I am.

Q. Can you explain to the grand jury what fronting is?

A. So fronting is just like a line of credit, right? If I don't have $30,000 for you but I have a good relationship with you and you have the cocaine, typically you'll front me or give me on credit the kilo and I'll pay you back the money later on.

Q. Now, you said a good relationship. Is that a good financial relationship?

A. That's a good trafficking relationship.

Q. So can anybody get fronted drugs of that quantity?

A. Typically not.

Q. They have to be creditworthy?
A. Yes.
Q. Now, similar to my last question, when you execute search warrants on suspected drug traffickers, do you typically find evidence of packaging or other evidence of distribution at the house where you've made a controlled delivery of a kilo-level quantity?
A. Not typically. That's more like street-level or mid-level houses that we execute warrants at. The larger levels, typically you'll find the kilos go to one house, phone calls get made, communications are done via various text messages that are encrypted, and then that kilo will sit at that house and then get moved to another house to get broken down. So you don't see -- at these levels, you don't see a whole lot of, like, a lab kind of breaking down aspect.
Q. And this is probably relating to that, but there's been testimony in this case that was elicited on cross-examination that officers did not find drug residue or other drug evidence inside the house. In your experience, is that significant to you?
A. No.
Q. Why not?
A. Because of the different levels of the organizations, those drugs are probably not going to stay there very long just based upon the outcome of the case. So we don't find a whole lot of

things like that at the house.
Q. Because those kilos tend to move from Point A to Point B very quickly?
A. Right.
Q. Now, within a drug trafficking organization, you said there are a number of roles. Is that right? Do members of drug trafficking organizations tend to hold multiple roles?
A. Sometimes. It depends on the organization. Larger organizations have typically one person that does one thing just so they know they have less access to the information in case they're encountered by law enforcement.

If you only have a crew of five traffickers, then those five traffickers might know a little bit more about the entire operation because they have to contribute to the job as a whole, right?
Q. Okay. Now, again, going back to something you talked about earlier, we talked about dummy addresses, return addresses, unidentifiable senders, unidentifiable receivers. But I believe you said that the actual address used in shipment is always valid.
A. Yes.
Q. In your experience, do drug trafficking organizations send packages to random addresses?
A. No.
Q. Why would that be?

A. It's a bad business decision because you're opening yourself up to the box getting stolen. Various other things can occur. But the biggest thing is, when these organizations work, they want that contraband to get to that destination for a reason, and then they want the guy on the other side to be able to pick up and do his job. To send it to a random address -- I think we're talking about two kilos here, so $70,000 to a random address? Not in my experience.

Q. One box would be worth approximately $70,000 back in February, 2019. Okay. Now, you said you've interviewed senders?

A. I have.

Q. And you've interviewed receivers?

A. Yes.

Q. Based on those interviews and your experience and your training, do receivers of controlled substances sent through the mail know what those packages contain?

A. Yes.

Q. Do they always know how much is within a package?

A. No. So what we encounter through interviews is, we see that the couriers or the mule, the middleman, however you want to term it, when we arrest them, they know what was in the box, whether heroin, cocaine, methamphetamine, but they typically don't know how much.

And the reason for that is because if I'm a courier

and I'm only getting paid -- say 500 to a thousand dollars is the going rate right now in Harrisburg. If I'm getting paid a thousand dollars to accept ten kilos and I'm getting a thousand dollars to accept one kilo, well, I want to get paid more for the ten kilos. So the main traffickers don't divulge the weights typically. They don't know the weight.

Q. Okay. Now, there's been testimony regarding the absence of communications found on a cellphone that was recovered from Mr. Santana's residence at the time the search warrant was executed.

In your experience, do you always recover communications from phones in investigations like this regarding drug trafficking activity?

A. That's a 50/50 answer. Sometimes we do, sometimes we don't, depending on the types of phones, the types of apps that are being used.

And generally, if the person or the smugglers are just very good at working their phones and deleting their information, I can get a call on Monday from my trafficker and say, hey, your kilo is coming Wednesday, you arrest me Wednesday, but I already had the phone call from Monday and wiped that out. So that's not out of the ordinary.

Q. Let me ask you this, during the course of your experience in drug interdiction and drug investigations, would you say there's a range in skill level of the suspects you've

investigated?
A. Yes.
Q. A range of experience level?
A. Yes.
Q. In your experience, do more experienced drug traffickers tend to take greater care with respect to their communications?
A. They do.
Q. And how do they do that?
A. Various application technology through various phones. They wipe their phones routinely. I think we were speaking earlier about Title III investigations. They'll drop their phones. We call it dropping their phone. They'll change their number because they don't want to be tracked or they don't want to be discovered by law enforcement.
Q. Now, lastly, Corporal, I'd like to turn your attention to the subject of firearms and their relationship to drug trafficking.

In this case, there's been testimony and evidence introduced that officers executing the search warrant recovered a nine-millimeter pistol that was loaded with a magazine and additional magazines.

MR. ONGAY: Your Honor, if we could have a sidebar.

THE COURT: Yes.

MR. ONGAY: I think this is beyond the representation of the expertise.

THE COURT: Please approach.

(The following discussion occurred at sidebar:)

THE COURT: Can you both hear me?

MR. ONGAY: Yes.

MR. HAUGSBY: Yes, Your Honor.

THE COURT: So, Mr. Ongay, I understand your objection is beyond the scope of the identified area of expertise.

MR. ONGAY: Correct.

THE COURT: A proffer, Mr. Haugsby.

MR. HAUGSBY: Certainly, Your Honor. This testimony will not be extensive, but I expect Corporal Fidler to talk about the fact that in his experience in this area, firearms are a tool of the trade of drug traffickers, just like a lot of these other tools of shipment and production are tools of the trade. He is going to talk about why drug traffickers have firearms, what they're used for, and really not much more than that, Your Honor.

THE COURT: Mr. Ongay.

MR. ONGAY: The representation was that it was going to be about importation and trafficking of narcotics.

MR. HAUGSBY: And, Your Honor, this is a critical tool in the area of drug trafficking, and I think that Corporal Fidler's testimony will confirm that, that this is not an entirely unrelated new area of testimony, this is testimony regarding a fundamentally important part of the drug

trafficking operation.

THE COURT: I understand the objection, I understand the response. I'm overruling the objection. I think it is consistent with his qualifications.

MR. ONGAY: Thank you.

(The discussion at sidebar was concluded.)

THE COURT: The objection is overruled, and you may restate your question, Mr. Haugsby.

MR. HAUGSBY: Thank you, Your Honor. I'll do my best.

BY MR. HAUGSBY:

Q. Okay. I was introducing this last area of questioning by summarizing what some of the testimony had been before the jury in this case regarding the recovery of a firearm, a nine-millimeter pistol from the defendant's residence, as well as additional magazines and ammunition that were found in that residence. Okay? In your experience, Corporal, do firearms play a role in drug trafficking?

A. Yes.

Q. Can you explain what that role is?

A. Well, typically it's for security. So you're trying to protect not only yourself because you're involved in drug trafficking, you're trying to protect the load of whatever it is. You're trying to protect money. You're trying to protect any sort of stash houses or personal assets.

Drug dealers and drug traffickers can't call the

police when there's a crime, so they have to be able to protect themselves. And what that entails is, they have to be concerned about, number one, the police, number two, being robbed, home invasions if information gets out about different stash houses and rival gangs. So you have to factor in all of this, which ultimately leads to arms.

Q. Now, in your experience, have you -- in your experience you've encountered drug traffickers who are armed?

A. I have.

Q. And have you ever encountered drug traffickers or those involved in drug distribution who have gun permits or are otherwise licensed to carry firearms?

A. Sure.

Q. Have you talked to them about that?

A. Sure. It adds another level of legitimacy. If they would get caught in -- say in transport of protecting a load and they're armed, they produce a valid gun permit to whoever stops them, and basically at any point after that, you know, the detainment is over, there's no reason to detain them because they lawfully own the weapon. That's just for instance of transportation. As far as also home security, so you want to keep your house secure or your location secure.

Q. Wrapping up here shortly, Corporal. The firearm in this case, I believe the testimony was that it was recovered in Mr. Santana's bedroom. There was also testimony that there was

evidence of packaging. The shipments were found in the garage, some distance from the bedroom. Does the distance of the firearm or its location in Mr. Santana's bedroom signify anything to you?

A. Not necessarily. We run into or we encounter houses where arms are secured all over the house or it's just in one particular bedroom for security. It depends on the situation.

Q. Let me ask you one last question then. You said that one of the risks that drug traffickers face is from home invasion robbery?

A. Correct.

Q. And you have experience with that?

A. I do.

Q. Do home invasion robberies typically occur at night?

A. Yes.

MR. HAUGSBY: Your Honor, with the court's indulgence a moment.

BY MR. HAUGSBY:

Q. Just a couple followup questions, Corporal. I'm sorry. What types of firearms do you typically see in your investigations in possession of drug traffickers?

A. Typically pistols are the most preferred, semiautomatics. And we do -- a lot of our traffickers like to accessorize their weapons, so they'll get extended magazines, they'll get different sights, they'll get flashy parts or suppressors. But

we do see -- pistols are the predominant one.

Q. And do you know why?

A. Easy to conceal.

Q. And do drug traffickers always have them on their person?

A. No.

Q. You talked about extended magazines. Does the -- would the recovery of multiple magazines in a house, in different locations within the house, have any significance to you?

A. Yes. You're trying to -- you have various ammunition and more ammunition at various locations throughout your house for better protection.

MR. HAUGSBY: Your Honor, one moment. Your Honor, I'll pass the witness.

THE COURT: Cross-examination.

MR. ONGAY: Certainly.

CROSS-EXAMINATION

BY MR. ONGAY:

Q. You have used the phrase the organization, the group, very often in your responses as if -- and correct me if I'm misunderstanding you -- only organizations and groups will send one kilo package or two kilo packages over the mail.

In your experience, have you ever interviewed a drug dealer that worked independently and, in fact, sold kilos?

A. Yes.

Q. The second thing, if a person is, indeed -- strike that.

You mentioned that the purpose primarily of having a firearm was for protection. Correct?

A. Yes.

Q. Okay. And you also testified that it's not always carried near the person, on the person. Correct?

A. Correct.

Q. Okay. But would you agree that if, indeed, the firearm is going to be for protection, it should be, if not on the person, immediately accessible to, in fact, have the effect of providing that protection?

A. Could you rephrase that question, counselor?

Q. Should the firearm, in order to provide protection, be close to the person who intends to use the firearm should the need arise?

A. Yes, within a reasonable distance.

Q. I understand. You also mentioned that, in your testimony about the packaging, the goals, how other matters are included inside the parcel, and you explained the reason why that is done. But you also, again, referred to that in the context of organizations and groups. These measures are simple measures that could be done by an individual trafficker. Is that correct?

A. Sure.

Q. Okay. And you mentioned that when a significant amount of drugs were, let's say a kilo, a market value in Pennsylvania at

that time of $35,000, was not paid up front, that it was fronted or provided on credit, that it had to be a good relationship and a creditworthy relationship between the parties. Is that correct?

A. Yes, sir.

Q. And that can also exist between individuals, not necessarily between organizations?

A. Sure.

Q. Okay. Also in your investigations, you have encountered individuals who buy drugs from someone and who, in turn, sell drugs to others who actually do not have any association beyond being seller and buyers. One sells to another, and the other one buys the drugs and does whatever he wants with his drugs, and that is the extent of the transaction. Is that also common?

A. I don't know if I understand your question, counselor.

Q. Can someone buy drugs from someone else and then turn around and sell the drugs to someone else without having any other association with the seller or obligation other than paying for the drugs?

A. Other than buying and selling and being a part of that conspiracy?

Q. Other than simply that, simply buying the drugs from a seller and then he sells the drugs on his own. Can that simply be the extent of the relationship, a buyer-seller relationship?

A. Yes.

MR. ONGAY: I have no other questions, Your Honor.

THE COURT: Redirect?

MR. HAUGSBY: Very briefly, Judge. Thank you.

REDIRECT EXAMINATION

BY MR. HAUGSBY:

Q. Some of the questions you were just asked focused on your testimony where you were speaking about drug trafficking organizations and businesses. You were asked whether or not individuals might, in some cases, have the capacity to send kilos to receivers in Pennsylvania. You recall the testimony you just received?

A. I do.

Q. Have you, during the course of your work, found agreements between receivers and shippers who were just working with one another?

A. That's impossible, counselor, because access to those kilos and access to levels of distribution at the kilo level, you have to know somebody to know somebody to know somebody else to make that happen. It's not a street-level deal where I'm buying an eightball of cocaine in the streets of Harrisburg City.

Q. And you said frequently these roles are defined among those within an organization or within a chain of distribution. Is that right?

A. Sure.
Q. And in your experience, would there be communications between those individuals along that chain?
A. Yes.
Q. Maybe not with everybody, but at least with some of them?
A. Yes.
Q. And as part of those communications, would there be agreements reached regarding pricing or what was to be done with the contraband product?
A. Always.
Q. Always. Okay. Now, you were asked a question regarding having a firearm immediately accessible. Was it also your testimony that sometimes drug traffickers just did not have a firearm on their person?
A. That's correct.
Q. Would that sometimes be the case if they were surprised?
A. Yes.
Q. And, lastly, you were asked a question about whether you could have a simple buyer-seller relationship. I think your testimony on redirect here has been that that's really highly unusual or really never happens.

MR. ONGAY: Objection. That was not his testimony.

MR. HAUGSBY: Let me try again, Your Honor.

THE COURT: I'll sustain the objection, but I'll allow you to rephrase.

MR. HAUGSBY: It was a poor question. I apologize.

BY MR. HAUGSBY:

Q. You were asked a question about buyer-seller relationships. Do you recall that?

A. I do.

Q. Have you encountered certain drug transactions that are simply between a buyer and seller?

A. Yes.

Q. Is that typically the case for shipments of multiple kilos of cocaine?

A. No.

Q. What about in cases where multiple kilos of cocaine are shipped multiple times?

A. No.

MR. HAUGSBY: Nothing further, Your Honor.

THE COURT: Mr. Ongay.

MR. ONGAY: No followup, Your Honor.

THE COURT: All right. Corporal Fidler, that concludes your testimony. Thank you. You are excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: Counsel for the United States, do you have any additional witnesses?

MR. FORD: Your Honor, if I might have one moment just to confirm with the team.

THE COURT: Yes.

(Counsel confer.)

MR. HAUGSBY: Your Honor, in the interest of being prudent, there's been a lot of exhibits and evidence in this case, the government is nearing the end of its presentation, but to be on the safe side, would it be okay to take a brief recess so that we could confer with court personnel to ensure that the government's exhibits have all been admitted in this case?

THE COURT: Yes, absolutely. But I just want to make sure I understand for timing purposes. Subject to verifying that all exhibits that you anticipate have been admitted have, in fact, been admitted, will the government then be resting?

MR. FORD: We will, Your Honor.

THE COURT: Okay. So, jurors, what we'll do is, we're going to take a brief recess. It's now almost 2:40. We will be in recess until 3 o'clock. So please rise.

(Jury leaves courtroom.)

THE COURT: Please be seated. We'll proceed for a moment off the record.

(Discussion held off the record.)

(Recess taken.)

THE COURT: Are there any remaining exhibits that the government seeks to introduce or have admitted?

MR. FORD: No, Your Honor.

THE COURT: All right. And so then I'll allow you to

rest in front of the jury, but does the government rest?

MR. FORD: We do, Your Honor.

THE COURT: Is there a motion by the defendant?

MR. ONGAY: Your Honor, yes, I will make the --

THE COURT: Take your mask off so I can hear you.

MR. ONGAY: I will make the -- I hate to say the word "customary," but a Rule 29 motion. I will be, depending on how much the court wants to hear, I'll -- I think the court knows where I'm going.

On Count 1, I submit to the court that the evidence does not establish the existence of a conspiracy, which is required. There is no evidence that my client and whoever sent these parcels or whether there was one or more than one person had, in fact, an agreement that went beyond the agreement to sell and buy from each other.

On Count 2, just to cover all bases, my argument, Your Honor, is that the manner in which the parcel was admitted into the home eliminated the ability of my client to make a knowing and clearly show that he had the intent to open that parcel and that he, in fact, had the intent to possess the contents to deliver them.

For what it's worth, I submit to the court that there's no evidence that he actually looked at the label of the parcel inside the home and realized that it wasn't addressed to him and he still opened it.

In terms of Count 3, simultaneous possession of a firearm with the commission of an offense -- and I'm assuming that the court will agree that there is sufficient evidence for the first two counts. If the court agrees with that, then Count 3 cannot proceed.

But assuming that there is, I will argue in Count 3 that all you have here is a simultaneous possession. There is no argument whatsoever that he used this firearm to help him commit the conspiracy or attempt to possess the controlled delivery parcel.

If you go through the elements that the Third Circuit suggests, you will see that many of those elements actually favor a finding -- for example, the firearm, my client had a license to carry, the firearm was not stolen, the firearm was not found near money and near drugs.

And notwithstanding the last witness's testimony that that was not important or that that was not indicative of anything, the Third Circuit says it is. And there was no accessibility to the firearm at the time that the firearm was found.

The pistol is a pistol, Your Honor, very common. Everyone has semiautomatic pistols. There's nothing unique about it. The magazine is an extended magazine, but the weapon was not cocked, did not have a bullet in the chamber. There is no evidence that that firearm was operable. I'm not certain

whether that's a requirement of the statute, but there is no evidence that it was operable. It was not even tested.

And I think overall, Your Honor, that will indicate that there are problems in terms of sufficiency, for sure with the first and the third count, and some with the second count. And that's pretty much my position, Your Honor.

THE COURT: I understand your argument, and your motion is denied.

With respect to conspiracy, I understand you certainly, on behalf of Mr. Santana, contest the sufficiency of the evidence to prove the existence of an agreement, but I believe the evidence is sufficient to warrant presenting the case to the jury for a verdict.

With respect to the second count of attempted possession with intent to distribute 500 grams and more of cocaine hydrochloride, again, I think although the evidence is disputed, it is sufficient to warrant submitting Count 2 to the jury.

With respect to the third count, again, I understand that the "in furtherance" element of the firearm possession count is vigorously disputed. There are a number of factors that the jury will be asked to consider, and I believe the evidence is sufficient to warrant submission of that charge to the jury for their consideration of whether the evidence is sufficient to establish guilt. So the motion is denied.

Are there any other matters to bring up before we bring the jury back in? On behalf of the United States?

MR. FORD: No, Your Honor.

THE COURT: On behalf of the defendant?

MR. ONGAY: No, Your Honor.

THE COURT: All right. So we'll bring the jury in, and I'll allow the government to formally rest at that point in time.

MR. FORD: Thank you, Your Honor.

(Jury enters courtroom.)

THE COURT: Please be seated. All right. Before we took our recess, government's counsel requested the opportunity to verify some exhibit issues. Those issues have been addressed. Mr. Ford, does the government rest at this point?

MR. FORD: We do, Your Honor.

THE COURT: All right. We turn then to Mr. Ongay. Mr. Ongay, it's time now for the defense case-in-chief. How would you like to proceed?

MR. ONGAY: Your Honor, we have a witness that is a character witness, and I would like to call Ms. Stephanie Soto to the stand. I just want to advise the court that Ms. Soto needs an interpreter.

THE COURT: Okay.

MR. ONGAY: I believe there are two in the courtroom, so it could work well.

THE COURT: Very well. Ms. Soto, please come forward with the interpreter.

STEPHANIE SOTO, called as a witness, having been duly sworn or affirmed, testified through the Spanish interpreter as follows:

COURTROOM DEPUTY: Would you please state your first and last name for the record.

THE WITNESS: Stephanie Soto.

THE COURT: Thank you. Please be seated, and you can remove your mask while you testify.

MR. ONGAY: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. ONGAY:

Q. Ms. Soto, good afternoon.

A. Good afternoon.

Q. Please state if you know a person named Adam Santana.

A. Yes.

Q. And do you see Mr. Santana here today?

A. Yes.

Q. And can you please point towards him for the court and the jury?

A. Yes.

Q. Can you describe what he's wearing just to be precise?

A. A white shirt and I think black trousers.

Q. Okay. And --

THE COURT: Mr. Ongay, if you'd like, I can direct that the record will reflect that Ms. Soto has identified Mr. Santana.

MR. ONGAY: I apologize. Thank you, Judge. I went into a moment there. I apologize. For the record, I'll make the request of the court to indicate that Ms. Soto did identify Mr. Santana.

THE COURT: The record will so reflect.

BY MR. ONGAY:

Q. Now, Ms. Santana -- I'm sorry, Ms. Soto, how long have you known Mr. Santana?

A. Six years.

Q. And how did you meet Mr. Santana?

A. He is my husband's first cousin and my daughter's godfather.

Q. Okay. And how often did you interact with Mr. Santana during those past six years?

A. I've been -- many times.

Q. When you say often or many times, would you say that's on a weekly basis?

A. More than once a week.

Q. And did you ever live, actually, with Mr. Santana at one point?

A. Yes.

Q. And what I mean by that to be precise is, you resided in the home with Mr. Santana and where his family lived. Is that correct?
A. Correct.
Q. And just to be curious, was this at 35 Redwood Street in Chambersburg?
A. Yes.
Q. Okay. And, now, with your interaction, having known him for six years, do you have an opinion about Mr. Santana's character?
A. He's a person that is respectful, and he follows the law.
Q. And you are aware, correct, of the charges in this case?
A. Yes.
Q. And you are aware of these charges, I assume, since around 2019?
A. Yes.
Q. And that does not affect your opinion about Mr. Santana. Is that correct?
A. No, not at all.

MR. ONGAY: I have no further questions, and I pass.

THE COURT: Cross-examination.

MR. FORD: If I might have a moment, Your Honor.

THE COURT: Yes.

MR. FORD: No cross, Your Honor.

THE COURT: All right. Ms. Soto, that concludes your

testimony, and you are excused.

THE WITNESS: Thank you.

MR. ONGAY: Thank you, Your Honor. I have a stipulation that I would like to, with the court's permission, read into the record.

THE COURT: Yes.

MR. ONGAY: Yes, I had it here in my face. Sorry.

THE COURT: That's fine. Do you intend to mark the stipulation with an exhibit number?

MR. ONGAY: Yes, Your Honor. This will become defense -- D3, but this one will actually be marked and moved into evidence. The other ones were only used for purposes of cross-examination. I just want to make sure that I read you the correct one. May I have a second?

Your Honor, during the break, I misplaced one of the attachments, the Exhibit A to the stipulation, and that was my only copy.

MR. FORD: (Handing.)

MR. ONGAY: Perfect. Thank you, Your Honor.

THE COURT: Mr. Ongay, would you like -- just one moment. For purposes of publishing the exhibit to the jury, we can utilize the ELMO so that you can simultaneously display it to the jury and read it to the jury, just as Mr. Ford did.

MR. ONGAY: Thank you. And that way they can actually read it as opposed to listen to my accent.

THE COURT: Well, we can do both. All right. Do you have the documentation you need?

MR. ONGAY: I'm ready, Your Honor.

THE COURT: Okay. And so, government counsel, is there any objection to the admission of Defendant's Exhibit 3?

MR. FORD: If I could just see real quick, Your Honor, what -- I just want to make sure -- I know I just handed it. I just want to make sure I gave you the right one.

(Counsel confer.)

THE COURT: Mr. Ford, is there any objection to the admission of Defendant's 3?

MR. FORD: No, Your Honor.

THE COURT: All right. Very good. So the court will admit Defendant's Exhibit 3, which is a stipulation, and when you're ready, Mr. Ongay, we have -- Ms. Edleblute has pulled out the ELMO, and so you can display Defendant's Exhibit 3 for the jury and read it to them.

MR. ONGAY: Your Honor, I apologize, I actually do not have it.

THE COURT: Mr. Ford, do you have a copy?

MR. FORD: I believe I do, Your Honor.

MR. ONGAY: I emailed it to the court.

THE COURT: Okay. Mr. Ongay, we're going to make a quick copy.

MR. FORD: Here you go.

THE COURT: Or there you go.

MR. ONGAY: Yes. Thank you. May I approach, Your Honor?

THE COURT: Please.

MR. ONGAY: Good afternoon, and sorry for the delay. Okay. This is a stipulation entered between the defense and the government. The stipulation reads as follows:

The government and the above-captioned defendant, Adam Neftali Santana, stipulate to the following testimony and evidence:

If called to testify, Jennifer Reed would testify that she is employed as the office manager for Crossfire Shooting Sports located at 1390 Edenville Road, Chambersburg, Pa., that Mr. Adam N. Santana was not a member of the facility, but he visited the facility.

The records show that on June 22nd, 2018, Mr. Santana completed the questionnaire and liability waiver form required to be able to use the facility.

A copy of the letter from Jennifer Reed dated September 15, 2020, and the questionnaire and liability waiver form are attached hereto collectively as Exhibit A. The parties agree that the stipulation and the exhibit should be admitted into evidence.

And below you have the signature of Jose Ongay, which is me as his attorney, and the signature of Mr. Scott Ford, the

prosecutor. And on the second page, it would be the signature of Mr. Santana.

I will now change and read to you the letter from Ms. Reed. This letter has the stationery language from Crossfire, the heading, Shooting Sports, the address of 1390 Edenville Road, Chambersburg, Pa., 17202. The date of the letter is September 15th, 2020.

It's addressed to Jose Luis Ongay, and it reads as follows:

I am writing this letter in response to your request for information regarding your client Adam N. Santana and his use of our facility.

Mr. Santana was not a member of our facility, but our facility is open to the public and membership is not required for range use. We do not currently maintain records of an individual use at our facility.

However, I can confirm that Mr. Santana did visit our facility for the first time on June 22nd, 2018. The customer questionnaire and liability waiver from that visit are attached and are accurate copies.

Please feel free to contact us with any further questions at (717)262-0060. And it's signed, Sincerely, Jennifer Reed, Office Manager.

And, Your Honor, I think that that, for the purposes of the stipulation, is sufficient, and I don't have, at this

point, anything else.

THE COURT: All right. Thank you. And, Mr. Ongay, I believe, based on prior conversations, there is an additional witness but who is available tomorrow morning. Is that correct?

MR. ONGAY: That is correct, just another character witness that will be also quite short.

THE COURT: All right. Well, thank you. If you can provide -- we'll make a copy of Defendant's Exhibit 3. My staff can take care of that for you.

So, jurors, what we'll do then, we're going to let you go today a little bit early because there are some matters I need to take up with counsel. So let me just explain the schedule for tomorrow.

I have another matter that I have to address at 8:30, so rather than beginning court at 9:00, we'll begin at 9:30. You just heard from Mr. Ongay there will be one additional brief witness for the defense. We will then be able to proceed with closing arguments and my final charge to you, my instructions to you on the law. So that's where we'll be tomorrow morning.

I'll ask you all to arrive by no later than 9:15 so that we can have everybody assembled and be prepared to bring you into the courtroom at 9:30.

The same instruction I gave you yesterday, we're

parting for the day, but I'll just remind you, you can't discuss this case with each other or anyone else. You can't do any research or reading about the case. And just remember that everything we need you to know you're going to learn in this courtroom.

So with that, we'll say good night, and we will see you all tomorrow morning at 9:30 a.m. Please rise.

(Jury leaves courtroom.)

THE COURT: Counsel, we're just going to take a ten-minute break so everybody can organize their thoughts for the charge conference. We'll come back at 3:30. Mr. Santana will be excused. This will be counsel only.

MR. ONGAY: That's fine.

THE COURT: It will be on the record, but I proceed with charge conferences with counsel only.

MR. ONGAY: If I may have a minute to explain that to him.

THE COURT: Sure, absolutely. We're going to be in recess until 3:30.

(Recess taken.)

THE COURT: So we're going to go on the record for our charge conference. Ms. Dixon circulated a draft of the post-closing instructions, as well as the verdict form, I believe on Friday, November 5th. So counsel have those, and we are going to work off of the draft that was circulated so that

we all have the same pagination and highlighting that Ms. Dixon provided.

Now, the court, at the pretrial conference, and I believe in Ms. Dixon's circulating email, had requested that counsel provide any objections, corrections, or points for discussion in advance, first from the government circulating by email a chart provided by the court -- and that was to be provided to defense counsel -- and then defense counsel would essentially add comments to the chart provided by the court, and then all of that would have come to the court. That has not happened. I understand, nonetheless, that there are points for discussion from counsel?

MR. FORD: There are a few minor points, Your Honor. And I apologize, that is 100 percent on me. The points that we have, though, are all very minor, just typos that we found. Again, my apologies. I should have circulated it prior and gotten it to the court.

THE COURT: Yes. Let's do that next time.

MR. FORD: Yes, Your Honor.

THE COURT: Okay. So we have to make quick work. I have until 4 o'clock. So let me just march us through this, and I'm going to refer by title of the instruction and page number on the points that I think we need to discuss, and then I'll give you the opportunity to come through in a cleanup round.

All right. So item number one is at Page 13, credibility of the witness, law enforcement. If you could all turn to Page 13. We had flagged the word "several," you have heard the testimony of several law enforcement officers. I think the question on behalf of the court was simply whether it would be appropriate to leave the word "several" or to substitute a number or some other word. So counsel for the government?

MR. FORD: I believe "several" is appropriate, Your Honor.

THE COURT: Mr. Ongay?

MR. ONGAY: That sounds perfect to me.

THE COURT: We will remove the highlighting and leave the word "several."

The next question is on -- actually, the next point would be, I think we need to add an instruction regarding character evidence. This would be from pattern instruction 4.39. And I would propose to include this instruction between Pages 13 and 14, so following credibility of law enforcement witnesses but before opinion evidence of expert witnesses.

Is there any objection to the inclusion in that location within the instructions?

MR. FORD: No, Your Honor.

MR. ONGAY: No, Your Honor.

THE COURT: Okay. And then pattern instruction 4.39,

the way it would read as I believe it applies in this case is:

You have heard opinion evidence about whether the defendant has a character trait for being a law-abiding citizen. You should consider this character evidence together with and in the same way as all the other evidence in the case in deciding whether the government has proved the charges beyond a reasonable doubt.

And that's simply selecting the correct -- I think the applicable portions from the pattern instruction. Any objection to that?

MR. FORD: No, Your Honor.

MR. ONGAY: No, Your Honor.

THE COURT: Then the next page I think we need to discuss is the instructions at 16 and 17. Obviously they don't both apply. The defendant did not testify, so my suggestion would be that we would remove the instruction applicable when a defendant testifies.

MR. ONGAY: That's correct.

THE COURT: The one at 16. I would imagine that is uncontroversial. Any discussion on that, counsel?

MR. FORD: No, Your Honor.

MR. ONGAY: No.

THE COURT: All right. And then at 17, Mr. Santana did not testify but did present evidence, so I would propose that we modify that to simply reflect, Mr. Santana did not

testify, but remove "and did not present any evidence in this case."

MR. FORD: Yes, Your Honor.

THE COURT: I don't think any additional adjustments are needed. Mr. Ongay, do you think any additional adjustments are needed?

MR. ONGAY: On this particular instruction?

THE COURT: Yes.

MR. ONGAY: No, I don't think so.

THE COURT: Mr. Ford?

MR. FORD: No, Your Honor.

THE COURT: Okay. So we'll make that one edit. Next we flagged -- actually, next is stipulation of fact at Page 22. So there are, as I understand it, two different stipulations of fact. There was Government's Exhibit 45, which is a stipulation of fact, and then, in addition -- and I wanted to verify this -- Mr. Ford asked a witness a question about whether the firearm was capable of expelling or propelling an explosive, and, Mr. Ongay, you indicated that you would stipulate to that fact. That is an element of the definition of firearm in the instructions, so would I be correct to instruct the jury that you stipulated to that fact?

MR. ONGAY: Yes, Your Honor.

MR. FORD: Yes, Your Honor.

MR. ONGAY: I did stipulate to that.

THE COURT: What's that?

MR. ONGAY: I did.

THE COURT: Yeah.

MR. FORD: And I would say, Your Honor, it could be phrased that Government Exhibit 150 is a firearm.

THE COURT: Okay. Well, there are two different -- that wasn't actually what the stipulation was. There's the stipulation of fact, and then there's the definition of firearm, which we're going to get to in a minute. I think we should add that that element has been stipulated by the defendant.

MR. FORD: Okay. Understood.

THE COURT: So I think we would bootstrap that, we would put it in both places.

MR. ONGAY: I just want to make sure -- and obviously however the court rules on this, I will stand by my stipulation. I assume that the stipulation that the firearm was capable of ejecting or, you know, firing a bullet does not mean that I stipulated that it was operable. Or is that how the court understood it?

THE COURT: You did not stipulate that it's operable.

MR. ONGAY: Okay.

THE COURT: But that's also not an element of the offense.

MR. ONGAY: I understand.

THE COURT: You can feel free to argue to the jury that it may not be operable.

MR. ONGAY: I understand, I understand.

THE COURT: All right. So I will -- we will modify the instruction on Page 22, which is the stipulation of fact instruction. It will include the reference to Government's 45, as well as the stipulation that the firearm essentially was capable of ejecting a projectile.

MR. ONGAY: Perfect.

THE COURT: Or we'll verify the language. I wrote it down simultaneous to the stipulation being entered. Next is the instruction on -- yes.

MR. FORD: I apologize, Your Honor. So then there was the stipulation that I put in for Government Exhibit 45 that was the drug lab, and then Mr. Ongay just put in the stipulation today, as well.

THE COURT: That requires a different instruction. Thank you for bringing that up. That is the right place to put it, so the stipulation that is Defendant's Exhibit 3, pattern instruction 2.02 would apply. That's stipulated testimony.

MR. ONGAY: Got it.

THE COURT: Is that right? Does everyone agree with that?

MR. ONGAY: Yes.

MR. FORD: I believe Government Exhibit 45 would

technically be testimony, as well, Your Honor.

THE COURT: Oh, that's a point.

MR. ONGAY: I think that we did say that he would testify in the --

MR. FORD: Yeah, but, I mean, having said that, Your Honor, I think the stipulation of fact and the stipulation of expected testimony pattern jury instructions, I believe they can all go together at that point.

THE COURT: Just give me a minute.

MR. ONGAY: We specifically say, If called to testify, the chemist will say --

THE COURT: I'm just going to look at Government's 45. I'll tell you what, just to be consistent, I think -- both stipulations, Defendant's 3 and Government's 45, use the language, If called to testify, this is what the testimony would be, in sum and substance. So we'll just be consistent.

So the instruction on stipulation of fact we'll actually limit to the firearm capable of ejecting a projectile, and then we'll insert immediately after that pattern instruction 2.02 on stipulated testimony, which will include G45 and D3. Make sense?

MR. FORD: Yes, Your Honor.

MR. ONGAY: Okay.

THE COURT: Then the next point of discussion is at Page 34. This is the instruction -- this was proposed by

Mr. Ongay for conspiracy, single or multiple conspiracies.

So, Mr. Ongay, in the first paragraph of this instruction, which is a pattern instruction, we've highlighted the language that would need to be filled in. So let me just begin by asking, is this applicable?

MR. ONGAY: Your Honor, I have been on the fence on this instruction without raising why, and I'm going to go with my gut feeling, and I'm requesting the court to not include it.

THE COURT: So you're withdrawing the request to include it?

MR. ONGAY: Yes.

THE COURT: I assume government counsel is not opposed?

MR. FORD: No, Your Honor.

THE COURT: All right. So we will remove that instruction.

The next point of discussion is Page 39. Mr. Ongay had proposed an instruction which is not a Third Circuit pattern instruction, and this is the instruction on buyer-seller relationship.

Why don't I turn to the government first. Are you in agreement or not in agreement with providing this instruction?

MR. FORD: We believe it's appropriate, Your Honor.

THE COURT: Okay. I do, as well, based on Corporal Fidler's testimony, so I will include the instruction.

Mr. Ongay, I made an assumption there that you still would like to include that instruction.

MR. ONGAY: Yeah, that one I definitely want to include.

THE COURT: Based on your examination of Corporal Fidler, I assumed you were still interested in that instruction. We will include it as it's drafted.

MR. ONGAY: I'm hoping to contact the court reporter tonight so she could give me a blowup of that portion of his testimony. I'm just kidding.

THE COURT: All right. And then if we could all turn to Page 43 within the possession with intent to distribute instruction. Just give me one moment.

So the reason we flagged the instruction at Page 43 is a very technical reason. When you begin with the attempted possession instruction that begins on Page 41, the Third Circuit pattern instructions would have us proceed directly from that to the definition of possession, which is at Page 44.

But we felt that that made less sense than including the instruction on Page 43. So we made the decision that the instruction at Page 43 should be included, but I'm flagging it in case there's any disagreement because it's not the pattern instruction model.

MR. ONGAY: It's just a question on the order, not necessarily a change?

THE COURT: It is a pattern instruction, but the order, yes, the ordering of it is not what's recommended by the Third Circuit.

MR. FORD: We have no issues with that, Your Honor.

MR. ONGAY: I do not, either.

THE COURT: All right. And then if you would turn to -- bear with me for one moment and I'll find the page -- Page 55. This is the definition of firearm. In light of the fact stipulation, I would propose to add to this that it is conceded in this case that the -- what is it, Glock 19 nine-millimeter handgun is a firearm?

MR. FORD: Yes, Your Honor. It's listed as Government Exhibit 150, if you wanted to refer to it like that, Your Honor, or if you just want to refer to it as a --

THE COURT: Let me look at the indictment. Hold on one second.

MR. FORD: Glock 19, nine-millimeter.

THE COURT: Actually, to be abundantly clear, I would propose to use the language directly from the indictment, with the exception of the word "loaded." So I would propose that the instruction would say, In this case, it is conceded that the Glock nine-millimeter pistol with Serial Number SYK946 is a firearm.

MR. ONGAY: That is fine.

MR. FORD: Yes, Your Honor.

THE COURT: Okay. We'll make that revision. All right. That is -- those are the only points that I felt we needed to discuss. Let me turn to Mr. Ford and ask if there are additional points you would like to discuss.

MR. FORD: Your Honor, these are just very minor points. On Page 31, about halfway through it says, The government need not prove that Mr. Santana knew everything about the conspiracy or that *they*, it just should be *he* knew everyone involved in that or that *he* was a member from the beginning.

THE COURT: Agreed. We'll make that correction.

MR. FORD: And then on Page 41, the last paragraph, Your Honor, the second line, guilty of attempt to commit possession with intent to distribute a --

THE COURT: Delete "a"?

MR. ONGAY: I'm sorry, what location on Page 41?

MR. FORD: Forty-one, the final paragraph, second line at the end.

MR. ONGAY: Oh, I see it.

MR. FORD: It says with intent to distribute a --

MR. ONGAY: To distribute.

MR. FORD: Then Page 51, Your Honor, it should be at the very end, If you find Mr. Santana possessed the firearm, you must consider whether the possession was in furtherance of his attempt to distribute cocaine hydrochloride, it should be

his attempt to possess with intent to distribute.

MR. ONGAY: I'm sorry, what instruction is that?

THE COURT: We're on Page 51.

MR. ONGAY: Okay.

THE COURT: The final paragraph, final sentence. So let me know when you're on Page 51.

MR. ONGAY: So it should read, You must find, correct?

THE COURT: You must consider whether the possession was in furtherance of his attempt to, and what's missing is, his attempt to possess with intent --

MR. ONGAY: I see.

THE COURT: -- to distribute cocaine hydrochloride.

MR. FORD: And then the final point, Your Honor, on Page 54.

THE COURT: Yes.

MR. ONGAY: Fifty-four?

MR. FORD: At the top.

THE COURT: Fifty-four.

MR. FORD: Yes, Your Honor, at the top, possession in furtherance of means for the purpose of assisting and promoting, accomplishing, advancing, or achieving the goal or objective of, and then it's attempting to distribute cocaine base. I believe it should be attempting to possess with intent to distribute cocaine hydrochloride.

THE COURT: Correct. Thank you. We'll make those

changes. Is there anything else on behalf of the government in the closing instruction?

MR. FORD: No, Your Honor.

THE COURT: Mr. Ongay?

MR. ONGAY: I do not have any suggested changes.

THE COURT: All right. Then let's turn to the verdict form. Does everybody have a copy of the verdict form that was circulated in advance?

MR. FORD: We have no issues with it, Your Honor.

THE COURT: Mr. Ongay, do you have any points of discussion with the verdict form?

MR. ONGAY: No, Your Honor.

THE COURT: All right. I did not, either. I reviewed it, as well, and it looks good to me.

Counsel, I think that concludes our charge conference. I don't have anything else to cover. Is there anything else before we part ways for the day? On behalf of the United States?

MR. FORD: No, Your Honor.

THE COURT: On behalf of the defendant?

MR. ONGAY: No, Your Honor.

THE COURT: All right. Wonderful. I'll see you all -- I do have a sentencing at 8:30, and so I told the jury to be here by 9:15. I probably won't be available until close to 9:30, depending on how long the sentencing takes. So I

will -- the courtroom will be open. You can feel free to come into the back of the courtroom or just sort of, you know, wait out in the hallway, and we'll obviously open the doors and let you know when we're ready.

MR. FORD: Yes, Your Honor.

MR. ONGAY: So we should be here by 9:15 at the latest?

THE COURT: What's that?

MR. ONGAY: 9:15 be here?

THE COURT: Yeah, I think definitely be here by 9:15.

MR. ONGAY: Okay.

THE COURT: I'll see everybody in the morning.

MR. ONGAY: Thank you, Your Honor.

(Whereupon, the proceedings were adjourned at 3:51 p.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, Federal Certified Realtime Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 5th day of July, 2022.

/s/ Lori A. Shuey
Lori A. Shuey
Federal Certified Realtime Reporter

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

UNITED STATES OF AMERICA :
: Criminal Case No. 1:19-CR-251
vs. :
: (Judge Wilson)
ADAM NEFTALI SANTANA, :
Defendant :

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
DAY 3, PAGES 348 THROUGH 446

BEFORE THE HONORABLE JENNIFER P. WILSON
UNITED STATES DISTRICT COURT JUDGE
NOVEMBER 10, 2021; 9:29 A.M.
HARRISBURG, PENNSYLVANIA

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THE COURT: Please be seated. Good morning, jurors. Welcome back. We are ready to proceed. Mr. Ongay, we are still on the defense case-in-chief, and I understand you have a witness to call.

MR. ONGAY: I do, Your Honor, and he's present, and his name is Joshua Garcia.

THE COURT: All right. Mr. Garcia, please come forward.

MR. ONGAY: Mr. Garcia also needs an interpreter.

THE COURT: All right.

MR. ONGAY: And, Your Honor, may I conduct the examination from the table?

THE COURT: Certainly.

MR. ONGAY: Thank you.

THE COURT: Mr. Garcia, please remain standing while we administer an oath.

JOSHUA GARCIA, called as a witness, having been duly sworn or affirmed, testified through the Spanish interpreter as follows:

COURTROOM DEPUTY: Could you please state your first and last name for the record.

THE WITNESS: Joshua Garcia.

THE COURT: Mr. Garcia, please have a seat, and you can remove your mask while testifying. Mr. Brown, if you need to remove your mask, please feel free. Mr. Ongay, please

proceed.

MR. ONGAY: Thank you, Your Honor. Can the court reporter hear me well?

COURT REPORTER: Yes.

DIRECT EXAMINATION

BY MR. ONGAY:

Q. Good morning, Mr. Garcia.

A. Good morning.

Q. Please state if you know a person named Adam Santana.

A. Yes.

Q. And how long have you known the person named Adam Santana?

A. All of my life.

Q. And can you explain to the court, how do you know Mr. Santana all of your life?

A. He's my cousin. We were raised as brothers.

Q. Thank you. Do you see Adam Santana in this courtroom?

A. Yes.

Q. Can you please point towards him?

A. *(Witness complies.)*

Q. For the record, indicating that Mr. Garcia has pointed towards my client, Adam Santana. Mr. Garcia, just to make it abundantly clear, can you describe what Mr. Santana is wearing today?

A. A white dress shirt and blue pants.

Q. Thank you. Now, how long have you been in Chambersburg,

Pennsylvania?
A. About three or four years.
Q. And are you married, sir?
A. Yes.
Q. And what is the name of your spouse?
A. Stephanie Soto.
Q. And did you and your spouse ever live with Mr. Santana?
A. Yes.
Q. And where did you live with him?
A. In Redwood.
Q. So that would be in Redwood in Chambersburg, Pa.?
A. Yes.
Q. Okay. Do you recall how long approximately you lived with him?
A. I don't remember.
Q. And currently you don't live with him anymore?
A. No.
Q. And did you have contact with Mr. Santana after you moved out of his home?
A. Yes.
Q. And how frequently would you say you have contact with him?
A. More than once a week.
Q. Okay. And that has been ongoing?
A. Yes.
Q. So would you say you know Mr. Santana well?

A. Yes.
Q. And do you have an opinion about Mr. Santana's character?
A. A man who respects the law.
Q. Thank you. You are aware of the allegations against Mr. Santana in this case?
A. Yes, correct.
Q. And have you been aware of these allegations since when it happened sometime in February of 2019?
A. Yes.
Q. And having that knowledge, does that affect your opinion about Mr. Santana's character?
A. Never.

MR. ONGAY: Your Honor, I do not have any -- thank you, Mr. Garcia, and I do not have any additional questions.

THE COURT: Any cross-examination?

MR. HAUGSBY: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. HAUGSBY:
Q. Good morning, sir.
A. Good morning.
Q. Sir, you said that you moved --

THE COURT: Mr. Brown, if you could just step back, the jurors can't see the witness. Thank you. Thank you, jurors.

MR. HAUGSBY: Your Honor, is there any problem if I

remain here?

THE COURT: I don't think so, no. It was just a line of sight issue.

MR. HAUGSBY: Understood, Your Honor.

BY MR. HAUGSBY:

Q. You said you moved to Chambersburg three or four years ago?

A. I believe so.

Q. And where did you move from?

A. From South Carolina.

Q. And were you born in South Carolina?

A. No, in Puerto Rico.

Q. How long did you live in Puerto Rico?

A. I don't remember.

Q. More than ten years?

A. Yes.

Q. And where in Puerto Rico was that?

A. In Juncos.

Q. And you said you and your brother -- you and your cousin, Mr. Santana, were raised like brothers?

A. Yes, he saw me grow up.

Q. So was Mr. Santana from Juncos?

A. Yes.

MR. HAUGSBY: Nothing further, Your Honor.

THE COURT: Any redirect?

MR. ONGAY: No, Your Honor.

THE COURT: All right. Mr. Garcia, that concludes your testimony. Thank you. You can resume your seat. Thank you, Mr. Brown.

INTERPRETER BROWN: You're welcome.

THE COURT: Mr. Ongay, is there any further -- are there any further witnesses you would like to call?

MR. ONGAY: No, Your Honor. The defense rests.

THE COURT: All right. Is there any rebuttal evidence from the United States?

MR. FORD: No, Your Honor.

THE COURT: All right. Then members of the jury, you have heard and seen all the evidence in this case. The lawyers now have the opportunity to present their closing arguments.

Under the rules of criminal procedure, the government will argue first, then the defense will present its closing argument, and finally, the government may, if it chooses, argue in response or in rebuttal to the defense's argument.

Closing arguments are designed to present to you the parties' theories about what the evidence has shown and what conclusions may be drawn from the evidence. Remember, though, what is said in closing arguments is not evidence. You have already heard and seen all the evidence in the case.

After the lawyers present their closing arguments, I will give you my final instructions concerning the law that you must apply to the evidence in reaching your verdict.

Although the lawyers may mention points of law in their closing arguments, the law that you must follow in reaching your verdict is the law that I will give you in my final instructions. If there is any difference between what the lawyers say about the law and what I tell you in my final instructions, then you must follow my instructions.

All right. I invite counsel for the United States to present their closing argument.

MR. FORD: Your Honor, if I might just have one moment just to move the podium.

THE COURT: Certainly. And, jurors, just for your awareness, between closing arguments and my final instructions, we will take a break. That's when you can expect our morning break will be. You may proceed.

MR. FORD: Thank you, Your Honor. Good morning, ladies and gentlemen. So as I told you on Monday, we were going to present a lot of evidence to you, and a lot of it might not have made sense taken in pieces. Well, now you've heard everything, and this is my opportunity to kind of put it all together.

As I also told you on Monday, it's not our intent to throw curveballs at you or smoke and mirrors. We're just going to give you the facts straight up, and I see no reason to change that at this point.

So first we have the charges. All right? Count 1 is

conspiracy to possess with intent to distribute five kilograms and more of cocaine. That's the entire conspiracy. That's all of the packages that were delivered to Mr. Santana.

Count 2 is attempt to possess with intent to distribute 500 grams or more of cocaine. Again, that's what happened on February 22nd. That's whenever they did that controlled delivery.

Now, it's charged as attempt to possess because he didn't actually possess anything. If you remember -- and I'm sure you heard several times -- the agents didn't want those two kilos to actually go out and potentially -- you know, if they would have somehow lost them during that controlled delivery, they didn't want to take that risk, so it was sham packages. It was those cardboard boxes with black tape. So, again, that's why it's attempt and not actual possession. And, finally, we have possession of a firearm in furtherance of drug trafficking.

Now, ladies and gentlemen, I'm about to talk to you a little bit about jury instructions. And, again, as Judge Wilson just told you, after closing argument, she's going to instruct you on the law. If there's anything that I said -- and, again, Judge Wilson just told you this, and I just want to reiterate, if there's anything that I say that's different than what she says, you have to follow what she says. All right? Because chances are it was just that I made an error whenever I

put my slides together. All right?

And, again, I'm not going to belabor the point with the jury instructions, but I just want to hit on some of the most important ones in my mind.

All right. So I want to start off with Count 2 because that's the count that you heard the most about. That was the controlled delivery. Again, it's the attempt to possess with intent to distribute 500 grams of cocaine.

All right. First we have to show the defendant attempted to possess a mixture containing a controlled substance, the defendant attempted to possess it knowingly or intentionally, that he intended to distribute the controlled substance, and that the controlled substance was cocaine. All right?

Let's get into the facts of what we have. We have multiple packages. All right? Because what's really important here is for us to establish to you, all right, that Mr. Santana knew those packages were coming and it was his intent to receive them or receive that one on February 22nd.

Well, we know of three specific packages, all right, all of which -- the first one was delivered on 14, February, 2019. That's the one that Inspector Corricelli told you he got it, it seemed odd, he ran the dog by it, the dog didn't hit, but nonetheless, he took it out there.

Mr. Santana -- we know that Mr. Santana received that

package because Inspector Corricelli said that he saw Mr. Santana come out, look around on the porch, pick it up, and take it inside. So we know that he received that one.

Then we have the second one, the one that was the controlled delivery on February 22nd, 2019, and then we have the third one. The third one was the one that was seized on the same date. Again, if you remember, Inspector Corricelli told you a little bit after midnight the two packages had arrived. They had been sent on different days, but they both got to the Harrisburg Post Office a little after midnight.

He ran the dogs by them early that Friday morning. The dogs hit on both of them, so therefore he went and he got a search warrant for one because he had a lot of work to do, so he didn't bother getting the search warrant on the second one until the following Monday.

So, again, we have all three of these packages, all three heading to Mr. Santana. And, again, that first one, we know that he received it and he was the one that picked it up and then we have that second one that ultimately ended up in his hands.

How else do we know that he knew that it was coming and he intended to receive it? He was ready with a razor blade. All right? So think about it, when you watched that video, when you saw the video, it was at about 37 seconds, is approximately the time that Mr. Santana arrived home in the

video. Then it was a little after six minutes that you start to see the officers lining up out on the street to go and kick in that door.

And what did Trooper Nesbit tell you? He said that Mr. Santana arrived home, they received a notification that the package moved from inside the house, and then he also received a notification that the light sensor had gone off, that he had opened up that package.

So in that amount of time, all right, 37 seconds to 6:15, he came in, he picked up that package. He took it into the garage, he opened it up, all right, and then you also have to count in the amount of time that it took all of the law enforcement officers to get out of their vehicles and start moving towards that -- towards that house. All right?

So all of that occurred in less than six minutes. So he was ready and he had a razor blade and he -- in order to open up that package, and he also shredded the shipping labels. Ladies and gentlemen, why would you shred the shipping labels, particularly to that degree? And particularly why would you do it within five minutes of receiving the package?

And, additionally, if you remember, I asked several times of Trooper Nesbit when he was showing pictures in the house, there were other packages in the house and all of which had their labels on it. Mr. Santana wasn't worried about identity theft, Mr. Santana was worried that law enforcement

was going to find out where this package was coming from. Additionally, in that five and a half minutes, he cut into the package. All right?

And then when law enforcement came, he ran and he ran out to the garage with his ten-year-old daughter still in the house. You heard Trooper Nesbit, he came in that front door, he encountered the ten-year-old daughter. He moved through the kitchen, he moved -- checked out the dining room, backed back out, and then started to move through the garage.

And Mr. Santana was running, and he ran out of the house. And, additionally, you heard from Trooper Long, he ultimately was tackled right there at that location where the two downspouts were, but he threw the packages ahead of him.

Now, another jury instruction that Judge Wilson is going to talk to you about is consciousness of guilt. Again, what I want to focus on here is, you know, the consciousness of guilt, flight.

You've heard testimony that the crime was supposed to have been committed, the defendant fled from law enforcement as they entered his home and threw the packages containing the cocaine. This conduct may indicate that he thought he was guilty of the crime charged and was trying to avoid punishment.

Again, remember, ladies and gentlemen, his ten-year-old daughter is in the house. You have armed men coming in the door, and he immediately flees with those two

packages in his hand and throws them. And, again, he threw the packages -- you can see from this photo, again, he was tackled there at the downspouts, and he threw the packages that distance.

Additionally, he had a digital scale. You heard from the agents, you know, digital scales are often used to weigh product, to make sure that they have the right amount of product, and then if you're dividing it out, to make sure that you're giving people the right amounts.

All right. Other evidence that delivery was not a mistake, the only residents, Santana, the girlfriend, and the daughter. Also it should indicate in the slide, as well, the son. If you remember, I asked Trooper Nesbit about indications of other people that lived in the house, and he ran through all of those names. It was Santana, the girlfriend, the daughter, and his son.

The cost of the drugs. You heard from Trooper Fidler if you were sending $60,000 in cocaine, you want to make sure that it's going to the right person. All right? And it's not just $60,000 of cocaine, it's actually 120,000 because you have that second package. And then you have all those other packages that Inspector Corricelli told you about.

Again, you have the timing. In only five minutes from arrival to execution of the search warrant, he moved the package, opened the package, shredded the package, cut into the

package. All right? And then you have the other packages in the scooter, which we're going to talk about here in a second.

And I apologize, it says Count 3, jury instructions, that should be Count 1. All right? And that's Count 1, that's the conspiracy to possess with intent to distribute five kilograms and more of cocaine.

All right. So, ladies and gentlemen, it's a crime in and of itself to agree with other people to commit a crime. All right? So it's a crime to possess with intent to distribute cocaine, is one crime, but then it's also a separate crime to agree with others to do it as a joint proposition. And that's what this first count is.

All right. So Government Exhibit 46, you remember I stood up yesterday and I read what we called a stipulation to you and I said that there was a lab tech at Pennsylvania State Police that examined the cocaine? It was the two kilograms that were in package two, the two kilograms that were in package three, that they weighed 2,003 grams. That's the two kilograms in package one -- or, I'm sorry, in package two and then 2,002 in package three.

So, hey, you know, you guys can do the math. That's four kilograms, but I charged five. Where's the fifth? Where's the fifth kilogram? We know that he received packages earlier. How do we know that? All right. So on the left, you have Government Exhibit 17. That's the photographs that

Inspector Corricelli showed you from parcel 4884, all right, what we were calling package two. That's the controlled delivery. So you got two cosmetic bags in there, right? All right.

And then we had parcel three, all right, and that's parcel 6795, package three. That's the one that came in the same day, on February 22nd, as package two. And you remember Inspector Corricelli ran the dogs, and he didn't open it until the following Monday because he was working to get the controlled delivery, and he found the other two kilograms. All right? So there's our four.

But then we got the items that were found in the scooter, all right, right underneath that scooter seat. Ladies and gentlemen, keep in mind, that scooter seat is where they found package two. That's where he cut into it. That's where he shredded everything. And right underneath that seat, what do they find? Four cosmetic bags. And what's one of those cosmetic bags? It looks identical to the cosmetic bags from the other two packages that contained the cocaine. All right?

So here's the summary of parcels that were sent to 35 Redwood Street. Again, this was from Inspector Corricelli's testimony yesterday. All right? We have all of these packages. I believe it's a total of eight packages. Starting at the bottom, we have package three, the one that was seized. Then we have package two, which is the controlled delivery.

And then we have the one in which Inspector Corricelli did surveillance. And then you see the similarities between all those other ones, from November 30th all the way up through February 20th, 2019.

So let's talk a little bit, though, about the similarities between the two packages that we know contained cocaine and those bags that were found under the seat in the scooter.

All right. First, you got dryer sheets in all three. Next, you got dollar store items. Now, not just dollar store items, dollar store items from All Ways 99, a particular dollar store. You have carbon paper. You got carbon paper that was found in the controlled delivery, you got carbon paper that was found on the cocaine in package three, and then you have carbon paper that was found inside the scooter. Then you have the similarities between all of the shipping labels. All right?

So, remember, Inspector Corricelli told you that he knew that there were eight packages that were delivered from October 30th of 2018 to February 22nd of 2019. But he said that he didn't have the scan for the one, he only had -- he had scans for four of the previous ones. And then, of course, he had the photo of the one that he delivered on February 14th, he had the photo of the one for the controlled delivery, and he had the photo of package three.

So what do you see for all of these? The return

address on all of these is Juncos, Puerto Rico, a location that we know that the defendant was from, a location in which the defendant would have contacts.

You have Madelinee Diaz, Carmen Diaz, and Carmen Diaz as the recipients on the three that we -- the three parcels that Inspector Corricelli actually laid hands on. So you've got the last name Diaz used in all three of them. And the return address is Carmen Rivera and then Juan Rivera and Juan Rivera.

The four that we had before, we have two in which return addresses were from Juan Rivera. We have two that were from Manuel Ortiz, which is a new name. But then we have two -- those two were sent to Damariz Rivera, which, again, we have the name Juan Rivera that's been used in other locations.

Additionally, we go and have two that were sent to Carmen Diaz. Diaz is a name that -- and that's the exact same name that was used in the two parcels that we know contained cocaine. So, again, we have all of these similarities between all of the packages.

Now, again, another jury instruction, what Judge Wilson is going to tell you is that the success is immaterial. Again, the agreement to commit a crime is a crime in and of itself. It doesn't matter if you were successful. So conspiracy is a criminal offense separate from the offense that was the object of the conspiracy. Conspiracy is complete

without the commission of that offense.

So why am I telling you that? Ladies and gentlemen, let's just say that you don't believe -- that you don't believe that there was a fifth kilogram, that all of those -- that those -- all of those points were not related, that all of the facts that I just presented to you, you know what, I still don't believe that he had received a kilogram earlier, it doesn't matter. If there was an intent for him to do it, if he was going to do it in the future, he still has committed the crime of conspiracy to possess with intent to distribute five kilograms.

All right. So now Count 3, possession of a firearm in furtherance of drug trafficking. All right? This is that Glock nine-millimeter pistol that was found upstairs in the bedroom. He possessed it. He even had a permit. All right? It was a firearm. The only question that's really up for decision here at this point is whether it was possessed in furtherance of drug trafficking.

Now, again, here are the elements of the offense. And, again, Judge Wilson is going to read these to you here shortly. But one that I think is of most importance, all right, the jury instruction you're going to hear, the definition of "in furtherance of."

Here are some factors. Okay? Some factors that may help to determine whether possession of a firearm furthers a

drug trafficking crime include, but are not limited to, all right, this is -- you don't have to prove all of these. These are just factors that you should keep in mind. And we're going to walk through them.

First, the type of criminal activity, receiving bulk quantities of cocaine. You heard from Corporal Fidler yesterday this was worth a lot of money. This cocaine was worth about $30,000. He was receiving $60,000 worth on February 22nd, 2019, and he was going to get another $60,000 worth.

He's transferring it to somebody. All right? You heard from Trooper -- or from Inspector Corricelli when he did that delivery on February 14th, shortly after Mr. Santana got it, he left. He left the house. So he's transferring it to somebody. He's not using it himself. So somebody knows that he has it, and that person is a criminal because they're dealing in drug trafficking. Therefore, there's a potential for violence, and Mr. Santana has to defend himself.

Additionally, his family is in the house. And as Corporal Fidler told you, you can't go to the police if you lose it. So all of these things all point to, you know, that -- and you also heard from Corporal Fidler drug traffickers often possess firearms and the two things go hand and hand.

All right. So, next, accessibility of the firearm.

It's directly next to his bed. You heard testimony that right there next to the bed, that his shoes were right there, as well as other indications that that was his side of the bed, and it was in that top drawer that we found the firearm. So it's right next to the bed ready to be accessed, ready to be used to defend.

The type of firearm, it's a Glock handgun. It's easy to use, it's easy to conceal, and we know that it's capable of carrying large-capacity magazines because the magazine that was in it was a 17-round magazine. And you heard from Trooper Nesbit the Glock usually carries a 15, but he went out and got a 17-round magazine, and that's what was in this weapon in particular.

All right. Whether the firearm is loaded, yes, it was loaded with a magazine capable of holding two extra rounds. There are also three other magazines in the closet, one of which is loaded with -- one of which is a 30-round magazine, and that one is loaded. There's also additional ammunition in the closet, and then there was an additional magazine with one bullet that was on the coat stand leading up to the stairs.

So, yeah, the firearm was loaded. And, again, just to be clear, that meant that the magazine was in the gun and there were rounds in the magazine. All he would have had to do was pick it up and rack it to put one round into the chamber, and it would have been ready to fire.

The time and circumstances under which the firearm was found. It was found during the execution of a search warrant with three loaded magazines nearby, with an extended magazine loaded, with another extended magazine nearby, with evidence of another gun in the closet, with another loaded magazine in the house. All right?

And then proximity to drugs or drug profiting or drug profits. It's in the same house, at the same time, located next to the bed ready to protect those drugs and the house and his family.

So of all of the factors, we've already given you the type of criminal activity, the accessibility of the firearm, the type of firearm, whether it was loaded, the time and circumstances under which it was found, and the proximity to drugs.

The only two things that would go against this is, okay, it wasn't stolen and the defendant possessed it legally. Well, just because he possessed it legally doesn't necessarily mean that he didn't possess it in furtherance of drug trafficking.

Yes, he went to a range once and shot it. Ladies and gentlemen, I submit to you if drug dealers are going to carry firearms in order to protect their drugs, they want to know how to shoot it, just like anybody else would.

So just because he possessed it legally -- and also

the fact that he possessed it legally, also, as you heard from Corporal Fidler, that also -- there's a reason for that. If he's moving drugs and he's pulled over by police and he has a firearm on him, well, then they could go and search the vehicle.

But if he's moving drugs and he has a firearm on him to protect himself and then the officer says, do you have a concealed carry permit, yeah, and he pulls out the concealed carry permit, then that shuts that down and the officer can't search the vehicle.

There's also a reason why you would want somebody that's not prohibited from possessing a firearm to be receiving these drugs. You don't want to send somebody up here to receive drugs from Puerto Rico that has a criminal record because they might already be on law enforcement's radar. You want somebody that's going to have a clean record, somebody that can possess a firearm legally.

All right. So, again, the charges in this case, Count 1, conspiracy to possess with intent to distribute five kilograms, as I've told you already, that's the entire conspiracy. That's the entire scope. That's the two packages that we know contained drugs and all of that evidence, that circumstantial evidence that I gave you about the other packages.

And, again, let me just also remind you,

circumstantial doesn't necessarily mean bad. It just -- you know, as Judge Wilson told you, circumstantial evidence might be if somebody comes into the courtroom with an umbrella and a raincoat, you can kind of take that as evidence that it's raining.

Additionally, Count 2, that's the attempt to possess with intent to distribute 500 grams. That's the controlled delivery on February 22nd, 2019. And, finally, the possession of a firearm in furtherance of drug trafficking.

Ladies and gentlemen, I thank you for your time over the past two and a half days. And I'm going to now pass to Mr. Ongay, and he's going to present his closing, and then you'll hear from me again in a little bit. Thank you.

THE COURT: Thank you, Mr. Ford. Mr. Ongay.

MR. ONGAY: Thank you, Your Honor. May it please the court, Mr. Ford, members of the jury, before I start, I have an accent and I tend to speak softly and low. If you cannot hear me, please signal so I will correct that. I want to make sure you hear me fully.

As the court instructed you when you were selected, you are going to, today, be instructed with the jury charge. At that point you will finally be in a position to evaluate the evidence and determine whether it did establish beyond a reasonable doubt the elements of the offense.

And this is not a question about whether criminal

conduct took place, whether we don't like what happened. We have a function, and my function is to communicate to you that the evidence that's introduced did not establish all of the elements beyond a reasonable doubt, notwithstanding the nature of the conduct or how distasteful or unpleasant it may have been.

And you are to decide whether the evidence did, in fact, establish each and every element of the charge. And if it does not, then if you follow your duty and your instructions, then you are to render a guilty -- I'm sorry, a not guilty verdict.

But if you do conclude that the elements were established, then you have an obligation to find my client guilty, also. Now, until you reach that point that you have deliberated, my client remains an innocent man.

I'm going to make references to the record and to the evidence, and whatever I say that does not coincide with your recollection you are to disregard. It's not an intent to mislead, it's more a function of my decaying memory.

Now, what is this case about? This case is about strictly eight mailings of Priority Mail packages from Puerto Rico to 35 Redwood Street, nothing else. Two of those parcels were, in fact, found with each two kilos of cocaine. No other drugs were found.

I concede that there is evidence that shows a

connection between the different parcels based on what was found during the search. But the points that I'm going to make and the elements I'm going to address are not affected by that evidence, and I will show you now why.

The first charge, and the government correctly stated that this is an agreement, slash, crime. This is what was agreed to. The court is going to instruct you that in order for you to convict my client, you have to conclude three things, and they all relate to an agreement.

First, that two or more persons agreed to distribute or to possess with intent to distribute, two goals, to distribute or to possess with intent to distribute more than five kilograms of cocaine. So the question in this factual situation is twofold, were more than five kilos, in fact, involved, and was this agreement, in fact, for the possession and the distribution of cocaine.

The second element, it's that Mr. Santana was a member of this agreement. It's not an agreement between two other people, it has to be Mr. Santana a part of that agreement with another person.

And the third element, it's also repetitive, it's that Mr. Santana joined this conspiracy, this agreement, knowing clearly the objective of the agreement.

Again, the essence of these three elements is that there was an agreement between Mr. Santana and someone else,

that they had the same goal, and that that goal and that purpose was to distribute and to possess with intent to distribute, not a crime generally, not an offensive conduct generally, not something repulsive, to distribute or to possess with intent to distribute, nothing else, nothing less.

In fact, the court is going to mention in its instruction to you the concept of unity of purpose. And what that means is that the parties who are alleged to have been the co-conspirators, the members of this agreement, had the exact same purpose. They had to have wished and hoped to accomplish the exact same thing, not a related thing, the exact same goal.

And there were two only that were charged, distribute cocaine or possess with intent to distribute cocaine. There was no charge that accused him of conspiring to be sellers and buyers between themselves.

The investigation, it's very narrow. It actually began sometime on the 11th of February, and there was a controlled delivery of a parcel that was actually exposed to a drug detection dog and found -- let me strike that, not found, the dog did not alert for the presence of cocaine.

Then some steps were taken. And then, again, the address came back on the 22nd because of two other parcels were intercepted. An investigation was done either right after the 22nd or sometime between the 13th and the 22nd that showed that other parcels had been shipped. And that is it.

Whether the parcels are similar, whether they contain similar things, none of that establishes or is relevant to prove what was the agreement, what was the goal.

That may prove that all of the parcels may have contained a controlled substance, but the question is not whether they all contained a controlled substance for the crime of conspiracy, the question is whether, to be guilty of conspiracy to begin with, is that they, in fact, agreed to distribute and to possess with intent to distribute. If the evidence doesn't establish that, you cannot convict my client.

Now, let's look at some other aspects of what the evidence showed or did not show. The agents admitted that they had not heard from Mr. Santana, knew Mr. Santana, knew nothing of Mr. Santana before the 13th -- or the 11th of 2019.

The evidence also, they admitted that they had not intercepted a single call or a text or an email where Mr. Santana discusses drug transactions or evidence that could be used to establish an agreement to distribute or possess with intent to distribute.

There is not a single conversation overheard live that Mr. Santana was discussing with anybody a drug transaction. There is not a single drug transaction where Mr. Santana is actually observed participating in a drug transaction. And the phone that was seized was searched and found to contain no evidence that related to the charges in this case.

The government did not introduce evidence about who was shipping those parcels. We don't know whether it was one single person, two single people, three people. We don't know who mailed those parcels.

The government talked a lot about -- through their experts that this is some organization. It really doesn't matter whether it was an organization or an individual, okay, the same element and the same obligation still remains.

Let's say that a cartel from Mexico was sending these packages to Mr. Santana via Puerto Rico. You still have to find that Mr. Santana and this cartel had agreed to distribute cocaine and to possess with intent to distribute the cocaine.

The size, the identity, the composition of whoever sends those packages is irrelevant. It's the agreement that was reached between the parties that is only relevant and the only question you have to answer on that charge.

The government does not know and did not introduce any evidence on when this conspiracy started. We can assume -- and we really have no evidence -- that it started on November 2nd of 2018. There is no evidence whatsoever about the terms of the agreement, what was -- how was this so-called conspiracy to possess -- I mean to distribute and to possess with intent to distribute, what were the terms.

There's no agreement about price, no agreement as to how was the cocaine supposed to be paid for, cash, in full, in

advance, partial credit, you know, in other words, making a down payment and allowing to pay the balance later, a fully credited fronting of the cocaine.

How were the payments supposed to be made? Were they being made in Chambersburg? Were they sent to Puerto Rico? We don't know anything. We don't know anything whatsoever about the terms of this alleged conspiracy.

In fact, the government did not really know for sure who was the intended recipient of the parcels. They suspected Mr. Santana because he picked up a package on the 14th, and the behavior, which was looking around, picking up the package, making a phone call, or appearing to make a phone call, and then going inside was somehow suspicious and indicative of criminal behavior.

I'm not certain if I will agree to that, but I'm not an agent. I just submit to you that in my opinion, that itself is not enough. I have engaged in that behavior many times when I pick up a package from my deck. My wife complains that the phone, it's my principal body part, and that that's -- I don't do anything without talking. So I'm not certain what that proves.

Now, the government admitted that if, unfortunately, someone else had entered that home, a member of the household, before Mr. Santana on that date, that that person, if that person opened the parcel, would have been also arrested and

charged, which means that they really did not know who was the intended recipient.

After a few seconds passed -- I just want to make sure that I am accurate -- the witness from the stand asked me if he could supplement the answer. And I said, yes, of course, nothing wrong with that. And then he added that I also have to consider the behavior of Mr. Santana running out of the house with the two kilos in his hands -- and I understand that they were not real cocaine, but I'll refer to them as kilos -- added to the decision to arrest and charge. Also, that is a fair response.

But it's also fair to conclude that someone else who had opened those parcels, that parcel, may have actually also ran out of that garage upon hearing the breaking of the front door, officers in undercover clothing walking in with guns and making -- and yelling and doing things. It is not unreasonable for someone to run under those circumstances, and it could have happened to another person. Again, the government did not observe Mr. Santana participate in a single transaction.

Now let's talk about the buyer-seller relationship. That's why I got into trouble during my opening. Now, the court will instruct you -- and I'm going to read a lot from the judge's instruction, and I apologize, but I think this is extremely important for this issue, the issue of the nature of the agreement and the extent of the agreement.

The court will instruct you that the existence of a simple buyer-seller relationship between Mr. Santana and another person without more, it's not necessarily sufficient to establish a conspiracy.

The court will go on and state the fact that Mr. Santana may have bought controlled substances from another person or sold controlled substances to another person is also not sufficient, without more, to establish that Mr. Santana was a member of the charged conspiracy. Again, buying and selling from among drug -- between drug dealers by itself is not enough.

Even if the seller of this controlled substance knows that the buyer was going to sell to others the controlled substance, that is also not necessarily sufficient to establish a conspiracy.

Now, this last portion, please pay attention. Instead, a conspiracy requires an agreement to commit some other crime beyond the crime constituted by the agreement to sell and buy from each other.

Two things. First, that this definition and instruction, it's recognizing that buying and selling between drug dealers is a crime. But it's also telling you that that crime, it's not the crime of conspiracy, and that that crime of conspiracy requires more, requires proof that the parties had an agreement to sell together, to sell on the spot, meaning

distribute, or to sell in the future, meaning possession with intent to distribute.

That's what the law requires you to find. And I submit that that evidence has not been presented to you. There has been evidence that there may have been some criminal activity, but the evidence does not prove that the criminal activity was the charge of conspiracy.

If you recall, when we were discussing in the beginning of this argument the section -- the first element of conspiracy, I explained to you that the court will discuss with you the concept of unity of purpose. Again, what was the purpose that has been established? One party's main purpose was to sell, and the other party's purpose was to buy. They do not have unity of purpose.

The court will then mention and encourage you to consider several factors in your determination of whether, in fact, there was a buyer-seller relationship between the parties. The first is the length of the alleged relationship. Actually, the word the instruction will use is "affiliation."

Here we have from the evidence, at most what we know for sure, it's from November 2nd of 2018 to February the 22nd, 2019, less than four months, not a long period of time.

Whether the parties had demonstrated a level of mutual trust among each other. And I do not mean to offend anyone involved in the drug trade, but the fact is that the only thing

that drug dealers care about is money. They don't have a vocation to sell or buy drugs, they sell drugs for money. And they go, I understand, to all kinds of extents, but that is the principal concern. That is what matters. So anything about trust between drug dealers will be something that involves trust about money.

There is no evidence about their arrangement money-wise. We don't know whether the seller trusted Mr. Santana and gave him full credit. And we don't know whether Mr. Santana trusted the buyer and sent him the money in advance, in full, before he received the drugs. We don't know anything because none of that evidence was presented.

So you cannot conclude that there was a demonstrated level of mutual trust. You cannot. You could, that is your prerogative, but I submit to you that the evidence does not. I apologize the way I said that you cannot.

Whether there's an established method of payment, we discussed that. We don't have any evidence on that. So, also, there isn't sufficient evidence for you to make that finding.

Whether the parties had a standardized way of engaging in their drug transactions. There's only one thing that we know that is standardized, and that is that parcels were shipped via Priority Mail to 35 Redwood Street. Nothing else. We don't know anything else.

We don't know the terms, we don't know how it was

paid, we don't know the price, we don't know anything else. We don't even know who are the senders, if there was one sender. We don't know anything. So I submit to you that the evidence there is also insufficient for you to determine if they had, in fact, standardized the nature of their business.

The next element, it's whether the buyer bought large amounts. One to two kilo purchases per parcel, as is alleged, and we know for sure that in two of the parcels there were each two kilos, it's clearly not a small amount of drugs. However, it is not, believe it or not, a humongous amount of drugs or a very large amount of drugs, unfortunately.

And as the agent testified -- I believe the expert, I'm sorry, this is the kind of delivery that will involve or will imply -- and your recollection is what counts -- that whoever received that will probably sell it in ounces. Again, I submit to you that that amount, it's not small, but it's not large, either.

The last factor is whether the buyer purchased the drugs on credit. And we already, by discussing the other factors, know that we don't have any evidence for that, to make that determination, so that also makes it impossible for you to decide.

I submit to you that the evidence that you do have available fails to establish that there was, in fact, an agreement to distribute or to possess with intent to distribute

between the sender and the recipient and that the only thing you have, at best, is a buyer-seller relationship.

On this point, I'd like to add that the agent also, reluctantly, the expert, admitted that, yes, there are relationships between drug dealers that are only buyer-seller relationships.

Now, I'm going to discuss some points that are not one hundred percent related to Count 1, but they relate to drugs and they were discussed. Your Honor, may I have a second? I need to get some water.

THE COURT: Please.

MR. ONGAY: Thank you. First, I raised the issues through questioning about the fact that stamps, meaning, you know, seals that you stamp, ink pads, plastic bags, and a press were not found.

The expert basically kind of like denied the importance of those, the lack of that evidence. I think that it is important, and I submit to you that if they had found that evidence, they would have stressed that they found that evidence. So I am telling you that you should consider that.

I also want you to remember that -- and the government made mention of this in their closing about the scale and the sealer. They were both unused. They were both in the boxes. And the agent candidly admitted, the trooper, Trooper Nesbit, I believe, that he did not even send for a chemical analysis or

trace analysis because it appeared clearly that they had not been used and there would be no evidence.

And that's also important, especially if you're going to accuse that when you found those items on the 22nd of February, that those items were actually being used by my client since November 2nd of 2018 to deliver drugs and to possess with intent to distribute drugs. If they were unused, they were not used for that. And it is clear that anyone could purchase a sealer to store food, and anyone could purchase a scale to weigh food. It's done all the time.

The method of packaging and the contents and the dryer sheets and the carbon paper, I recognize that those things are important and relevant for the government's position of the similarity within the parcels and for you to make inferences of whether all the parcels contained narcotics. I understand that. That is a fair request on the part of the government. That has nothing to do with whether the agreement between the parties was an agreement to distribute or to possess with intent to distribute. That's irrelevant.

It was also somehow implied, I wouldn't say outright stated, that this was some sort of sophisticated method and that clearly involved some sort of organization the way the things were packaged. I disagree. This is -- anyone could do this.

And, more importantly, it doesn't work. They

themselves admitted that these strategies of dryer sheets and carbon paper and other things, they didn't really accomplish the goal that they wanted, that that was a misconception. So that's no big deal.

I do accept that the taping of the packages, as the expert explained, if properly taped, may, in fact, prevent the odor of the -- and the scent of the controlled substance from being picked up by a drug detection dog, true, but that doesn't have anything to do, either, with the element of the agreement was to distribute, the agreement was to possess with intent to distribute. That has nothing to do with that.

And, lastly, I did mention this, we do not know whether there was one person sending this, separate individuals, or an actual group. So the implication about an organization participation and all of that, it's really not relevant either to determine whether the parties had agreed to possess with intent to distribute together, part of their goal, or to distribute as their main goal.

I'm going to now move to Count 2. And I'm going to try to move it. I apologize. Count 2 deals with the charge of attempted possession of a controlled substance of more than 500 grams. And that charge strictly involves the controlled delivery parcel of February the 22nd of 2019. No other deliveries can be considered, in my opinion -- and if I'm wrong, the court will correct me when she charges you -- for

you to determine that charge.

Now, to prove that charge, the court will instruct you that the government has to establish that the defendant intended to commit the crime of possession with intent to distribute and that the second element is that the defendant, Mr. Santana, performed an act, that that act constituted a substantial step, something that really helped in trying to accomplish his desire, his goal, to possess a controlled substance with intent to distribute.

The court is also, as part of the court's instructions, going to give you the definition and the elements of possession with intent to distribute. I'm not going to discuss all of those elements. I'm going to simply emphasize that one of those elements requires the following: That Mr. Santana knowingly and intentionally attempted to possess a controlled substance. That means that he, knowing the necessary facts, did take a step and intended and attempted to possess the controlled substance with intent to distribute.

Let's discuss the controlled delivery of this parcel. It's clear that that parcel was going to be delivered and that a warrant was obtained that required that parcel to first be accepted by an individual, presumably a resident of 35 Redwood Street, and then brought into the home by that individual. We know that that did not happen. We also know that a mechanic, a maintenance worker, actually picked up the package and brought

it in.

We also know, and the evidence is uncontradicted, that the government contacted this maintenance worker, instructed him to leave 35 Redwood Street, and also instructed him to leave the parcel inside the home. And we know that because Inspector Corricelli was candid enough to say that he actually had discussed that decision with Trooper Nesbit and that they both agreed that the parcel should remain in the home.

Unfortunately, we also know that when the government presented their case to the grand jury, they did not tell the grand jury what really happened, and they told the grand jury that Mr. Santana had accepted the parcel and that he had brought it into the home.

Please understand that that version that the government presented to the grand jury, it's a much persuasive and incriminating account of the events. He has Mr. Santana receiving a parcel not addressed to him outside his home. He has him accepting that parcel, he knowingly taking possession of that parcel. He has him then taking voluntary steps to bring that parcel into the home, and then he has Mr. Santana opening the parcel. And that was a fantasy because that did not happen.

Had that happened, then I may not have been able to argue that Mr. Santana really did not have the capacity or sufficient -- to make a knowing and voluntary decision, an

intentional decision to attempt to possess the parcel. But that's not what happened. What happened is that someone else brought that parcel. And what Mr. Santana did was to open that parcel and then the forces of the government went into action and he was apprehended.

We do not know for sure what happened inside that home. The government made some representations that I believe are correct, the evidence that you heard is appropriate, but that does not eliminate the fact that Mr. Santana did not accept that parcel and Mr. Santana did not bring it into the home and that that also was in violation of the requirements of the search warrant.

Think about this: If Mr. Santana, based on the evidence that the government presented, really knew what was inside that parcel, okay, and he was completely conscious that there were supposed to be kilos there, why would he cut the packages to look in it? He would know. He didn't know, I submit to you, so he cut them.

The government will argue in their reply that's going to come after me -- and please know that I don't get a second chance, which I understand why, but just want you to understand -- that that actually shows that he realized there was something wrong and that's why he cut them and that he's a sophisticated drug dealer and therefore he knew.

I submit to you that if Mr. Santana had known that

there was something wrong, the first thing he would have done is that he would have put those parcels, those kilos, inside the box and would have written on the box "return to sender" and walked out of the house to take it to a post office. A smart drug dealer would have tried to do that, not opened them and continued to play with them. That's what I submit to you would have happened.

The third charge, possession of a firearm in furtherance of a drug trafficking crime, this, again, involves the Glock 19 found inside a dresser drawer inside the second-floor bedroom, notwithstanding the government's representation that Mr. Santana had access to that firearm. Unless he was extremely fast and flexible, I don't think he could access that firearm either from inside the garage or from behind the garage in the yard. That is physically impossible.

Also, there is no evidence that the government knew Mr. Santana had a firearm. And there is no evidence that they knew that he had a firearm, period, in his home. Now, the charge accuses Mr. Santana of having used that firearm in furtherance of the conspiracy and also in furtherance of the attempt to possess with intent to distribute the controlled substance.

Let's talk about the "in furtherance of the conspiracy." It is impossible for the evidence to show that he possessed that firearm in furtherance of a conspiracy because

the firearm did not come into the picture, there is no evidence about the firearm on November 2nd or on December 1st or on January 1st or on February 1st. The first you hear about the firearm is on the 22nd of February, the last day of the investigation. So he cannot have used that firearm, and the government cannot prove that he was using that firearm for the conspiracy.

Now, let's look at the -- at what happened on the 22nd. And let's look at it within the context of the judge's instruction. The first thing, this crime, it's a little different in that your first element requires you to make a finding that you have already determined that Mr. Santana has been proven guilty of at least one of the first two charges.

If you have concluded that he has not, then your deliberation on this charge is to stop and you are to find him not guilty. If you have, in fact, made a finding, then the second element has to be established. And the second element is that the firearm was possessed by Mr. Santana, and the third element that Mr. Santana possessed that firearm to further the commission of either the conspiracy or the attempted possession charge.

The court is going to explain and define to you what "in furtherance of" means and is going to tell you something like this: "In furtherance" means that the purpose in possessing the firearm was to assist, promote, accomplish,

advance, or achieve the conspiracy or the attempted possession with intent to distribute.

The court will also explain to you that the mere presence of a firearm at the scene is not enough to find that the possession was in furtherance of a drug trafficking crime. The presence could have been coincidental, could have been unrelated to the drug trafficking crimes.

And then the court is going to tell you to consider a series of factors. And I know Mr. Ford went through them, but I'm also going to go through them.

The type of criminal activity involved, this was a criminal -- a drug crime. It was not a drug crime involving a delivery in the streets or a meeting where drugs are being distributed. It was a drug crime where a parcel was delivered to a home, and that's it. Those facts did not involve interaction with anyone else, the mailman and the occupants of the home, at best, theoretically, and we know that in this case, not even the mailman.

The second element that the court -- I'm sorry, factor that the court will ask you to consider is whether Mr. Santana had access to the firearm. I discussed that already, but I'm going to touch it again.

Just because the firearm was inside a dresser drawer, inside a bedroom occupied by Mr. Santana, and assuming that, in fact, he was sleeping on that side of the bed, when he is in

the backyard of the house, that still does not mean that he had access.

Just because it was inside the bedroom doesn't make it accessible. You have to look at the physical aspect of the situation to determine whether he, in fact, had access. And I submit to you that it was physically impossible for him to have access to that firearm in the circumstances in which the firearm was found and also where he was.

The third element is the type of a firearm. It's a semiautomatic pistol. It's not an AK47, an AK47, it's not a machine gun, it's just an automatic -- a semiautomatic pistol, unfortunately, very common in today's society. Yes, it had a magazine that was a little larger than the normal one by two bullets from 15 to 17. True, it was in excess, but let's be realistic, it's not like he had 20 more bullets.

The next factor is whether the firearm was stolen. And the government tries to minimize this as not important. I submit to you that it is important. If it wasn't, the court would have not included it in their factors.

And if the firearm had been stolen, just like in the other points, I submit to you, trust me, they would have made a point that this was a stolen weapon and discuss all the problems of stolen firearms and violence.

THE COURT: Mr. Ongay, two minutes.

MR. ONGAY: My goodness. Okay. The next one is

whether Mr. Santana possessed a firearm legally. We know he did. He had a permit to carry.

The next one is whether the firearm was loaded. True, the firearm had, in fact, bullets in the magazine, but the government also admitted that there was no bullet in the chamber, and without a bullet in the chamber, the firearm cannot be fired.

The firearm was also not found near drugs or near money that was the proceeds of drugs. The expert tried to minimize the importance that the firearm was not found near drugs. I submit to you that if it had been found near drugs, they would have made a point of it. And I also submit to you that the court has chosen to include this as a factor, and I submit to you that that is an important point to consider.

Last, Mr. Santana established, through our stipulation, that he used the firearm to shoot in a range. My last point, the gun cases, nothing illegal about gun cases. And interestingly, the agent refused to admit that it was safer to transport gun cases -- weapons in gun cases.

Bullets, he admitted that individuals who, in fact, are gun enthusiasts and go to ranges will have bullets in their home. Hearing protection and eye protection, he would not admit, and I leave that to your decision that those items can be provided in the gun range.

And, finally, the operability of the firearm. A

firearm cannot be used to accomplish anything if it doesn't do what it's supposed to do, which is to fire bullets. And there's no evidence, and he admitted it, that the firearm was tested and was found to be operable.

So I submit to you that when you look at all the evidence, you're going to conclude, number one, that the element of an agreement between Mr. Santana and the supplier of these drugs did not include an agreement for them to distribute or possess with intent to distribute, that Mr. Santana did not knowingly attempt to possess the kilograms of cocaine that were delivered on the 22nd because he did not accept possession or brought that parcel into his home, and, finally, that the evidence does not establish at all that that firearm was actually possessed to further a drug trafficking crime.

And, last, I thank you for your attention, your patience, and I appreciate very much that in a pandemic, you have taken the time to help us adjudicate something as important as this, and I hope you have a good day.

THE COURT: Thank you, Mr. Ongay. Mr. Ford, you have a ten-minute rebuttal.

MR. FORD: Thank you, Your Honor. All right. So, ladies and gentlemen, again, I want to begin with that disclaimer, anything that I say with regard to the jury instructions, if it differs from what you hear from the judge, make sure that you listen to the judge's instructions.

Having said that, there's another jury instruction I want to talk to you about. And, unfortunately, I don't have this one up on --

THE COURT: Let's pause for a moment. I think it's a little distracting, so I'll give Inspector Corricelli a moment to find what he's looking for.

MR. FORD: Thank you, Your Honor.

THE COURT: I don't want the jury to be distracted.

MR. FORD: Thanks, Your Honor. So, ladies and gentlemen, here's the jury instruction. And I don't have this one up on PowerPoint, so I'm just going to read it to you:

Consideration of evidence. You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion. All right?

Now, let's go point by point on some of the stuff that Mr. Ongay stated. First, he stated that the officers didn't know the intended recipient of the drugs on February 22nd. That's right. That's why they did a controlled delivery.

And whenever they did that controlled delivery, the package was taken inside the house. They received notification -- within five minutes of the defendant arriving home, they received notification that the package had been

moved, that the light sensor had gone off.

And whenever they came in, they found that in those five minutes, he had taken the label, he had shredded it, and he had the package on the scooter, and underneath that scooter were similar packages with the same cosmetic bags, all of which secreted in cellophane underneath the seat of that scooter.

Additionally, he states that anyone could have ran whenever law enforcement was coming in the house. That's true. Nobody knows how they're going to react whenever they're under a stressful situation like that, but not anyone -- not everyone would have shredded the label of that package.

Not everyone would have had a razor on hand. Not everyone would have taken that package to the scooter in the garage. Not everyone would have four cosmetic bags of the exact same floral, zebra design that were in -- that were containing the cocaine secreted in the seat of that scooter. And not everyone would have then cut into the package.

And why would he have done that? Just like Mr. Ongay said, why would he have done that? Because it didn't look like the other ones. It wasn't wrapped in carbon paper. He picked it up -- again, keep in mind, as soon as he opens up that cosmetic bag, the light sensor goes off. He picks it up, he has the razor blade in his hand, this doesn't look right. He cuts into it and the police officers are already moving and they're kicking in the front door of the house.

Now, Mr. Ongay made a big deal about Inspector Corricelli's statements during the grand jury stating that it makes it such a stronger case that he brought it in the house versus Mr. Wagaman. Ladies and gentlemen, that's the least of his concerns. Again, his concerns should be that he took it into the garage, to the scooter, shredded the package, that he had the other cosmetic bags. The fact that Mr. Wagaman brought it in is pretty much irrelevant.

And it's also irrelevant for your purposes whether or not the search warrant was relevant -- or whether or not the search warrant was good or not. The evidence was admitted by Judge Wilson, the evidence is before you. What's going on with the search warrant is really none of your concern for purposes of this trial.

He also says that we don't have any evidence of the agreement. Well, ladies and gentlemen, we have a pattern of conduct. We have eight packages being shipped to this house, all very similar. We've got a similar MO.

We have a high dollar amount. All right? Each of those packages -- you heard from Corporal Fidler each of those kilos was worth $30,000. Well, you've got a package that had $60,000, package two, and then you had package three which also had another $60,000. You also heard from Corporal Fidler that users don't buy this amount.

Ms. Reed, if we could bring back up my closing. All

right. Now, I want to talk to you real quick about the buyer-seller relationship. All right? Mr. Ongay walked through these factors.

Ladies and gentlemen, think of it like this, okay -- and, again, listen to Judge Wilson's instructions. Take the instructions from her. All right? But a buyer-seller relationship, all right, if you go and if you buy one time from somebody, it might be a buyer-seller relationship. Okay? It's not ongoing, there's not that agreement. All right?

So here are some of the factors, though, to look at for the difference between a conspiracy and just a one-time sale. And, again, it could be multiple sales. You know, you could go to that person one time, no intent to come back, and then later, well, okay, there might be a buyer-seller relationship there. But how do you tell the difference between a buyer-seller relationship and a conspiracy?

Here are the factors: First, length of the affiliation. Ladies and gentlemen, in this case, it's at least from October of 2018 to February of 2019 because we know because we have all of those parcels. All right? And remember, again, I showed you all the shipping labels of the seven of the eight that we had. I showed you all the similarities.

You can look right here, you can see all of these packages are coming from Juncos. A lot of them are coming from

the same 2819 P.O. box. You got the same types of names, Juan Rivera, Carmen Rivera, Carmen Diaz. They're interchanging the names.

Demonstrated level of mutual trust. All right. Mr. Ongay says drug dealers don't have a whole lot of trust unless it's based on money. They're sending $30,000 to $60,000 worth of product. Ladies and gentlemen, I submit to you that takes a lot of trust.

And they're sending it from Puerto Rico to Chambersburg, Pennsylvania. To send a package worth $60,000 from Puerto Rico to Chambersburg, Pennsylvania, you've got to have trust on somebody on the other end.

They've got a standard way of doing business. We've harped on this over and over. Dollar store trinkets, cosmetic bags, carbon paper, dryer sheets, similar fake names.

Whether the buyer bought in large quantities. Two kilos in package 4884, two kilos in package 6795. All right. So that bottom two lines, those are the weights. All right? If you look over into one of the middle columns, 8.44 pounds, 8.75 pounds. Well, look up, all right, 6750 is 8.88, similar weight. Exhibits 231 and 232, 4.88, 4.62, similar to about half. Again, these weights are all indicative of kilo to two kilo quantities.

All right. So here are your factors: Length of the affiliation, whether there's a demonstrated level of mutual

trust, whether the parties had a standardized way of doing business, and whether they bought in large amounts. The only two that we don't know -- and, again, these are factors to consider, don't have to have all of them. All right? These are just the types of things.

And, ladies and gentlemen, straight up, we don't know the established way of payment, and we don't know whether they were purchased on credit. They very easily could have been, we just don't know. And, again, you know why we don't know, because on February 22nd they did a controlled delivery to figure out where the drugs were going to, and they found out it was going to the defendant.

All right. The last thing I'm going to talk about is in furtherance of drug trafficking and that gun. All right? Mr. Ongay says he can't access it. Yeah, he can't access it whenever he's in the garage and they're kicking in the front door. But in the middle of the night, if somebody is breaking into the house, it's right next to his bed, so he could have accessed it that way. And I would submit to you that's the safer place to keep it, particularly if you want to protect those drugs.

Mr. Ongay said several times we don't have any evidence that he used it. He's not charged with using it, he's charged with possessing it. He possessed it. His possession was done in furtherance of drug trafficking, not that he waved

it, not that he showed it to somebody, that he possessed it.

He also said it's an automatic pistol. Okay, that's a fairly standard firearm. A lot of people might own that. Thirty-round magazine. Seventeen-round magazine found -- 17-round magazine found in the weapon, 30-round magazine found loaded in the closet.

Now, the last thing I'm going to talk to you about, he used the term "gun enthusiast." All right? I submit to you, we don't have any evidence that he's a gun enthusiast. The only evidence that we have is he went to a range one time and fired it.

We don't have evidence that he had eye protection in the house. We don't have evidence that he had hearing protection in the house. We don't have evidence that he had targets in the house. We don't have evidence that he had a cleaning kit in the house.

But let's just say for the sake of argument that you believe Mr. Ongay and the man is a gun enthusiast. Ladies and gentlemen, a lot of people in the military are gun enthusiasts. Why? Because they possess firearms in furtherance of their job. A lot of hunters are gun enthusiasts. Why? Because they possess firearms in furtherance of hunting. A lot of law enforcement officers are gun enthusiasts. Why? Because they possess firearms in furtherance of their job.

THE COURT: One minute.

MR. FORD: Ladies and gentlemen, being a gun enthusiast is not mutually exclusive from being a drug dealer. Again, I want to thank you for your time, and it's our hope that you would convict the defendant on all three counts. Thank you.

THE COURT: Jurors, that concludes closing arguments. We will take a brief recess. It's now 11 o'clock, and we'll have you returned to the courtroom at 11:15. So court stands in recess.

(Jury leaves courtroom.)

THE COURT: Court's in recess.

(Recess taken.)

THE COURT: Members of the jury, I am now going to instruct you on the law that is applicable to this case. You have been provided with written copies of the same instructions I'm about to read, but please pay attention to the instructions orally, as well.

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved

the defendant, Adam Neftali Santana, guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments. If what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way.

Mr. Santana has pleaded not guilty to the offenses charged. Mr. Santana is presumed to be innocent. He started the trial with a clean slate, with no evidence against him. The presumption of innocence stays with Mr. Santana unless and until the government presents evidence that overcomes that presumption by convincing you that Mr. Santana is guilty of the offenses charged beyond a reasonable doubt.

The presumption of innocence requires that you find Mr. Santana not guilty unless you are satisfied that the government has proved guilt beyond a reasonable doubt. The presumption of innocence means that Mr. Santana has no burden

or obligation to present any evidence at all or to prove that he is not guilty.

The burden or obligation of proof is on the government to prove that Mr. Santana is guilty, and this burden stays with the government throughout the trial.

In order for you to find Mr. Santana guilty of the offenses charged, the government must convince you that Mr. Santana is guilty beyond a reasonable doubt. That means that the government must prove each and every element of the offenses charged beyond a reasonable doubt.

A defendant may not be convicted based on suspicion or conjecture, but only on evidence proving guilt beyond a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt or to a mathematical certainty. Possible doubts or doubts based on conjecture or speculation are not reasonable doubts. A reasonable doubt is a fair doubt based on common -- I'm sorry, based on reason, logic, common sense, or experience.

A reasonable doubt means a doubt that would cause an ordinary, reasonable person to hesitate to act in matters of importance in his or her own life. It may arise from the evidence or from the lack of evidence or from the nature of the evidence.

If, after hearing all the evidence, you are convinced

that the government has proved Mr. Santana guilty beyond a reasonable doubt, you should return a verdict of guilty. However, if you have a reasonable doubt as to an element of an offense, then you must return a verdict of not guilty.

Mr. Santana is charged with more than one offense. Each offense is charged in a separate count of the indictment. The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. You must separately consider the evidence that relates to each offense, and you must return a separate verdict for each offense.

For each offense charged, you must decide whether the government has proved beyond a reasonable doubt that Mr. Santana is guilty of that particular offense. Your decision on one offense, whether guilty or not guilty, should not influence your decision on any of the other offenses charged. Each offense should be considered separately.

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside the court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, the stipulations that the lawyers agreed to, and the facts that I have judicially noticed. Nothing else is evidence.

The lawyers' statements and arguments are not evidence, their questions and objections are not evidence, my legal rulings are not evidence, and my comments and questions are not evidence. Make your decision based only on the evidence as I have defined it here and nothing else.

There are two kinds of evidence, direct evidence and circumstantial evidence. Direct evidence is simply evidence like the testimony of an eyewitness, which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is evidence which, if believed, indirectly proves a fact. It is evidence that proves one or more facts from which you could find or infer the existence of some other fact or facts.

An inference is simply a deduction or conclusion that reason, experience, and common sense leads you to make from the evidence. An inference is not a suspicion or a guess. It is a reasoned, logical decision to find that a disputed fact exists on the basis of another fact.

To draw an inference, you must find that there exists a logical and convincing connection between the facts established and the conclusion inferred. For example, if someone walked into the courtroom wearing a wet raincoat and carrying a wet umbrella, that would be circumstantial evidence

from which you could conclude that it was raining. You would not have to find that it was raining, but you could.

Sometimes different inferences may be drawn from the same set of facts. The government may ask you to draw one inference, and the defense may ask you to draw another. You and you alone must decide what inferences you will draw based on all of the evidence.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one or says that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

As I stated in my preliminary instructions at the beginning of the trial, in deciding what the facts are, you must decide what testimony you believe and what testimony you do not believe.

You are the sole judges of the credibility of the

witnesses. Credibility refers to whether a witness is worthy of belief. Was the witness truthful? Was the witness's testimony accurate? You may believe everything a witness says or only part of it or none of it.

You may decide whether to believe a witness based on his or her behavior and manner of testifying, the explanations the witness gave, and all the other evidence in the case just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember to use your common sense, your good judgment, and your experience.

In deciding what to believe, you may consider a number of factors:

One, the opportunity and ability of the witness to see or hear or know the things about which the witness testified; two, the quality of the witness's knowledge, understanding, and memory; three, the witness's appearance, behavior, and manner while testifying; four, whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; five, any relation the witness may have with a party in the case and any effect the verdict may have on the witness; six, whether the witness said or wrote anything before trial that was different from the witness's testimony in court; seven, whether the witness's testimony was consistent or inconsistent

with other evidence that you believe; and, eight, any other factor that bears on whether the witness should be believed.

Inconsistencies or discrepancies in a witness's testimony or between the testimony of different witnesses may or may not cause you to disbelieve a witness's testimony. Two or more persons witnessing an event may simply see or hear it differently. Mistaken recollection, like failure to recall, is a common human experience.

In weighing the effect of an inconsistency, you should also consider whether it was about a matter of importance or an insignificant detail. You should also consider whether the inconsistency was innocent or intentional.

You are not required to accept testimony even if the testimony was not contradicted and the witness was not impeached. You may decide that the witness is not worthy of belief because of the witness's bearing and demeanor or because of the inherent improbability of the testimony or for other reasons that are sufficient to you.

After you make your own judgment about the believability of a witness, you can then attach to that witness's testimony the importance or weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testified or the quantity of the evidence that was presented. What is more

important than numbers or quantity is how believable the witnesses were and how much weight you think their testimony deserves.

You have heard the testimony of several law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his or her testimony necessarily deserves more or less consideration or greater or lesser weight than that of any other witness.

At the same time, it is quite legitimate for defense counsel to try to attack the believability of a law enforcement witness on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case. You must decide, after reviewing all the evidence, whether you believe the testimony of the law enforcement witness and how much weight, if any, it deserves.

You have heard opinion evidence about whether Mr. Santana has a character trait for being a law-abiding citizen. You should consider this character evidence together with and in the same way as all the other evidence in the case in deciding whether the government has proved the charges beyond a reasonable doubt.

The rules of evidence ordinarily do not permit witnesses to state their own opinions about important questions in a trial, but there are exceptions to these rules. In this case, you heard testimony from Pennsylvania State Police

Corporal Scott Fidler who testified as an expert in the field of drug trafficking.

Because of his knowledge, skill, experience, training, or education in his field, he was permitted to offer opinions in his field and the reasons for those opinions. The opinions this witness stated should receive whatever weight you think appropriate given all of the other evidence in the case.

In weighing this opinion testimony, you may consider the witness's qualifications, the reasons for the witness's opinions, and the reliability of the information supporting the witness's opinions, as well as the other factors discussed in these instructions for weighing the testimony of witnesses.

You may disregard the opinions entirely if you decide that Corporal Fidler's opinions are not based on sufficient knowledge, skill, and experience, training, or education. You may also disregard the opinions if you conclude that the reasons given in support of the opinions are not sound or if you conclude that the opinions are not supported by the facts shown by the evidence or if you think that the opinions are outweighed by other evidence.

If you believe that a witness knowingly testified falsely concerning any important matter, you may distrust the witness's testimony concerning other matters. You may reject all of the testimony or you may accept such parts of the testimony that you believe are true and give it such weight as

you think it deserves.

Mr. Santana did not testify. A defendant has an absolute constitutional right not to testify. The burden of proof remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that he is innocent.

You must not attach any significance to the fact that Mr. Santana did not testify. You must not draw any adverse inference against him because he did not take the witness stand. Do not consider for any reason at all the fact that he did not testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.

Statements and arguments of counsel are not evidence unless made as an admission or stipulation. The purpose of an argument to the jury is to suggest inferences and deductions which the particular attorney believes can be drawn from the evidence. While you may follow the inferences and deductions that are suggested to you by a particular attorney if they seem reasonable and logical to you, you are not bound to do so.

During their arguments, counsel are permitted to make reference to evidence that they believe supports their position. They are permitted to refer to evidence from which they believe an inference can be drawn that supports their position, and in the course of their reference to the evidence, they are permitted to characterize the evidence in a certain

way. In all cases, it is your recollection of the evidence which controls, not counsel's recollection of the evidence.

As to any offer of evidence that has been rejected or ruled out by the court, you, of course, must not guess as to what the answer might have been had I allowed the witness to answer or as to the reason for the objection, nor are you permitted to draw any inference from the question itself, nor can you speculate what an excluded exhibit might have shown.

It is, indeed, the duty of the lawyers for the respective parties to make objections when that particular lawyer believes that certain evidence which is offered would be, perhaps, inadmissible or in some manner prejudicial to his client.

With reference to the objections made by the lawyers, keep in mind that it is not a question of someone trying to keep anything away from you that you are supposed to hear, rather it is a matter of whether, under the Federal Rules of Evidence, the testimony is admissible. If it is not admissible, it must be excluded.

The important thing for you to remember is that if I have sustained an objection, you cannot consider the evidence or draw any inference from the fact that it was offered. But if I have admitted the evidence and overruled the objection, you may and can and should fully consider the evidence admitted.

You observed during the course of the trial that the court from time to time called counsel to the bench for a conference. You may not draw any unfavorable inference or inferences whatsoever from these conferences for or against any of the parties to the case. If the court felt that the jury should hear anything that was discussed out of its hearing at the bench, the court permitted that to be presented to you in open court.

Although the government is required to prove Mr. Santana guilty beyond a reasonable doubt, the government is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case. In addition, as I have explained, Mr. Santana is not required to present any evidence or produce any witnesses.

The government and Mr. Santana have agreed that Government Exhibit 150, the Glock nine-millimeter pistol, Serial Number SYK946, is a firearm. You should, therefore, treat this fact as having been proved. You are not required to do so, however, since you are the sole judges of the facts.

The parties have agreed what Gabriel Llinas's and Jennifer Reed's testimony would be if called as a witness. The stipulated testimony is contained in Exhibits G45 and D3. You should consider that testimony in the same way as if it had been given here in court by the witness.

The government presented certain summaries in order to help explain the documents related to the packages delivered to Mr. Santana's house which were admitted as evidence in this case. The summaries are not themselves evidence or proof of any facts. If the summaries do not correctly reflect the evidence in the case, you should disregard them and determine the facts from the underlying evidence.

During the trial, you heard testimony of witnesses and argument by counsel that the government did not use specific investigative techniques. You may consider these facts in deciding whether the government has met its burden of proof, because, as I told you, you should look to all of the evidence or lack of evidence in deciding whether Mr. Santana is guilty.

However, there is no legal requirement that the government use any specific investigative technique or all possible techniques to prove its case. Your concern, as I have said, is to determine whether or not the evidence admitted in this trial proves Mr. Santana's guilt beyond a reasonable doubt.

You have heard testimony that after the crime was supposed to have been committed, Mr. Santana fled from law enforcement as they entered his home and threw the packages containing cocaine in the air. If you believe Mr. Santana committed these acts, then you may consider this conduct, along with all the other evidence, in deciding whether the government

has proved beyond a reasonable doubt that he committed the crime charged.

This conduct may indicate that he thought he was guilty of the crime charged and was trying to avoid punishment. On the other hand, sometimes an innocent person may commit these acts for some other reason. Whether or not this evidence causes you to find that Mr. Santana was conscious of his guilt of the crime charged and whether that indicates that he committed the crime charged is entirely up to you as the sole judges of the facts.

I will now instruct you on the elements of the crimes charged. As you know, Mr. Santana is charged in the indictment with violating federal law. As I explained at the beginning of the trial, an indictment is just the formal way of specifying the exact crimes the defendant is accused of committing.

An indictment is simply a description of the charges against a defendant. It is an accusation only. An indictment is not evidence of anything, and you should not give any weight to the fact that Mr. Santana has been indicted in making your decision in this case.

Count 1 of the indictment charges that from on or about November 2, 2018, through on or about February 22, 2019, in the Middle District of Pennsylvania, Mr. Santana agreed or conspired with other persons to distribute and possess with intent to distribute five kilograms and more of cocaine

hydrochloride.

It is a federal crime for two or more persons to agree or conspire to commit any offense against the United States even if they never actually achieved their objective. A conspiracy is a kind of criminal partnership.

In order for you to find Mr. Santana guilty of conspiracy to possess with intent to distribute a controlled substance, you must find that the government proved beyond a reasonable doubt each of the following three elements:

First, that two or more persons agreed to distribute or possess with intent to distribute a controlled substance. I will explain the elements of this offense to you shortly. Second, that Mr. Santana was a party to or member of that agreement. And, third, that Mr. Santana joined the agreement or conspiracy knowing of its objectives to distribute or possess with intent to distribute a controlled substance and intending to join together with at least one other conspirator to achieve that objective, that is, that Mr. Santana and at least one other conspirator shared a unity of purpose and the intent to achieve that objective. I will explain these elements in more detail.

The first element of the crime of conspiracy is the existence of an agreement. The government must prove beyond a reasonable doubt that two or more persons knowingly and intentionally arrived at a mutual understanding or agreement,

either spoken or unspoken, to work together to achieve the overall objective of the conspiracy to possess with intent to distribute cocaine.

The government does not have to prove the existence of a formal or written agreement or an express oral agreement spelling out the details of the understanding. The government also does not have to prove that all the members of the conspiracy directly met or discussed between themselves their unlawful objectives or agreed to all the details or agreed to what the means were by which the objectives would be accomplished.

The government is not even required to prove that all the people named in the indictment were, in fact, parties to the agreement or that all members of the alleged conspiracy were, in fact, parties to the agreement -- sorry, or that all members of the alleged conspiracy were named or that all members of the conspiracy are even known.

What the government must prove beyond a reasonable doubt is that two or more persons in some way or manner arrived at some type of agreement, mutual understanding, or meeting of the minds to try to accomplish a common and unlawful objective.

You may consider both direct and circumstantial evidence in deciding whether the government has proved beyond a reasonable doubt that an agreement or mutual understanding existed.

You may find the existence of a conspiracy based on evidence of related facts and circumstances which prove that the activities of the participants in a criminal venture could not have been carried out except as the result of a preconceived agreement, scheme, or understanding.

If you find that a criminal agreement or conspiracy existed, then in order to find Mr. Santana guilty of conspiracy, you must also find that the government proved beyond a reasonable doubt that he knowingly and intentionally joined that agreement or conspiracy during its existence.

The government must prove that Mr. Santana knew the goals or objectives of the agreement or conspiracy and voluntarily joined it during its existence intending to achieve the common goals or objectives and to work together with the other alleged conspirators towards those goals or objectives.

The government need not prove that Mr. Santana knew everything about the conspiracy or that he knew everyone involved in it or that they were a member from the beginning. The government also does not have to prove that Mr. Santana played a major or substantial role in the conspiracy.

You may consider both direct evidence and circumstantial evidence in deciding whether Mr. Santana joined the conspiracy, knew of its criminal objective, and intended to further the objectives.

Evidence which shows that Mr. Santana only knew about

the conspiracy or only kept bad company by associating with members of the conspiracy or only was present when it was discussed or when a crime was committed is not sufficient to prove that Mr. Santana was a member of the conspiracy even if Mr. Santana approved of what was happening or did not object to it.

Likewise, evidence showing Mr. Santana may have done something that happened to help a conspiracy does not necessarily prove that he joined the conspiracy. You may, however, consider this evidence with all the other evidence in deciding whether the government proved beyond a reasonable doubt that Mr. Santana joined the conspiracy.

In order to find Mr. Santana guilty of conspiracy, you must find that the government proved beyond a reasonable doubt that Mr. Santana joined the conspiracy knowing of its objective and intending to help further or achieve that objective.

That is, the government must prove, one, that Mr. Santana knew of the objective or goal of the conspiracy; two, that Mr. Santana joined the conspiracy intending to help further or achieve that goal or objective; and, three, that Mr. Santana and at least one other conspirator shared a unity of purpose toward that objective or goal.

You may consider both direct evidence and circumstantial evidence, including Mr. Santana's words or conduct and other facts and circumstances, in deciding whether

Mr. Santana had the required knowledge and intent.

The government is not required to prove that any of the members of the conspiracy were successful in achieving any or all of the objectives of the conspiracy. You may find Mr. Santana guilty of conspiracy if you find that the government proved beyond a reasonable doubt the elements I have explained even if you find that the government did not prove that any of the conspirators actually possessed with intent to distribute controlled substances.

Conspiracy is a criminal offense separate from the offense that was the objective of the conspiracy. Conspiracy is complete without the commission of that offense.

A conspiracy ends when the objectives of the conspiracy have been achieved or when all members of the conspiracy have withdrawn from it. However, a conspiracy may be a continuing conspiracy, and if it is, it lasts until there is some affirmative showing that it has ended or that all of its members have withdrawn.

A conspiracy may be a continuing one if the agreement includes an understanding that the conspiracy will continue over time. Also, a conspiracy may have a continuing purpose or objective and therefore may be a continuing conspiracy.

The existence of a simple buyer-seller relationship between Mr. Santana and another person without more is not necessarily sufficient to establish a conspiracy even where the

buyer intends to resell the controlled substance.

The fact that Mr. Santana may have bought controlled substances from another person or sold controlled substances to another person is not sufficient without more to establish that Mr. Santana was a member of the charged conspiracy.

Even if the seller knows that the buyer was going to sell to others the controlled substance, that is also not necessarily sufficient to establish a conspiracy. Instead, a conspiracy requires an agreement to commit some other crime beyond the crime constituted by the agreement to sell and buy from each other.

In considering whether a conspiracy as opposed to a simple buyer-seller relationship existed, you should consider all of the evidence, including the following factors:

One, the length of the affiliation; two, whether there is a demonstrated level of mutual trust; three, whether there is an established method of payment; four, whether the parties had a standardized way of doing business over time; five, whether the buyer bought large amounts; six, whether the buyer purchased the drugs on credit. No single factor necessarily indicates by itself that a defendant was or was not a member of the conspiracy.

Count 2 of the indictment charges Mr. Santana with attempt to possess with the intent to distribute cocaine hydrochloride. An attempt to possess with intent to distribute

cocaine hydrochloride is a federal crime even though Mr. Santana did not actually complete the crime of possessing with the intent to distribute cocaine hydrochloride.

In order to find Mr. Santana guilty of this offense, you must find that the government proved beyond a reasonable doubt each of the following two elements:

First, that Mr. Santana intended to commit the crime of possession with intent to distribute a controlled substance, as I will define that offense; and, second, that Mr. Santana performed an act constituting a substantial step toward the commission of possession with intent to distribute a controlled substance which strongly corroborates or confirms that the defendant intended to commit that crime.

With respect to the first element of attempt, you may not find Mr. Santana guilty of attempt to commit possession with intent to distribute cocaine hydrochloride merely because he thought about it. You must find that the evidence proved beyond a reasonable doubt that Mr. Santana's mental state passed beyond the stage of thinking about the crime to actually intending to commit it.

With respect to the substantial step element, you may not find Mr. Santana guilty of attempt to commit possession with intent to distribute a controlled substance merely because he made some plans to or some preparation for committing that crime.

Instead, you must find that Mr. Santana took some firm, clear, undeniable action to accomplish his intent to commit possession with intent to distribute cocaine hydrochloride. However, the substantial step element does not require the government to prove that Mr. Santana did everything except the last act necessary to complete the crime.

As I stated, Count 2 of the indictment charges the defendant with attempt to possess with intent to distribute cocaine hydrochloride, which is a violation of federal law. I am now providing you with the elements of possession with intent to distribute.

First, that Mr. Santana attempted to possess a mixture or substance containing a controlled substance; second, that Mr. Santana attempted to possess the controlled substance knowingly or intentionally; third, that Mr. Santana intended to distribute the controlled substance; and, fourth, that the controlled substance was cocaine hydrochloride.

To "possess" a controlled substance means to have it within a person's control. The government does not have to prove that Mr. Santana physically held the controlled substance, that is, had actual possession of it. As long as the controlled substance was within Mr. Santana's control, he possessed it.

If you find that Mr. Santana either had actual possession of the controlled substance or had the power and

intention to exercise control over it, even though it was not in Mr. Santana's physical possession, that is, that Mr. Santana had the ability to take actual possession of the substance when Mr. Santana wanted to do so, you may find that the government has proved possession. Possession may be momentary or fleeting. Proof of ownership of the controlled substance is not required.

The law also recognizes that possession may be sole or joint. If one person alone possesses a controlled substance, that is sole possession. However, more than one person may have the power and intention to exercise control over a controlled substance. That is called joint possession. If you find that Mr. Santana had such power and intention, then he possessed the controlled substance even if he possessed it jointly with another.

Mere proximity to the controlled substance or mere presence on the property where it is located or mere association with a person who does control the controlled substance or the property is not enough to support a finding of possession.

"Distribute," as used in the offenses charged, means to deliver or to transfer possession or control of a controlled substance from one person to another. "Distribute" includes the sale of a controlled substance by one person to another but does not require a sale. "Distribute" also includes a delivery

without any financial compensation, such as a gift or a trade.

You are instructed that as a matter of law, cocaine hydrochloride is a controlled substance, that is, some kind of prohibited drug. It is solely for you, however, to decide whether the government has proved beyond a reasonable doubt that Mr. Santana attempted to distribute or possess with the intent to distribute a mixture or substance containing cocaine hydrochloride.

To act "knowingly," as used in the offenses charged, means that Mr. Santana was conscious and aware that he was engaged in the acts charged and knew of the surrounding facts and circumstances that make out the offenses. "Knowingly" does not require that Mr. Santana knew that the acts charged and surrounding facts amounted to a crime.

To act "intentionally," as used in the offenses charged, means to act deliberately and not by accident. "Intentionally" does not require that the defendant intended to violate the law.

The phrase "knowingly or intentionally," as used in the offenses charged, requires the government to prove beyond a reasonable doubt that the defendant knew that what he possessed with intent to distribute was a controlled substance.

In addition, the government must also prove beyond a reasonable doubt that the controlled substance was, in fact, cocaine. However, as long as you find the government proved

beyond a reasonable doubt that the defendant knew that what he possessed was a controlled substance, you need not find that the defendant knew that the controlled substance was cocaine hydrochloride.

In deciding whether the defendant acted knowingly or intentionally, you may consider evidence about what the defendant said, what the defendant did and failed to do, how the defendant acted, and all the other facts and circumstances shown by the evidence that may prove what was in the defendant's mind at that time.

In order to find Mr. Santana guilty of possession of a controlled substance with intent to distribute as charged in the indictment -- rather attempted possession of a controlled substance with intent to distribute, you must find that the government proved beyond a reasonable doubt that Mr. Santana intended to distribute a mixture or substance containing a controlled substance.

To find that Mr. Santana had the intent to distribute, you must find that Mr. Santana had in mind or planned in some way to deliver or transfer possession or control over a controlled substance to someone else.

In determining whether Mr. Santana had the intent to distribute, you may consider all the facts and circumstances shown by the evidence presented, including the defendant's words and actions.

In determining Mr. Santana's intent to distribute controlled substances, you may also consider, among other things, the quantity and purity of the controlled substance, the manner in which the controlled substance was packaged, and the presence or absence of weapons, large amounts of cash, or equipment used in the processing or sale of controlled substances.

If you find Mr. Santana guilty of the offenses charged in Counts 1 or 2, you must answer some questions called jury interrogatories to decide whether the offense involved certain weights or quantities of controlled substances. Do not answer these jury interrogatories until after you have reached your verdict.

If you find that the government has not proved Mr. Santana guilty of the offenses charged in Counts 1 or 2, then you do not need to answer the interrogatories. If you find Mr. Santana guilty, then in answering these interrogatories, as in deciding your verdict, you must be unanimous.

And in order to find that the offense involved a certain weight or quantity of controlled substances, you must all be satisfied that the government proved the weight or quantity beyond a reasonable doubt. Weight or quantity means the total weight of any mixture or substance which contains a detectable amount of the controlled substance.

Special Interrogatory Number 1 relates to Count 1 and first asks whether you unanimously find, beyond a reasonable doubt, that the weight or quantity of cocaine hydrochloride which was involved in the conspiracy was five kilograms or more.

If your answer to this question is "yes," that completes Special Interrogatory Number 1. If your answer is "no," you must then answer Special Interrogatory Number 2, whether you unanimously find, beyond a reasonable doubt, that the quantity of cocaine hydrochloride which was involved in the conspiracy was 500 grams or more.

If you unanimously find that the government did not prove beyond a reasonable doubt that the offense involved 500 grams or more but rather involved an amount less than 500 grams, your answer should be "no" to both questions. That completes Special Interrogatories Number 1 and 2.

Likewise, Special Interrogatory Number 3 relates to Count 2 and asks whether you unanimously find, beyond a reasonable doubt, that the weight or quantity of cocaine which Mr. Santana attempted to possess with intent to deliver was 500 grams or more.

If you unanimously find that the government did not prove beyond a reasonable doubt that the offense involved 500 grams or more but rather involved an amount less than 500 grams, your answer should be "no." That completes Special

Interrogatory Number 3.

Count 3 of the indictment charges Mr. Santana with possessing a firearm in furtherance of a drug trafficking crime, which is a violation of 18, U.S.C., Section 924(c)(1)(A).

The offenses alleged in Count 1, conspiracy to possess with intent to distribute cocaine hydrochloride, and Count 2, possession with intent to distribute cocaine hydrochloride, are both drug trafficking crimes.

In order to find Mr. Santana guilty of possessing a firearm in furtherance of drug trafficking, you must find that the government proved each of the following two elements beyond a reasonable doubt:

First, that Mr. Santana committed the crime of conspiracy to possess with intent to distribute cocaine hydrochloride as charged in Count 1 of the indictment or the crime of attempted possession with intent to distribute cocaine hydrochloride as charged in Count 2 of the indictment; and, second, that Mr. Santana knowingly possessed a firearm in furtherance of this crime.

If you find Mr. Santana possessed the firearm, you must consider whether the possession was in furtherance of his attempt to possess with intent to distribute cocaine hydrochloride.

To establish the second element of the offense, the

government must prove that Mr. Santana possessed the firearm in question. To "possess" means to have something within a person's control. The government does not have to prove that Mr. Santana physically held the firearm, that is, had actual possession of it. As long as the firearm was within Mr. Santana's control, he possessed it.

If you find that Mr. Santana either had actual possession of the firearm or had the power and intention to exercise control over it, even though it was not in Mr. Santana's physical possession, that is, that Mr. Santana had the ability to take actual physical possession of the object when Mr. Santana wanted to do so, you may find that the government has proven possession. Possession may be momentary or fleeting.

The law also recognizes that possession may be sole or joint. If one person alone possesses a firearm, that is sole possession. However, more than one person may have the power and intention to exercise control over a firearm. That is called joint possession. If you find that Mr. Santana had such power and intention, then he possessed the firearm even if he possessed it jointly with another.

Mere proximity to the firearm or mere presence on the property where it is located or mere association with a person who does control the firearm or the property is insufficient to support a finding of possession. Proof of ownership of the

firearm is not required.

The government must prove that Mr. Santana knowingly possessed the firearm described in the indictment. This means that Mr. Santana possessed the firearm purposely and voluntarily and not by accident or mistake. It also means that Mr. Santana knew the object was a firearm.

Possession "in furtherance of" means for the purpose of assisting in, promoting, accomplishing, advancing, or achieving the goal or objective of attempting to possess with intent to distribute cocaine hydrochloride. Mere presence of a firearm at the scene is not enough to find possession in furtherance of a drug trafficking crime.

The firearm's presence may be coincidental or entirely unrelated to the underlying crime. Some factors that may help determine whether possession of a firearm furthers a drug trafficking crime include, but are not limited to, the following:

One, the type of criminal activity that is being conducted; two, accessibility of the firearm; three, the type of firearm; four, whether the firearm is stolen; five, whether Mr. Santana possesses the firearm legally or illegally; six, whether the firearm is loaded; seven, the time and circumstances under which the firearm is found; and, eight, proximity to drugs or drug profits.

The term "firearm" means any weapon which will expel

or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term includes the frame or receiver of any such weapon.

In this case, it is stipulated that the Glock nine-millimeter pistol with Serial Number SYK946 is a firearm.

That concludes my instructions explaining the law regarding the testimony and other evidence and the offenses charged. Now let me explain some things about your deliberation in the jury room and your possible verdicts.

Upon retiring to the jury room, you should first select one of your members to act as your foreperson who will preside over your deliberations and will be your spokesperson here in court.

Now that all the evidence is in and the arguments are completed, once I have finished these instructions, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence and to make every reasonable effort you can to reach a unanimous verdict.

Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong, but do not ever change your mind just because other jurors see

things differently or just to get the case over with.

In the end, your vote must be exactly that, your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience. Listen carefully to what the other jurors have to say and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. You should all feel free to speak your minds.

Remember, also, that if you elected to take notes during the trial, your notes should only be used as memory aids. You should not give your notes greater weight than your independent recollection of the evidence.

You should rely upon your own independent recollection of the evidence or lack of evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

Once you start deliberating, do not talk, communicate with, or provide any information about this case by any means to court officials or to me or to anyone else except each other.

During your deliberations, you may not use any electronic device or media, such as a telephone, cellphone,

smartphone, iPhone, Blackberry, or computer, the Internet, any Internet service, or any text or instant messaging service or any Internet chat room, blog, or website, such as FaceBook, MySpace, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case.

If, during your deliberations, you should wish to communicate with the court, please reduce your message or question to writing signed by the foreperson, put the note in an envelope, and pass it to the clerk who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally.

I caution you, however, with regard to any message or question you might send that you should never state or specify your numerical division at the time.

A form of verdict has been prepared for your convenience. As to each question that you answer, your verdict must be unanimous. When you have reached your unanimous verdicts, the foreperson should write the verdicts on the form, date and sign it, return it to the courtroom, and give the form to my courtroom deputy to give to me.

If you decide that the government has proved Mr. Santana guilty of any or all of the offenses charged beyond a reasonable doubt, say so by having your foreperson mark the

appropriate place on the form.

If you decide that the government has not proved Mr. Santana guilty of some or all of the offenses charged beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form.

Keep in mind that the dispute between the parties is, for them, a most serious matter. They and the court rely upon you to give full and conscientious deliberation and consideration to all the issues and evidence before you.

Consider all the surrounding circumstances, the probabilities or improbabilities of the testimony, what counsel and the court have said. You should try to reach what is a just, true, and correct solution of the controversy submitted to you.

In reaching your conclusion, you should be guided solely by the evidence which has been presented to you, the inferences drawn from the evidence, and the instructions of the court on the law. You should not be influenced by fear, favor, prejudice, or sympathy. All the parties stand equally before the court, and each is entitled to the same fair and impartial treatment at your hands.

When you retire to deliberate, Ms. Edleblute will provide each of you with a written copy of these instructions, which you already have, a copy of the verdict form, and one original verdict form. The copies of the verdict form are so

marked, and you should only indicate your unanimous verdict on the original verdict form.

The court would ask counsel whether there has been a failure to charge on any substantial matter of law.

MR. FORD: No, Your Honor.

MR. ONGAY: No, Your Honor.

THE COURT: At this time then I will invite Ms. Edleblute to escort all of the jurors to the jury room to begin deliberations. However, Jurors 13 and 14, I will ask that when you arrive in the jury deliberation room, please collect your belongings, and then Ms. Edleblute will escort you to Jury Deliberation Room Number 2. Court stands in recess.

(Jury leaves courtroom at 12:14 p.m.)

THE COURT: Please be seated. Just a few matters. We need to stay on the record for a few moments. Number one, there were, I think, two instances when there were stray "possession with intent to distribute" without the word "attempted." I think I corrected one or two. There may have been one I didn't correct. I wanted to address that on the record.

So there is a discrepancy between what they have in writing and what I read in those handful of instances. We can correct the written instructions so that they reflect what I read to them and provide the corrected pages to the jurors or we can leave things as they stand. What's the preference of

the United States?

There was also -- I'm sorry, there was also cocaine base that had been submitted by the government. We corrected every instance but one. On the record, I stated cocaine hydrochloride, but the written instruction did say "base." I could provide that corrected page to the jurors. What's the preference of the government?

MR. FORD: I think we should probably provide the corrected instructions, Your Honor.

THE COURT: Mr. Ongay?

MR. ONGAY: I agree, Your Honor.

THE COURT: Okay. So then is everyone in agreement -- I think I missed one "attempted" when I read it out loud. Should we provide the corrected instruction for each instance where the word "attempted" should have appeared?

MR. FORD: I believe we should, Your Honor.

MR. ONGAY: Yes, Your Honor.

THE COURT: All right. So what we'll do is, we will provide just the corrected pages to the jurors and ask them to substitute that for the pages in their binders. All right? Just so everyone understands.

With respect to exhibits, I know that Ms. Edleblute provided a list of the digital exhibits that she has already uploaded to the court system, which is referred to as the JERS, J-E-R-S. The jurors do not yet have access to it until she

turns the screen on.

She provided you with a list for the purpose of having counsel review it to identify if there were any errors. Has counsel for the United States reviewed that list?

MR. FORD: We have, Your Honor. We found no errors.

THE COURT: And have you signed it?

MR. FORD: I did not sign it, Your Honor.

MR. ONGAY: The signature should be at the bottom of the last page?

MR. FORD: My one question, though, Your Honor, is, I don't know what the court's preference is with regard to the hard exhibits.

THE COURT: We'll turn to that in just a moment.

MR. FORD: Yes, Your Honor.

THE COURT: Mr. Ongay, have you also had a chance to review --

MR. ONGAY: Yes, I did, Your Honor, and I just signed it.

THE COURT: Very good. So provide those to Ms. Dixon, if you would. All right. And then, Mr. Ford, you had asked about physical exhibits that are not in digital form. What are you requesting to send back, if anything?

MR. FORD: Obviously, Your Honor, the firearm, the cocaine, and the magazines and rounds we would not send back. However, the other exhibits that included the bags -- and to

give the court specific numbers, we would be -- our hard exhibits are Government's Exhibits 150 to 164.

So we would be requesting to send back 157, which is the digital scale, 158, which is the black handbag -- or, I'm sorry, not 158, because that's the gun boxes. 160, which is the items that were -- that was the controlled delivery parcel, 161, 162, 163, 164, and 189.

THE COURT: I'm sorry, what was the last one?

MR. FORD: 189.

THE COURT: You're proposing to send the cocaine to the jury?

MR. FORD: I'm sorry, Your Honor, did I include -- I don't want to send the cocaine back. I apologize, not 163 and 164.

THE COURT: All right. So the list that you're proposing is 157, which is the scale, 160, which is the now empty parcel box, Priority Mail box, 161, which are the items that were found in the scooter, 162, which is a parcel -- the parcel box that was intercepted.

MR. FORD: Correct, Your Honor.

THE COURT: But now empty.

MR. FORD: Correct, Your Honor.

THE COURT: And then 189, which -- what is 189?

MR. FORD: That's the cosmetic bags and all the trinkets that were found in package three.

THE COURT: Okay. The contents exclusive of the cocaine?

MR. FORD: Correct, Your Honor.

THE COURT: Okay. Mr. Ongay, what is your position with respect to sending Exhibits 157, 160, 161, 162, and 189 back to the jury?

MR. ONGAY: I do not object, Your Honor.

THE COURT: We'll do that. So I'll need you to collect those items. And then when Ms. Edleblute returns, we'll have her deliver those to the jury, as well.

I'm going to retain the alternates. We have lunch for them, and they'll be down in the jury assembly room on the seventh floor. We will retain them for as long as it seems appropriate. If appropriate, I'll dismiss them at the right time. I'll let you know when I do that. But I think it's best to retain them for now.

The last thing is, I would ask that all counsel and Mr. Santana -- we obviously know Mr. Santana is not too far away, but all counsel be no more than ten minutes from the courthouse in case of a question or a verdict. Phone numbers are being provided. Is there anything else on behalf of the United States?

MR. FORD: No, Your Honor.

THE COURT: Mr. Ongay, anything else?

MR. ONGAY: No, Your Honor.

THE COURT: All right. We'll stand in recess until we hear from the jury.

(Recess taken from 12:21 p.m. to 1:50 p.m.)

THE COURT: Thank you. Please be seated. Foreperson of the jury, has the jury reached a verdict?

THE FOREPERSON: Yes, we have.

THE COURT: You can please hand your verdict form to Ms. Edleblute. All right. The jury's verdict form appears to be in order, and I will now read the jury's verdict.

With respect to the charge of conspiracy to distribute and possess with intent to distribute cocaine hydrochloride from on or about November 2, 2018, through on or about February 22, 2019, what is your verdict? The jury has marked guilty.

Special Interrogatory 1, do you unanimously find that the government proved beyond a reasonable doubt that the object of the conspiracy was to possess with intent to distribute five kilograms or more of cocaine hydrochloride? The jury answered yes.

Special Interrogatory 2 asks, do you unanimously find that the government proved beyond a reasonable doubt that the object of the conspiracy was to possess with intent to distribute 500 grams or more of cocaine hydrochloride, the jury did not answer the question because of their answer to Special Interrogatory 1.

Question 2, with respect to the charge of attempted possession with intent to distribute cocaine hydrochloride on or about February 22, 2019, what is your verdict? The jury answered guilty.

Special Interrogatory 3, do you unanimously find the government proved beyond a reasonable doubt that the defendant attempted to possess with intent to distribute 500 grams or more of cocaine hydrochloride? The jury answered yes.

Question 3, with respect to the charge of knowingly possessing a firearm, specifically a loaded Glock nine-millimeter pistol, Serial Number SYK946, in furtherance of a drug trafficking crime from on or about November 2, 2018, through on or about February 22, 2019, what is your verdict? The jury answered guilty.

Special Interrogatory 1, do you find that the defendant possessed a firearm in furtherance of cocaine -- or, I'm sorry, conspiracy to distribute cocaine hydrochloride? The jury indicated yes. Attempted possession with intent to distribute cocaine hydrochloride? The jury answered yes.

The jury has signed and dated this form by the foreperson on this date, November 10, 2021.

All right. Counsel for the United States, would you like to poll the jury?

MR. FORD: No, your Honor.

THE COURT: Counsel for the defendant, are you

requesting to poll the jury?

MR. ONGAY: No, Your Honor.

THE COURT: All right. So it appearing that the jurors have reached a unanimous verdict, the Clerk of Court is provided with the verdict form and is directed to enter judgment in accordance with the verdict. Here you go, Ms. Edleblute.

Members of the jury, I would like to take the opportunity to speak with you privately in the jury room after we adjourn just for a few minutes, but first, in the presence of counsel and Mr. Santana, I would like to extend my deep appreciation for the service that you have rendered here this week.

By participating in this process, you have conferred one of the most fundamental protections in our democracy, which is the right to a fair and impartial jury. On behalf of the parties, counsel, and the United States judiciary, we all thank you.

Before you are excused, I would advise you that you may be approached by counsel following the conclusion of this trial. And if you wish, you may speak with counsel and answer any questions they may have about their performance or other similar issues. However, you are equally entitled to refuse to answer their questions or not to speak to them at all. The choice is entirely yours.

To counsel, I would admonish you not to ask the jurors any questions going to the deliberative process. As you know, the secrecy of their proceedings represents the hallmark of the jury system, and any questions that you may ask of the jurors may not touch on the jurors' internal deliberations.

Members of the jury, you are now excused with the gratitude of the court. Please rise, everyone.

(Jury leaves courtroom at 1:55 p.m.)

THE COURT: So I need to advise counsel that any posttrial motions seeking a new trial grounded on a reason other than newly discovered evidence filed under Federal Rule of Criminal Procedure 33 must be filed within 14 days.

I will issue a scheduling order establishing a deadline for preparation of the presentence report and also scheduling a presentence conference, which will be by phone. And, Mr. Santana, that will include counsel only. The purpose of that telephone conference is to select an appropriate date for your sentencing hearing.

Is there anything further to address on behalf of the United States?

MR. FORD: No, Your Honor.

THE COURT: Mr. Ongay?

MR. ONGAY: No, Your Honor.

THE COURT: Court is adjourned.

(Whereupon, the proceedings were adjourned at 1:56 p.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, Federal Certified Realtime Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 5th day of July, 2022.

/s/ Lori A. Shuey
Lori A. Shuey
Federal Certified Realtime Reporter

CERTIFICATE OF SERVICE

Service on the Assistant United States Attorney

I, José Luis Ongay, certify that I served two copies of the Appendix to the Brief for Appellant upon Assistant United States Attorney Scott R. Ford at Ronald Reagan Federal Building, 228 Walnut Street, Suite 200, Harrisburg, PA 17108-1754.

Service on Mr. Adam N. Santana

I also certify that I served Mr. Adam N. Santana, 76982-067, a copy of the Appendix to the Brief via first class mail to Adam N. Santana, 76982-067, Federal Correctional Institution at Cumberland, P.O. Box 1000, Cumberland, MD 21501.

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