

Appendix A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 29 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-50031

Plaintiff-Appellee,

D.C. No.

v.

3:20-cr-02923-LAB-1

JAHVARIS LAMOUN SPRINGFIELD,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued and Submitted June 8, 2023
Pasadena, California

Before: M. SMITH and DESAI, Circuit Judges, and AMON,** District Judge.

Jahvaris Springfield appeals his conviction for distribution of fentanyl resulting in death, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). Springfield also appeals his 300-month sentence. The parties' familiarity with the briefing and record is assumed. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Carol Bagley Amon, United States District Judge for the Eastern District of New York, sitting by designation.

affirm.

1. The district court did not clearly err in determining that Springfield's *Miranda* waiver was knowing and intelligent. *See United States v. Garibay*, 143 F.3d 534, 536 (9th Cir. 1998) (knowing-and-intelligent-waiver determination reviewed for clear error). Under the totality of the circumstances, the record supports a finding that Springfield was aware "of both the nature of the right being abandoned and the consequences of the decision to abandon it" when he answered the agents' questions. *United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998) (en banc) (quotation omitted). Indeed, he was advised of his rights individually and in his native language, appeared to understand them, and referenced his experience with the criminal justice system before waiving his rights. *See United States v. Crews*, 502 F.3d 1130, 1140 (9th Cir. 2007) (listing relevant factors). As to Springfield's claim that he smoked marijuana and ingested ecstasy in the hours before his questioning, the record does not indicate that he was so intoxicated that he lacked an understanding of his rights. *See Matylinsky v. Budge*, 577 F.3d 1083, 1095 (9th Cir. 2009).

2. Nor were Springfield's inculpatory statements involuntary. *See United States v. Preston*, 751 F.3d 1008, 1020 (9th Cir. 2014) (en banc) (voluntariness reviewed de novo). Drug use does not render a confession involuntary where the statement is "the product of a rational intellect and a free will." *Medeiros v.*

Shimoda, 889 F.2d 819, 823 (9th Cir. 1989)) (citation omitted). Even assuming Springfield was intoxicated, Springfield answered the agents' questions in a reasonably lucid, responsive manner and the agents' conduct was not coercive, threatening, or otherwise improper. *See Preston*, 751 F.3d at 1018–19 (holding that courts must consider both the defendant's mental state and the officers' conduct in determining the voluntariness of a confession).

3. The district court did not abuse its discretion by issuing an instruction to the jury pursuant to *Allen v. United States*, 164 U.S. 492 (1896). *See United States v. Hernandez*, 105 F.3d 1330, 1333 (9th Cir. 1997) (*Allen* instructions reviewed for abuse of discretion and content of instructions reviewed for coerciveness). “In determining whether an *Allen* charge is coercive, the court examines: (1) the form of the instruction, (2) the time the jury deliberated after receiving the charge in relation to the total time of deliberation and (3) any other indicia of coerciveness.” *United States v. Steele*, 298 F.3d 906, 911 (9th Cir. 2002). The court delivered its *Allen* charge after the jury deliberated for over five hours and sent the court a note indicating that it had reached a “standstill.” The instruction repeatedly indicated that the jury need not reach a verdict and framed suggested methods of deliberation neutrally. *See United States v. Bonam*, 772 F.2d 1449, 1451 (9th Cir. 1985) (per curiam) (explaining that this court has “generally upheld” instructions as non-coercive “[w]hen the portion of the instruction that asks the minority to re-examine

its views is counterbalanced by the caution that a juror should not abandon his conscientiously held views”). We accord the fact that the jury deliberated for only a short period after the district court delivered the *Allen* charge less weight because the jury recessed for an entire evening just before hearing the charge. *See Steele*, 298 F.3d at 911 (“The fact the jury reached its verdict half an hour after returning from a weekend recess could merely reflect that the jurors came to a resolution during a weekend when they individually pondered the evidence.”); *United States v. Beattie*, 613 F.2d 762, 765 (9th Cir. 1980) (“While the time elapsed between charge and verdict is significant, it is not dispositive of the issue.”); *Hernandez*, 105 F.3d at 1333–34 (holding that forty minutes of deliberation after *Allen* instruction was “not so short as to raise the specter of coercion” where the jury had already deliberated for four and a half hours). No other relevant indicia of coerciveness exist.

4. The district court properly denied Springfield’s motion for a new trial because the defense investigator’s declaration about the jury foreman’s statements concerning juror deliberations was inadmissible pursuant to Federal Rule of Evidence 606(b). *See United States v. Lopez*, 913 F.3d 807, 826 (9th Cir. 2019) (denial of new trial motion reviewed for abuse of discretion). Our court has previously held that Rule 606(b) bars consideration of post-verdict juror statements indicating that jurors considered the defendant’s failure to testify at trial during deliberations. *United States v. Rutherford*, 371 F.3d 634, 639–40 (9th Cir. 2004).

Springfield proposes a novel constitutional exception to Rule 606(b) for evidence showing jurors considered a defendant's decision not to testify at trial. However, the Supreme Court has rejected similar proposed constitutional exceptions. *See Tanner v. United States*, 483 U.S. 107, 126–27 (1987) (no constitutional exception for statements showing extreme juror misconduct); *Warger v. Shauers*, 574 U.S. 40, 50–51 (2014) (no constitutional exception for statements showing dishonesty during *voir dire*). Springfield analogizes his proposed exception to the racial animus exception to Rule 606(b). *See Pena-Rodriguez v. Colorado*, 580 U.S. 206, 221–25 (2017) (recognizing narrow exception to Rule 606(b) for the “distinct” and “unique” issue of racial bias in the jury). But even if we recognized a similar exception here, the hearsay-on-hearsay declaration Springfield presented to the district court in this case would not meet the high evidentiary burden required to overcome Rule 606(b). *See id.* at 225–26 (holding that whether a showing of impermissible bias “has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence”).

5. The district court did not abuse its discretion in imposing a 300-month sentence. *See United States v. Autery*, 555 F.3d 864, 871 (9th Cir. 2009) (substantive reasonableness of sentence reviewed for abuse of discretion). The sentence imposed falls below the Guidelines range of 360 months to life. *See United States v. Kabir*,

51 F.4th 820, 829 (9th Cir. 2022) (“[T]he fact that the district court . . . imposed a below-Guidelines sentence is suggestive of its reasonableness.”). Upon review of the record, we lack “a definite and firm conviction that the district court committed a clear error of judgment” in imposing its sentence. *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055 (9th Cir. 2009). We therefore conclude that the sentence in this case “fall[s] comfortably within the broad range of sentences that would be reasonable in the particular circumstances.” *United States v. Carty*, 520 F.3d 984, 994 (9th Cir. 2008) (citation omitted).

AFFIRMED.

Appendix B

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
JAHVARIS LAMOUN SPRINGFIELD (1)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:20-CR-02923-LAB

Matthew C. Binninger
Defendant's Attorney

USM Number 96314-298

☐ -

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☒ was found guilty on count(s) 1 of the Indictment
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title and Section / Nature of Offense**Count**

21:841(a)(1), (b)(1)(C); 21:853 - Distribution Of Fentanyl Resulting In Death; Criminal Forfeiture

1

The defendant is sentenced as provided in pages 2 through 5 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 dismissed on the motion of the United States.☒ Assessment: \$100.00

-

☐ JVT Assessment*: \$

-

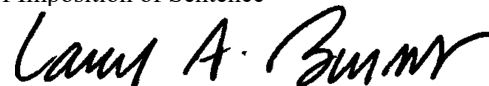
*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

☒ No fine ☐ Forfeiture pursuant to order filed _____, included herein.

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 any material change in the defendant's economic circumstances.

February 14, 2022

Date of Imposition of Sentence



HON. LARRY ALAN BURNS
UNITED STATES DISTRICT JUDGE

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: JAHVARIS LAMOUN SPRINGFIELD (1)
CASE NUMBER: 3:20-CR-02923-LAB

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
300 months

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
☒ The court makes the following recommendations to the Bureau of Prisons:
ARIZONA DESIGNATION.
PARTICIPATE IN THE RESIDENTIAL DRUG ASSESSMENT PROGRAM.

- ☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant must surrender to the United States Marshal for this district:

- ☐ at _____ A.M. on _____
☐ as notified by the United States Marshal.

- ☐ The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ on or before
☐ 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

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: JAHVARIS LAMOUN SPRINGFIELD (1)
CASE NUMBER: 3:20-CR-02923-LAB

Judgment - Page 3 of 5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of:
10 years

MANDATORY CONDITIONS

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. 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. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4. ☐ The defendant 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. ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☐ The defendant 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 the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7. ☐ The defendant must participate in an approved program for domestic violence. (check if applicable)

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

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: JAHVARIS LAMOUN SPRINGFIELD (1)
CASE NUMBER: 3:20-CR-02923-LAB

Judgment - Page 4 of 5

STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change. As an alternative to employment as described in this condition, the defendant may seek and maintain full time schooling or a combination of employment and schooling.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant 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. The defendant 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: JAHVARIS LAMOUN SPRINGFIELD (1)
CASE NUMBER: 3:20-CR-02923-LAB

Judgment - Page 5 of 5

SPECIAL CONDITIONS OF SUPERVISION

1. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
2. Participate in a program of drug or alcohol abuse treatment, including drug testing and counseling, as directed by the probation officer. Submit to drug testing three times a month for one year. The probation officer may modify or eliminate testing after one year if no dirty tests are reported. The defendant must not use or possess marijuana under any circumstances.
3. Submit to a search of person, property, house, residence, office, vehicle, papers, cellular phone, computer or other electronic communication or data storage devices or media effects, conducted by a United States Probation Officer or any federal, state, or local law enforcement officer, at any time with or without a warrant, and with or without reasonable suspicion. Failure to submit to such a search may be grounds for revocation; you shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of up to 120 days (non-punitive).

//

Appendix C

1 **SEALED**

FILED

Sep 22 2020

4:14 pm

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ vanessac DEPUTY

3 UNITED STATES DISTRICT COURT

4 SOUTHERN DISTRICT OF CALIFORNIA

5 November 2019 Grand Jury

6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

9 JAHVARIS LAMOUN SPRINGFIELD,

10 Defendant.

Case No. '20 CR2923 LAB

I N D I C T M E N T

Title 21, U.S.C., Sec. 841(a)(1)
and (b)(1)(C) - Distribution of
Fentanyl Resulting in Death;
Title 21, U.S.C., Sec. 853 -
Criminal Forfeiture

12 The grand jury charges:

13 On or about February 5, 2019, within the Southern District of
14 California, defendant JAHVARIS LAMOUN SPRINGFIELD, did knowingly and
15 intentionally distribute a Schedule II Controlled Substance, to wit:
16 a mixture and substance containing a detectable amount of N-phenyl-N-
17 [1-(2-phenylethyl)-4-piperidinyl] propanamide (commonly known as
18 fentanyl), and the death of B.J.G. resulted from the use of such
19 substance; in violation of Title 21, United States Code,
20 Section 841(a)(1) and (b)(1)(C).

21 FORFEITURE ALLEGATIONS

22 1. The allegations contained in the above Count are hereby re-
23 alleged and by their reference fully incorporated herein for the purpose
24 of alleging forfeiture to the United States of America pursuant to the
25 provisions of Title 21, United States Code, Section 853.

26 2. As a result of the commission of the felony offense alleged
27 in the above Count of this indictment, said violations being punishable
28 by imprisonment for more than one year and pursuant to Title 21, United

1 States Code, Sections 853(a)(1) and 853(a)(2), defendant JAHVARIS LAMOUN
2 SPRINGFIELD shall, upon conviction, forfeit to the United States any and
3 all property constituting, or derived from, any proceeds that the
4 defendant obtained, directly or indirectly, as the result of the
5 offenses, and any and all property used or intended to be used in any
6 manner or part to commit and to facilitate the commission of the
7 violations alleged in the above Count of this indictment.

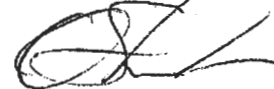
8 3. If any forfeitable property, as a result of any act or omission
9 of the defendant:

- 10 a. cannot be located upon the exercise of due diligence;
11 b. has been transferred or sold to, or deposited with, a
12 third party;
13 c. has been placed beyond the jurisdiction of the Court;
14 d. has been substantially diminished in value; or
15 e. has been commingled with other property which cannot be
16 subdivided without difficulty;

17 it is the intent of the United States, pursuant to Title 21, United
18 States Code, Section 853(p), to seek forfeiture of any other property
19 of the defendant up to the value of the said property listed above as
20 being subject to forfeiture.

21 DATED: September 22, 2020.


A TRUE BILL:



Foreperson

24 ROBERT S. BREWER, JR.
United States Attorney

26 By:



27 STEPHEN W. WONG
Assistant U.S. Attorney

Appendix D

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	No. 20-CR-2923-LAB
)	
v.	)	August 24, 2021
)	
JAHVARIS LAMOUN SPRINGFIELD,	)	9:00 a.m.
)	
Defendant.	)	San Diego, California
)	

TRANSCRIPT OF JURY TRIAL - DAY 1
BEFORE THE HONORABLE LARRY ALAN BURNS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	UNITED STATES ATTORNEYS OFFICE
	By: STEPHEN H. WONG, ESQ.
	MIKAELA LAUREN WEBER, ESQ.
	880 Front Street
	San Diego, California 92101
For the Defendant:	LAW OFFICE OF MATTHEW C. BINNINGER APC
	By: MATTHEW C. BINNINGER, ESQ.
	225 Broadway, Suite 2100
	San Diego, California 92101-5030
Court Reporter:	CYNTHIA R. OTT, RDR, CRR
	cynott@gmail.com

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1 You don't have to go in there, but you can go in or go
2 outside. And let's say at 11:20, if you can be back in your
3 seats, we'll complete this process, and get you on your way,
4 whether you're remaining here or going on to other things.

5 We're in recess now. See you back at 11:20.

6 (At 11:04 a.m., the jury was excused, and the following
7 proceedings were held:)

8 THE COURT: I want to take care of as much as we can
9 while we're on the break. Any additional challenges for cause?

10 MR. WONG: None that we have heard thus far.

11 THE COURT: And, Mr. Binninger, you said also --

12 MR. BINNINGER: None on behalf of the defense so far.

13 THE COURT: If something develops during the course of
14 voir dire, you can raise it again, but otherwise, we'll be
15 prepared to give you the list as it stands now.

16 MR. WONG: Okay.

17 THE COURT: See you back at 11:20.

18 (A recess was taken from 11:05 a.m. to 11:20 a.m.)

19 THE COURT: All right. We're back in session. All
20 prospective jurors are present. Counsel and the defendant are
21 present.

22 Mr. Binninger, if you want to follow up, you may.

23 MR. BINNINGER: Thank you, Your Honor.

24 Good morning, ladies and gentlemen. I have a few
25 follow-up questions that I'd like to ask a few specific jurors,

1 and then I have a few general questions that I have just to the
2 entire panel.

3 And as Judge Burns has indicated, his process is not
4 about outing anyone. It's not about trying to get to know
5 people to be able to judge or critique them in any way. This
6 is simply to find out who is the best impartial jurors to hear
7 this case.

8 So I just want to do a quick follow-up. Ms. McCaw,
9 thank you very much for opening up about your son's friend that
10 passed away. I'm truly sorry about that.

11 I can understand how that is a traumatic experience or
12 that hearing pieces of evidence in this case could potentially
13 bring up some traumatic feelings. I'm not saying whether that
14 would bias you, one way or the other, but it might possibly
15 distract you.

16 Is that possible? Would you say that that might
17 happen as a result? Here, let me give you this. Sorry.

18 PROSPECTIVE JUROR: It's possible. It's possible.
19 It could be possible.

20 MR. BINNINGER: Okay. Do you think that if you heard
21 some evidence that could potentially maybe distract you and
22 that might be difficult to sort of focus or pay attention on
23 the remainder of the evidence in the case? Do you think so,
24 ma'am? And I apologize, I don't mean to put you on the spot.

25 PROSPECTIVE JUROR: No, I understand. And I probably

1 wouldn't be the best juror.

2 MR. BINNINGER: Well, I appreciate that. Thank you
3 very much for your honesty. I know that not everyone like
4 Ms. McCaw mentioned that they knew someone close to their
5 family that had passed away, but has anyone else in this panel,
6 perhaps not a family member, but a friend or someone that they
7 knew passed away as a result of a drug overdose, such that you
8 might have a difficult time listening to this case?

9 Is there anybody else out there? Thank you, sir.
10 Thank you, Ms. McCaw. Appreciate that, your honesty.

11 Mr. Hjort.

12 PROSPECTIVE JUROR: I live in Imperial County, where
13 they call Niland the drug capital of California probably. We
14 have constantly somebody overdosing. That I know personally, I
15 mean, there must have been -- one year, we had one, two,
16 three -- at least five OD'ed, in our town.

17 MR. BINNINGER: Do you think that because of your
18 experience --

19 PROSPECTIVE JUROR: Well, you know, I don't know,
20 because I'm kind of conflicted between, you know, nobody forced
21 nobody to get -- you know, these guys are hard core drug
22 addicts. They'll go and get that drug. Nobody has to force
23 them to do it.

24 MR. BINNINGER: Okay. Do you think -- and I
25 appreciate your honesty, sir. I do. I'm just curious. Do you

1 think that given your experience of having known people from
2 your town that have passed away from overdoses -- and I
3 understand your point of view, with regard to drug users as
4 well, but do you think that there's anything from your past
5 that, if you heard pieces of evidence, regardless of whether
6 it's from the government or from the defense, that
7 might -- might inhibit your ability to focus the rest of the
8 trial, or do you think that you're okay and you could listen to
9 this?

10 I know it's a difficult question.

11 PROSPECTIVE JUROR: It is a very difficult question,
12 and I didn't know that I'd be faced with this, ever, you know.

13 MR. BINNINGER: There's no error. You've made no
14 error whatsoever, sir.

15 PROSPECTIVE JUROR: No, I have nothing against anybody
16 that does anything, as long as it don't bother me. The thing
17 is that I don't want to be throwing off the judicial -- sort of
18 whatever it needs to be for fairness.

19 MR. BINNINGER: Okay. So do you think you could view
20 all the evidence and hear all the evidence --

21 PROSPECTIVE JUROR: I could view all the evidence, but
22 I don't want nobody to look at me that if I judge one way or
23 another, I'm using it because of --

24 MR. BINNINGER: Fair enough, fair enough.

25 PROSPECTIVE JUROR: That's all I want to --

1 MR. BINNINGER: Okay. Maybe not an actual person that
2 you know, maybe not a family member, maybe not a friend, but
3 does anyone here have such a strong opinion -- I'm sorry,
4 ma'am, did you raise your -- okay. Does anyone have such a
5 strong opinion about -- were you raising your hand, sir?

6 PROSPECTIVE JUROR: I did.

7 MR. BINNINGER: I apologize. I didn't see.

8 PROSPECTIVE JUROR: It's not very strong. One of my
9 old friends, her partner overdosed.

10 THE COURT: This is Mr. O'Connor, by the way.

11 PROSPECTIVE JUROR: Yes, this is Mr. O'Connor.

12 THE COURT: Did you know what type of drug it was?

13 PROSPECTIVE JUROR: I think it was heroin. It was a
14 long time ago. I don't remember specifically.

15 MR. BINNINGER: Did it have an impact on you, such
16 that you might experience some difficulty viewing this case
17 fairly and impartially?

18 PROSPECTIVE JUROR: I mean, I didn't think about it
19 until last, so probably not, but it was pretty heavy when it
20 happened, because she had just had a kid with him. And he died
21 soon after.

22 MR. BINNINGER: But you personally think because of
23 the amount of time that has elapsed, that you don't have any
24 concerns viewing --

25 PROSPECTIVE JUROR: No, I don't think so, since like I

1 said, I didn't think about it until last, so it's probably not
2 a concern.

3 MR. BINNINGER: Okay. Thank you. I'm sorry if I
4 missed hands. There's a lot of people.

5 Okay. Does anyone have such strong feelings about the
6 concept of narcotics, drug distribution, or just simply any
7 idea or concept of when people overdose, such that you would
8 have a difficult time listening to this trial? And I
9 apologize, I know I'm really breaking it down into an esoteric
10 part here, but I just want to make absolutely certain that we
11 have the right jurors for this trial.

12 Does anyone have such strong feelings about that?
13 Okay. I'd like to follow up. Was it Mr. Macias?

14 PROSPECTIVE JUROR: Yes, sir.

15 MR. BINNINGER: Okay. I appreciate your -- the pride
16 you take in your work, and the fact that you are of the belief
17 that the marshals, correct, U.S. Marshal Service. And I
18 understand that you had said that you have an incredibly high
19 respect, high standard, you never met a marshal that wasn't
20 good at their job.

21 I just want to ask. Do you think that if the
22 government were to present their case and the defense were to
23 present their case, and it seemed as though that both sides
24 made good points, would you give the tie to law enforcement
25 because of your connections to law enforcement? Could you say

1 that one more time, sir?

2 PROSPECTIVE JUROR: No. I'll just keep -- I'll just
3 go straight off the evidence.

4 MR. BINNINGER: Okay. Does anyone else here feel that
5 if, in any way, that both sides seem to present equally good
6 cases, and at the end of the day, it seems as though, you know,
7 it was almost like a tie, that they would give a tie to law
8 enforcement because of your own personal ties with friends in
9 law enforcement, family in law enforcement, or just your
10 overall beliefs about law enforcement, is there anyone here
11 that would do that?

12 Okay. So let me put it to you another way. Does
13 anyone here have any problems with the concept of the
14 presumption of innocence, that Mr. Springfield as he sits here
15 right now is presumed innocent, and if we were to vote right
16 now, he would be not guilty. Does anyone have a personal
17 problem -- and, again, you will get no judgment from me about
18 the concept of the presumption of innocence. Does anyone feel
19 as though our country is too lenient, and that we should have
20 stricter criminal justice laws, so that the defendant is not
21 presumed innocent?

22 Okay. Let me ask it one more way. Does anyone have a
23 problem that the prosecution must prove their case beyond a
24 reasonable doubt? In other words, does anyone have a problem
25 or feel as though that is too high of a burden for the

1 prosecution, that really what it ought to be is, well, if he
2 likely did it, he's guilty. Does anyone have a problem with
3 the concept of the burden of doubt?

4 No? Okay. Good. One final question I have. My
5 client has a constitutional right to testify or not to testify,
6 depending on what he chooses to do, and what I advise him to
7 do. If I advise my client not to testify, is anyone going to
8 hold that against Mr. Springfield, that I have made that advice
9 to him, or is anyone going to say, well, he didn't get up there
10 and testify. And so as a result of that, I'm voting guilty.

11 Yes, thank you, sir. Could I have the microphone?
12 Thank you. Yes, sir.

13 PROSPECTIVE JUROR: I want to hear the side, both. We
14 can't hear the victim. He's dead. I want to hear his side.
15 So if he doesn't testify -- I know it's his right, it's a Fifth
16 Amendment right, but I want to hear all voices in this case,
17 even if you're advising him not to testify, I'm going to hold
18 it against him for not testifying, because I want to hear his
19 side of the story.

20 MR. BINNINGER: Okay. I appreciate your honesty, sir.

21 Does anyone else feel that way? And, again, there is
22 no wrong answers. No one's going to get criticized. It's just
23 simply, do you feel that same way? Does anyone feel that they
24 want to hear both sides, and if they don't hear both sides,
25 they're going to hold it against Mr. Springfield?

1 PROSPECTIVE JUROR: Let me clarify on that. I'll hold
2 it against him in terms of the evidence that's presented to me.

3 If the evidence is -- like you're saying, if they're
4 tied, the evidence that the prosecution and the defense
5 presents, and I'm not leaning one way or another, by him not
6 testifying, that puts into my thinking some doubt, why is he
7 not testifying.

8 MR. BINNINGER: So you would have a difficult time
9 judging the government's case if Mr. Springfield did not
10 testify?

11 PROSPECTIVE JUROR: If the evidence was presented as
12 you said previously. They're both even.

13 MR. BINNINGER: Well --

14 PROSPECTIVE JUROR: And hearing him might sway me
15 going one way or the other, but by him not testifying, that
16 puts some doubt in my thinking as to why he's not testifying.
17 I want to hear all the facts.

18 MR. BINNINGER: Okay, okay. Just to clarify, the
19 question I had about both sides essentially being even was in
20 reference to the burden of doubt.

21 Now, I understand that they're mixed together, and so
22 I appreciate your honesty in your answer, but I just want to be
23 perfectly certain, though, I get this. If the government
24 presents the entirety of their case, whatever that may be, and
25 then I advise Mr. Springfield, I don't think you should

1 testify, am I hearing you correctly, sir, that that would be an
2 issue for you, that you would have a problem, especially if he
3 doesn't testify?

4 PROSPECTIVE JUROR: It causes some doubt in my
5 thinking, why he's not testifying.

6 MR. BINNINGER: Okay.

7 PROSPECTIVE JUROR: I can't say it would sway me to go
8 guilty or not guilty. It just throws some doubt into why he's
9 not.

10 MR. BINNINGER: Okay. And I believe -- I don't want
11 to cut you off. Okay. If I could get that.

12 PROSPECTIVE JUROR: I do agree.

13 MR. BINNINGER: And you agree in the sense that if he
14 does not testify, that you would have a difficult time --

15 PROSPECTIVE JUROR: I'm not saying difficult time. It
16 casts additional doubt. Because usually the reason you don't
17 testify is because you're guilty.

18 MR. BINNINGER: Does anyone else believe that reason?

19 PROSPECTIVE JUROR: Because if you're not guilty, you
20 have nothing to lose.

21 MR. BINNINGER: Well, I'm not going to debate with
22 you, sir. You have every right to your opinion, and I
23 appreciate your honesty. I truly do. Does anyone else feel
24 that way?

25 THE COURT: You're up against the 15 minutes,

1 Mr. Binninger.

2 MR. BINNINGER: Thank you, Your Honor. I'm all done.

3 THE COURT: Mr. Wong, before you go, I want to follow
4 up with Mr. Galacgac and Mr. Wood. One of the instructions
5 I'll give in this case, this is a legal instruction, it's an
6 instruction all jurors must follow is this, that a defendant in
7 a criminal case has a constitutional right not to testify, and
8 no presumption of guilt may be raised, no inference of any kind
9 may be drawn from the fact the defendant doesn't testify.

10 I understand what both of you have said. Out in
11 society, it's a common thing to expect somebody to answer, but
12 here we're dealing with constitutional rights that all of us
13 have.

14 I can tell you from experience that there's lots of
15 reasons people don't testify. And many of the reasons have
16 nothing to do with the fact that they're trying to hide
17 something or anything like that.

18 Some people have stage fright, or they're
19 inarticulate, and they think I'm going to come off terribly.
20 There's a variety of reasons why. But most important here is
21 the fact that you have the protection of the United States
22 Constitution that says you don't have to testify.

23 The other thing that I want to mention to the two of
24 you, and I'm going to come back to you, is the presumption of
25 innocence. The presumption of innocence frees all of us, not

1 just Mr. Springfield in this case, but all of us from having to
2 prove guilt [as spoken], having to give a side of the story.
3 The burden here is on the government to prove its case. They
4 made the accusation. They have to prove it. We don't turn to
5 the person who's been accused, and say, well, you've got to
6 offer something to tell us that you didn't do this. Instead,
7 the focus is on the government. Can you prove the accusation
8 that you brought?

9 Now, that's the black letter law that you'll have to
10 follow if you hear this case. And as I said, I'm not trying to
11 delegitimize what both of you have said. And like
12 Mr. Binniger, I appreciate that the answers were honest
13 answers. But for you to sit on this case, I'd need you to put
14 out of your mind the idea that, well, I'm going to hold it
15 against the defendant if he doesn't testify.

16 The law forbids you from doing that. Now, having
17 heard the Court's instruction on that, Mr. Galacgac, can you
18 follow that? Can you say, okay, I mean, this is my
19 inclination, you know, I voiced it. We vetted it, but the
20 judge has told me, that's not the right way to approach this
21 case, can you follow that instruction?

22 PROSPECTIVE JUROR: It would be kind of difficult for
23 me at the moment right now, not hearing the evidence, because
24 his defense -- if both sides presents evidence that's equal,
25 and by him not testifying, that causes some doubt in my mind

1 why he's not testifying.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: But it's hard to know that when
4 you're going through the trial, when people are presenting
5 evidence, if I'm being convinced evidence presented to me at
6 that time is convincing enough to go either one way or another,
7 so it's hard -- difficult for me to say at this point.

8 THE COURT: Okay. Well, here's what I'm telling you
9 at the forefront. He has no obligation to testify. And you
10 can't have an expectation that he will. Ultimately, whatever
11 advice the lawyer gives, it's the person on trial who makes the
12 decision. Mr. Springfield has a right to decide whether he's
13 going to testify or not. He doesn't have to follow a lawyer's
14 advice.

15 What I'm telling you, though, is, that's entirely his
16 decision, and it should have no bearing on how you evaluate the
17 evidence. If he doesn't testify, you look at all of the
18 evidence and say, has the case been proved? Am I firmly
19 convinced that the accusation has been proved true or not?

20 It sometimes happens that, you know, the evidence --
21 the jury will look at the evidence and say, well, we don't even
22 need to hear from the defense. We're not convinced by
23 listening to this. That sometimes happens. So that's the
24 frame of mind that jurors should have, is we're going to look
25 to the government to prove the.

1 If the defendant testifies or if the defense offers
2 evidence, we'll certainly consider that, too, but the focus is
3 always going to be on the accuser to prove the accusation.

4 Can you accept and follow that instruction or do you
5 think your inclination would still be, I want to hear from
6 Mr. Springfield?

7 PROSPECTIVE JUROR: So I'm kind of in a flux now,
8 because before I got into the room --

9 THE COURT: Uh-huh.

10 PROSPECTIVE JUROR: And when you said the charge, I
11 was open-minded.

12 THE COURT: Yeah.

13 PROSPECTIVE JUROR: As soon as he presented the case
14 where both evidence was presented equally convincing.

15 THE COURT: Yeah.

16 PROSPECTIVE JUROR: Then it hinges on somebody
17 testified or not testifying.

18 THE COURT: Okay. Well, it sounds like, no, you'd be
19 bothered by this if he didn't testify. You'd want him to
20 testify, even though I tell you he has no legal obligation.

21 PROSPECTIVE JUROR: I want to hear the whole story
22 from either side.

23 THE COURT: Well, okay.

24 PROSPECTIVE JUROR: I know it's his right to not
25 testify. It's a constitutional right.

1 THE COURT: Yeah.

2 PROSPECTIVE JUROR: It would -- when it comes down to
3 it, it would cause me some --

4 THE COURT: Concern.

5 PROSPECTIVE JUROR: -- concerns, not like one way or
6 another, like, oh, he's guilty, he's not testifying because of
7 that.

8 THE COURT: Right.

9 PROSPECTIVE JUROR: It puts into more thinking into,
10 okay -- if we're going through the trial, I can look at it
11 myself where, okay, he does not testify. Okay, let's step
12 back. Let's go back to the evidence. Let's go back to the
13 evidence that was presented by both sides.

14 THE COURT: That's what you'd have to do.

15 PROSPECTIVE JUROR: Yeah.

16 THE COURT: Because the instructions says no inference
17 of any kind can be drawn from the fact -- and I don't know what
18 he's going to do. I'm not sure, at this point, Mr. Springfield
19 has made a decision yet.

20 Oftentimes, defense counsel tell me, we're going to
21 wait and listen to the government's evidence, and then we'll
22 decide, you know, what we're going to do. So I don't know, one
23 way or the other. I'm just telling you that if it turns out
24 that he decides, I'm not going to testify, I don't need to
25 testify, that no inference can be drawn from his decision. And

1 you have to be committed to that. And your instinct that,
2 well, no, if he didn't testify, I think that's going to push
3 toward guilt, that can't be part of your thinking if you're
4 going to fairly judge this case.

5 Can you commit to that, or do you think it's still
6 going to be creeping into your thought process?

7 PROSPECTIVE JUROR: What I mentioned during my
8 previous, when I was talking about myself, I was voir dired
9 from another case, the indecent exposure case.

10 THE COURT: Right. Right. And that's the one where
11 you thought the guy was guilty.

12 PROSPECTIVE JUROR: Guilty no matter what, and that
13 was even before --

14 THE COURT: Yeah. Well, we wouldn't --

15 PROSPECTIVE JUROR: I was thinking about, like, okay,
16 I can think about that. But the way he presented it, where he
17 presented the scenario, it comes down to like, okay, if
18 evidence is presented, both equally convincing, it comes down
19 to, he does not testify.

20 I want to say I'm leaning 70/30 percent that there's a
21 doubt or questioning why he's not testifying on his behalf,
22 even though that's his right.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: It would be that percentage.

25 THE COURT: All right. Fair enough. If you'll pass

1 the mic back down to Mr. Wood.

2 PROSPECTIVE JUROR: I'm good with it.

3 THE COURT: Well, I'm not sure with that means.

4 You heard the instruction that I read. Yeah, no
5 inference, Mr. Wood, of any kind can be drawn. And, again,
6 you've got to look to the accuser here. The government bears
7 the burden of proof and that remains throughout the case.

8 Now, that's not to say that they can't prove their
9 case. It just means that you have to look to them to prove
10 their case, not to the defendant in any way to prove innocence,
11 not testify, not offer evidence.

12 Again, I don't know whether Mr. Binninger,
13 Mr. Springfield, I don't know what decisions they've made
14 regarding presentation of evidence. Maybe they don't know at
15 this point. Maybe they want to sit and listen to the evidence,
16 too, and see how it comes out, and make a decision at that
17 point.

18 But the point is, if they decide not to present
19 evidence, if Mr. Springfield decides not to testify, you can't
20 rely on that at all or consider that at all as making up for
21 the government's burden of proof, or showing that he's somehow
22 guilty. It doesn't prove that.

23 PROSPECTIVE JUROR: Understood.

24 THE COURT: Okay. Can you follow that legal
25 principle?

1 PROSPECTIVE JUROR: Yes, sure.

2 THE COURT: All right. Mr. Wong, go ahead.

3 MR. WONG: So let me begin with the -- what was just
4 said. There was some talk about whether this will be a
5 difficult case to hear. A person died. Of course it will be.

6 And I would be bothered if someone said, well, I can
7 sit through a homicide case, and I wouldn't be bothered at all.
8 The question is not whether you would be bothered, the question
9 is not whether you're the best juror, but whether you can be
10 fair and impartial, whether you can put aside that sympathy and
11 prejudice, and make a clinical decision, like a surgeon who has
12 to put aside the natural empathetic thoughts about the person
13 on the table and say, I need to be clinical here, I need to
14 be -- remove myself and make some decisions impartially.

15 That's the question. Now, a lot of us bring in our natural
16 inclinations and upbringings to the Court, and that's natural.

17 Again, that's the common sense that we rely on as
18 members of the public and the jury. So with that in mind, let
19 me follow up with you, Mr. Wedemeyer, you said you had a
20 problem with -- or you had your own thoughts about the drug
21 laws. Could I ask you what those are?

22 PROSPECTIVE JUROR: I think the drug laws do need to
23 be reformed, but I don't intend to have that be advised in my
24 decision in this case.

25 MR. WONG: Do you have any particular suggestions or

1 thoughts as to how they ought to be reformed?

2 PROSPECTIVE JUROR: I don't have any specifics. I
3 think that there should be more treatment outside of, like,
4 prison sentences as part of that reform.

5 MR. WONG: Do you have a problem -- do you have any
6 disagreement or any quibble with the law you'll be applying in
7 this case, which is that it is illegal to distribute a
8 controlled substance that results in death?

9 PROSPECTIVE JUROR: I have no problem with that.

10 MR. WONG: Would you want to change that at all?

11 PROSPECTIVE JUROR: I don't believe I would want to
12 change that law.

13 MR. WONG: Does anyone disagree with Mr. Wedemeyer?
14 Does anyone else have any feelings about the drug laws in the
15 United States that you think would come to bear? And, again,
16 that's not to say you're the best juror or the worst juror for
17 this case, there's just the honest answer.

18 Does anyone have any feelings about the country's drug
19 laws that they think they would bring into them as part of
20 their common sense understanding when you hear the evidence in
21 this case?

22 I see no other hands.

23 So as Judge Burns just said, you will all, should you
24 be chosen, be asked to render a judgment in this case. And we,
25 the prosecution table, bear the entire burden to prove our

1 case, every single element of our case beyond a reasonable
2 doubt.

3 If we don't do that, then you have to vote not guilty.
4 If we do do that, if you are fairly and impartially looking at
5 the evidence, and you believe the government has proven the
6 case beyond a reasonable doubt, then you have to vote guilty.

7 Now, Mr. Galacgac, I think we got confused with the
8 hypothetical which was presented to you as equal/equal. If
9 it's an equal presentation, if the scales are balanced, that is
10 not beyond a reasonable doubt, you would have to vote not
11 guilty. Do you accept that?

12 PROSPECTIVE JUROR: Like I said, I mentioned 70/30
13 percent wondering why he's not testifying on his behalf, even
14 though it's his right.

15 MR. WONG: That was my question, though, was, if you
16 think the presentation of the evidence is equal, would you vote
17 not guilty? In other words, if we had failed to present our
18 case beyond a reasonable doubt.

19 PROSPECTIVE JUROR: Based on instructions.

20 THE COURT: Hold on a second, Mr. Wong and
21 Mr. Galacgac, talk one at a time. The court reporter has to
22 take down his answer and your question.

23 Put your question to him again, Mr. Wong.

24 MR. WONG: If we had failed to present to you -- to
25 convince you of the elements beyond a reasonable doubt, would

1 you vote not guilty?

2 PROSPECTIVE JUROR: I would have to, based on the
3 instructions.

4 MR. WONG: And you would follow that instruction
5 regardless of -- everyone else agree?

6 And similarly, it can be hard to render judgment about
7 another person. But if we have -- in the hypothetical, if
8 we've met every element of the offense, if we have satisfied
9 our burden beyond a reasonable doubt, would anyone, because of
10 your upbringing, or your experience, or just the way you feel
11 about this case, would you have a hard time rendering that
12 decision?

13 I believe while the judge was talking, there
14 was -- there was a hand over in this section. Someone said,
15 look, I don't know if I could go into that room and render a
16 decision. Does anyone have any question about themselves,
17 whether you could go in there, speak with 12 strangers, and
18 then come out with a very important decision?

19 I see no hands.

20 Mr. Callender, you are a former realtor.

21 PROSPECTIVE JUROR: Yes, sir.

22 MR. WONG: And buying a house is a hard decision,
23 correct?

24 PROSPECTIVE JUROR: Yes, it is.

25 MR. WONG: Do you ever -- in the course of your

1 career, did you encounter decision paranoia, where someone
2 just -- you know, they saw all of the factors, they saw all of
3 the upsides to buying or not buying, but they just were
4 paralyzed with their decision?

5 PROSPECTIVE JUROR: Yes.

6 MR. WONG: How did you get them beyond that? How
7 would you, in the jury deliberation room, should you be chosen,
8 work with your other jurors to help that decision paranoia?

9 PROSPECTIVE JUROR: It's basically through reason.
10 You have to reason with them, that the decision they're making,
11 you have to present the facts, and let them decide to do the
12 deal.

13 It's pretty -- pretty straightforward. The numbers
14 speak for themselves.

15 MR. WONG: Now, in this case, you're not going to be
16 dealing with black and white numbers, but you're going to have
17 to hear evidence.

18 Would anyone -- well, let me put it this way. By a
19 show of hands, will you all pledge to honestly and impartially,
20 should you be chosen, participate with your fellow jurors,
21 deliberate with your fellow jurors, can I see a show of hands?

22 Good.

23 I have some particular questions about people.

24 Mr. Guay, you work at a rehabilitation center? Could you tell
25 me about that, and tell me -- I'm curious, because I assume in

1 that setting, you would work with people who are afflicted with
2 various sorts of addictions, including drug addictions.

3 PROSPECTIVE JUROR: Yes, we work in a mental health
4 rehabilitation center, so we're a step down from a state
5 hospital. We work with people with dual diagnoses, like
6 schizophrenia and also different drug addictions.

7 MR. WONG: What is the particular function you perform
8 there?

9 PROSPECTIVE JUROR: Currently, what I do is I train
10 people on skills to help them be ready to go back into the work
11 force in the community. And I also work with them on devising
12 plans and learning coping skills to help them with their
13 symptoms.

14 MR. WONG: Do you work with -- do you counsel people
15 who are addicted to controlled substances?

16 PROSPECTIVE JUROR: Yes.

17 MR. WONG: And what -- how would that experience come
18 to bear, should you be chosen to deliberate in that room? How
19 would that affect your decision-making?

20 PROSPECTIVE JUROR: I don't think it would affect it,
21 because all we do every day is we're met with these people who
22 have these difficulties in life. And we do our best to be
23 objective to their needs, and make sure that we're able to give
24 them the best care possible, without judging them based on
25 their history, like, oh, you can't do that because of this.

1 MR. WONG: Of course, right. As between the person
2 who receives drugs and the person who's delivering drugs, would
3 you have any particular bias between those two parties to the
4 transaction?

5 PROSPECTIVE JUROR: I mean, everyone has a little bit
6 of bias. I'd say there's a little bit there, but not enough to
7 influence my decision, one way or the other.

8 MR. WONG: And what would you -- and I'm not
9 suggesting at all it would influence your decision. Of course
10 you could fairly and impartially put it aside, but working with
11 people who are addicted to drugs, does that affect your -- do
12 you have any thoughts about the people who are dealing those
13 drugs?

14 PROSPECTIVE JUROR: Yeah, I have some thoughts about
15 them.

16 MR. WONG: What are those thoughts?

17 PROSPECTIVE JUROR: It's probably not best that
18 they're dealing these things to these people, because it really
19 affects their lives.

20 MR. WONG: Does anyone have any experiences similar to
21 Mr. Guay, where you have, either through a family member,
22 through -- we have nurses here, we have teachers. I mean, does
23 anyone have any particular bias or experience with drug
24 transactions that you would want to mention to us now?

25 Okay. Well, thank you again for your time. We look

1 forward to presenting our case to you. And I will tender it
2 back to the Court.

3 THE COURT: All right. Thank you.

4 Mr. Binninger, Ms. Weber, Mr. Wong, will you approach
5 one more time, please, before we distribute the list?

6 (Sidebar.)

7 THE COURT: All right. Counsel are at sidebar with
8 the Court. Any additional challenges for cause?

9 MR. BINNINGER: Yes, Your Honor, on behalf of the
10 defense, I would challenge for cause Juror Number 31,
11 Ms. McCaw.

12 THE COURT: Okay.

13 MR. BINNINGER: Who indicated that she might have a
14 difficult time listening to the case because of her son's
15 friend that died.

16 And then also, I would challenge for cause Juror
17 Number 13 and Number 16. That's Mr. Wood and also Mr. -- I'm
18 sorry, I forget his name.

19 THE COURT: Galacgac.

20 MR. BINNINGER: I think with respect to Mr. Galacgac,
21 it's been pretty much well established that he can not deal
22 with the burden of proof.

23 With regard to Mr. Wood, I admit the Court did
24 rehabilitate him, but I can't get past the fact that he started
25 off by saying, if you don't testify, you're guilty. And then

1 it just seemed like -- I appreciate the Court following up, but
2 given the setting, it seemed to me that he just sort of
3 backtracked and said, you know what? Forget it, I don't want
4 to be singled out. To me, I think he should be kicked as well.

5 THE COURT: Let me go from back to forward.

6 Ms. McCaw, any objection excusing her for cause?

7 MR. WONG: No.

8 THE COURT: She'll be excused for cause.

9 MR. BINNINGER: Yes, sir.

10 THE COURT: Ms. McCaw, she's Number 31. Next would be
11 13, Mr. Galacgac, any objection to excluding him for cause?

12 MR. WONG: No.

13 THE COURT: The Court excuses him for cause, too.

14 Finally, Mr. Wood, who's Juror Number -- let's see --

15 MR. BINNINGER: 13.

16 THE COURT: Yeah, I'm sorry, he's 13, and Galacgac
17 is --

18 MS. WEBER: 16.

19 THE COURT: 16, yeah, okay. Any objection to Wood
20 being excused?

21 MR. WONG: Yes, we do object to Mr. Wood. We think he
22 squarely told the Court he could follow the instructions. He
23 was very impartial.

24 THE COURT: I agree. He came around. He said, I got
25 it. Look, even the Supreme Court has recognized the natural

1 instinct outside of the judicial processes if someone stays
2 silent in the face of a serious accusation, they have something
3 to hide, and they're probably guilty. The Supreme Court has
4 said as much. So for a juror to say, yeah, that's how I feel,
5 but I can come around, and I read the instruction to him, and
6 he said, I get it, I'll follow it.

7 I'm not suggesting it's not a matter for peremptory
8 challenge. It probably is, but I think he's sufficiently
9 rehabilitated.

10 Let me say also, I watched his demeanor, too. I don't
11 think he was simply complying. I think after he listened to
12 the presumption of innocence and the right to remain silent
13 that he said, oh, okay, I mean, that's the rule that applies
14 here.

15 I have in mind he's an engineer. He mentioned he was
16 analytical. So all of those things, in my judgment, counsel
17 against excusing him for cause at this point. I accept his
18 explanation.

19 So that's denied. The other two are granted. One
20 alternate. That means one additional strike per side if you
21 choose to use it, one alternate juror.

22 (End of sidebar.)

23 MR. WONG: May I go sidebar?

24 THE COURT: Nope. Let's go. We're going to get you a
25 list in just a second here. You can't do it without the list,

1 right?

2 MR. BINNINGER: Yes, Your Honor.

3 THE COURT: We're almost through, folks. If you'll
4 bear with us just a few more minutes, they're going to make
5 their decisions with some dispatch.

6 They've listened carefully. They've made notes. I
7 think they have an idea of how they want to exercise their
8 peremptory challenges. And I will impanel one alternate juror
9 in the case, so we'll impanel a jury consisting of 13, rather
10 than 12, to begin with here.

11 So, Mr. Binninger, if you use all strikes, it should
12 be 1 through 10, and then A1 if there's a strike to an
13 alternate. The government 1 through 6, with A1, if there's a
14 strike for the alternate on yours.

15 So let's see. While they're making their decisions,
16 I'll tell you a little bit about the history of our court.

17 Mr. Concepcion remembers because he was here. We used
18 to have a single courthouse. The original courthouse is over
19 here. It's the old bankruptcy courthouse. If you're out and
20 about at noon, you might want to take a look at it. It's
21 called the Weinberger Courthouse now. It was named after the
22 first district judge that was actually assigned here in San
23 Diego.

24 Up until 1968, our district used to be part of Los
25 Angeles. It was a huge district. It went from all the way up

1 further questions.

2 THE COURT: Anything else?

3 THE WITNESS: Thank you.

4 MR. WONG: Nothing further, Your Honor.

5 THE COURT: All right. Thank you, Mr. Gallagher.
6 You're excused as a witness. You may stand down.

7 THE WITNESS: Thank you, Judge, and I apologize for
8 missing yesterday.

9 THE COURT: Next witness, Ms. Weber?

10 MS. WEBER: Your Honor, at this time, the
11 United States calls Dr. Michael Levine.

12 THE COURT: Doctor, come forward, please. You can
13 stop there and raise your right hand.

14 MICHAEL LEVINE, M.D., GOVERNMENT'S WITNESS, SWORN

15 THE COURT: All right. Have a seat and adjust the mic
16 as close as possible to your mouth. Keep your voice up. State
17 and spell your full name.

18 THE WITNESS: Michael Levine, M-I-C-H-A-E-L, Levine,
19 L-E-V-I-N-E.

20 THE COURT: All right. And when you testify, a little
21 slower.

22 Go ahead, Mr. Wong.

23 DIRECT EXAMINATION

24 BY MR. WONG:

25 Q. Dr. Levine, where are you employed?

1 A. The University of California at Los Angeles.

2 Q. And what do you do for a living?

3 A. I'm a physician.

4 Q. What kind of physician?

5 A. Emergency medicine and medical toxicology.

6 Q. Are you also a professor?

7 A. Associate professor.

8 Q. And where do you teach?

9 A. UCLA.

10 Q. UCLA Medical School?

11 A. Correct.

12 Q. Are you also -- do you participate on any national boards?

13 A. Multiple.

14 Q. Do you participate in a nationwide poison control advisory

15 board?

16 A. Yes, sir.

17 Q. And what do you do for that board, what are your duties?

18 A. It's called the MPDS Fatality Review Committee. So what

19 that is, is it's a -- every year, they take a constellation of

20 all the deaths reported to U.S. Poison Control Centers, and go

21 through the deaths and ascribe causality.

22 Q. And you participate on that board and ascribe causality to

23 multiple events that come through a Poison Control Center?

24 A. Correct.

25 Q. What is toxicology?

1 A. Toxicology is -- is a medical specialty that evaluates
2 overdose, envenomations, and adverse drug reactions.

3 Q. Now, you are a medical toxicologist?

4 A. Yes, sir.

5 Q. How is that -- how is your job different from that of a
6 pharmacist?

7 A. So a pharmacist doesn't have any specific medical training.
8 It's an entirely different schooling. And a pharmacist focuses
9 on medications, and specifically legal prescription
10 medications, and then knows all about the pharmacology and the
11 chemistry of those medications.

12 Q. And those are drugs given at therapeutic doses?

13 A. Correct.

14 Q. And in contrast to that, what do you, as a medical
15 toxicologist, study?

16 A. So I also study adverse drug reactions, but from a -- much
17 more from a clinical standpoint. And I also focus on what
18 happens in overdose phenomena, not just at therapeutic dosing,
19 but in supratherapeutic dosing.

20 Q. What is a pathologist?

21 A. A pathologist is a physician that is trained, that
22 has -- that completes -- so they complete medical school. And
23 they undergo a residency, where they focus on several different
24 things. Mostly on tissues, and on bodies, and on lab
25 abnormalities.

1 think are in the universe of -- of things that affect a person,
2 but are irrelevant to the cause of death?

3 A. I'm sorry, could you state that slightly differently,
4 please?

5 Q. Sure. In your hypothetical example, if the cancer patient
6 was also morbidly obese, would you deem that, in your example,
7 irrelevant to their death?

8 A. That would likely be either irrelevant or possibly
9 contributory, but most likely irrelevant, because they were the
10 same weight a week before as they are the day they died,
11 presumably.

12 And that they didn't die a week before, they died the day
13 they died. So the weight doesn't change. That's not the
14 but-forth cause of death.

15 Q. And, again, this sounds very similar to the methodology you
16 just described, when you described your work as an emergency
17 room physician.

18 A. Correct. It's essentially the same general methodology.
19 Obviously, the specifics are modified, but the general
20 methodology and how I approach it is the same.

21 Q. Okay. Now let me jump to the end right now, and then we'll
22 back into how you arrived here.

23 What is your -- in your opinion, what was the cause of
24 Mr. Gallagher's death?

25 A. Acute fentanyl toxicity.

1 Q. Do you believe cocaine was a causative factor in his death?

2 A. Not at all.

3 Q. So let's see how you arrived at that opinion.

4 What did you first review when you were reviewing Brendan
5 Gallagher's death?

6 A. I don't remember the specific order, but I could tell you
7 the general set of documents that I received.

8 Q. That's fair.

9 A. I received some documentation outlining where they --
10 how -- it was all redacted, but some general documentation
11 about the overall investigation, and how they found the
12 substances, how they found pills.

13 I looked at the -- I got the autopsy report. I got the
14 investigation report from the local police department and the
15 DEA.

16 I got the DEA's lab -- the DEA lab report, in terms of the
17 analysis of the pills. And then I conducted -- after that, I
18 then conducted also some independent review, where I relook at
19 the levels, and how those relate to other deaths, just to make
20 sure I'm not incorrectly recalling things.

21 Q. You reviewed the medical examiner's toxicology report. Is
22 that one of the documents you included when you referenced
23 medical examiner documents?

24 A. It was. I apologize. I was assuming -- I was lumping that
25 all together with the autopsy.

1 A. It's very low.

2 Q. And are you able to derive from that, that the -- either
3 the cocaine had been there longer than that, or it was a
4 relatively low amount of cocaine?

5 A. I can't tell you which of the two, but probably one of the
6 two.

7 Q. It was one -- one or the other of those?

8 A. Or both, yes, sir.

9 Q. Explain, why is that? Help me with the logic.

10 A. So if cocaine gets broken down to these two main
11 metabolites, even if you have some condition that's going to be
12 resulting in a slightly faster degradation of the cocaine,
13 there's -- you would expect the metabolites to be at a higher
14 amount.

15 So even if I'm converting really fast for some reason that
16 cocaine to the metabolites, breaking down that cocaine, I'm
17 going to expect to see a high amount of the metabolites. The
18 half-life, so that time that it takes for the drug to be cut in
19 half, for benzoylecgonine is much longer than it is for
20 cocaine. We're talking four, five, six hours half-life.
21 There's a range for benzoylecgonine, whereas we're talking just
22 over an hour for cocaine.

23 So I would expect, if he used like a normal amount of
24 cocaine, like an average dose of cocaine, if you will, I would
25 expect there to be cocaine found, if he used it really quickly

1 before his death. And then if he used it hours prior, I would
2 expect there to be still more benzoylecgonine found.

3 And when you look at series of cocaine deaths, on
4 postmortem examples or postmortem samples, meaning when you're
5 looking at blood from dead bodies, where the cause of death is
6 cocaine, you often see cocaine levels in the 6 or 7 or 800
7 range.

8 We're seeing none. And then the benzoylecgonine would be
9 expected to be high as well, in the hundreds, not .08.

10 Q. Okay.

11 A. Or the tens to hundreds, depending on --

12 Q. And that is -- so that is a relatively low amount compared
13 to the -- when put in the context of other typical cocaine
14 cases that you have seen?

15 A. Where cocaine is the death, correct.

16 Q. Where cocaine is the death, yes.

17 So let's go a little deeper into why you are able to
18 exclude or on what basis you exclude cocaine as playing any
19 role in Mr. Gallagher's death.

20 A. So I think there's a couple of reasons, one of which is we
21 talked about the levels. But in the very beginning, I talked
22 about what is the person doing prior -- one of the things I
23 look at is what was the decedent doing prior to their death.

24 So when someone has -- when someone is high on cocaine, and
25 certainly to the point that they're going to have a fatality

1 from the cocaine, I would expect that they're not going to be
2 sitting there nicely calmly smoking a cigarette. They're going
3 to be agitated.

4 Patients that are high on cocaine are agitated, they're
5 sweaty, they're -- often you'll find abnormal vital signs.
6 Now, we don't know what his were in this case, but they often
7 have a high heart rate, high blood pressure.

8 Really everything goes up with cocaine. So your mental
9 status goes up. You're hypervigilant. You're paranoid.
10 You're hallucinating. You're agitated. So you could have --
11 maybe you'll have a seizure, but you'll have some increased
12 mental status.

13 You'll be not typically sitting there nice and calm, and
14 just sitting there smoking -- like you're smoking a cigarette,
15 or just smoking a cigarette, and then die from cocaine a little
16 bit later.

17 Q. Is it true that most cocaine-related deaths occur while
18 someone is under the influence of cocaine?

19 A. Correct. So there was -- if you look at, for example,
20 cocaine-induced heart attacks, the risk is about 24 times
21 greater of dying in that first hour compared to subsequent
22 hours.

23 Q. Okay. What other -- you mentioned a heart attack. What
24 other ways can cocaine induce sudden death?

25 A. It could cause what's caused an aortic dissection, where it

1 tears open part of your aorta. And you physically get a hole
2 in the aorta, which is the large blood vessel leaving the
3 heart.

4 It could cause hemorrhage into your brain and bleeding in
5 your brain. And that could cause swelling and bleeding and
6 ultimate death. It could cause some lung abnormalities that
7 you could see, which is not usually going to be an imminent
8 sudden death. That's a little bit more subacute death.

9 But the quick ones are either going to be things like a
10 heart attack, some type of arrhythmia, some type of aortic
11 dissection, a head bleed, or some traumatic injury, like you're
12 agitated and paranoid, and running around doing odd things.
13 And you run off a building, or you do something like that,
14 because you're acting bizarre.

15 Q. Now, all of those things you mentioned, are they all most
16 likely to occur while you're under the influence of cocaine?

17 A. Correct.

18 Q. As opposed to hours later?

19 A. Yes, sir.

20 Q. So why is it that you would not expect someone to consume
21 cocaine, and then hours later suffer an aortic dissection that
22 you described?

23 A. So one of the things that happens with an aortic dissection
24 is it's usually in some individual that's predisposed, but they
25 have a thin wall. The aorta is a little bit thin.

1 And then when you have cocaine, like I said before,
2 everything goes up. So your heart rate goes up, your blood
3 pressure goes up. You're really increasing that pressure
4 inside of the artery.

5 So now you have a lot higher pressure all of a sudden being
6 directed at a weak part of your aorta. And it physically
7 causes a hole to form in the aorta.

8 Q. Now, isn't it true that cocaine can cause an enlargement of
9 the heart?

10 A. Yes, sir.

11 Q. And an enlargement of the heart --

12 A. I'm sorry, let me clarify. Chronic cocaine, not single use
13 cocaine.

14 Q. Chronically using cocaine can cause an enlargement of the
15 heart?

16 A. Correct.

17 Q. What -- how does an enlarged heart contribute to sudden
18 death?

19 A. When your heart gets very enlarged -- well, there's two
20 factors at play here. One of which is, why is your heart
21 enlarged. A lot of patients have an enlarged heart because of
22 an underlying disease process.

23 Like they have atherosclerotic disease. They've had -- and
24 it ends up causing an enlargement of the heart. Some people
25 have enlargement of the heart without underlying disease

1 processes. So there is an increased risk of sudden death with
2 an enlarged heart. A lot of that is related to the underlying
3 disease process that they have. Even without it, though, there
4 still is a small increased risk of sudden death by having an
5 arrhythmia or an abnormal heartbeat.

6 Q. And would you expect those, an arrhythmia based on an
7 enlarged heart, to also occur contemporaneous with or
8 relatively soon after consumption of the cocaine?

9 A. I would expect it to be much more likely, correct.

10 Q. Why is that?

11 A. Because cocaine does a couple things, one of which is, in
12 addition to things like raising your heart rate and your blood
13 pressure, it messes up what's called sodium channels in your
14 heart, or throughout your body, but in your heart as well. And
15 that sodium channel is responsible for some of the electrical
16 activity of your heart.

17 So think of it almost as -- so here's my heart. There's a
18 little pacemaker here, and it sends electrical impulses, like
19 to the middle of the heart. And that spreads out over the rest
20 of the heart.

21 And once that electricity goes there, it tells the heart to
22 beat. That's why the top part beats slightly before the bottom
23 part.

24 The cocaine is going to -- and when you have high doses, it
25 will cause sodium channel blockade, which will mess up that

1 electrical impulse flow, and could cause arrhythmias. But
2 that's going to be in high doses. And the higher the dose is
3 going to be shortly after being used, not hours after you've
4 metabolized the drug.

5 Q. Okay. And with regard to all of those factors you just
6 listed, all the things you just described about the way an
7 enlarged heart can cause sudden death, and the way cocaine can
8 cause sudden death, does your conclusion that Mr. Gallagher
9 died at least five hours after consuming cocaine allow you to
10 rule those out?

11 A. Yes, sir.

12 Q. Because he had to be alive to metabolize that cocaine; is
13 that correct?

14 A. Correct.

15 Q. Now, why is it that cocaine could not have been metabolized
16 after he died while he was laying in the morgue, before they
17 took the blood. They were -- I'll ask you to assume that there
18 was about 18 hours while he was sitting in the morgue before
19 his blood was drawn.

20 A. Well, for starters, I believe he was refrigerated in the
21 morgue. So when you're refrigerated, the body temperature
22 becomes much cooler. And the stability of cocaine in cool
23 environments, meaning when it's, like, 4 or 5 degrees
24 centigrade, so it's just like 40-ish degrees, it lasts a lot
25 longer. It doesn't break down very quickly. If you have room

1 cause would be the cardiovascular disease?

2 A. I don't think it's a but-forth cause, is what I said.

3 Q. I understand that, sir. I understand that you have an
4 opinion, I'm just saying, in your report, you did not assess
5 the cardiovascular disease aspect?

6 A. I didn't -- I didn't discuss it in my report. I did assess
7 it. I didn't discuss it.

8 Q. Okay. All right. So you saw the Scripps medical records
9 from when Mr. Gallagher was actually taken to the hospital,
10 right?

11 A. Yes, sir.

12 Q. And you saw that in Dr. David J. Smith's notes, he said
13 that Mr. Gallagher was admitted due to cardiac arrest?

14 A. Yes, sir.

15 Q. And the final diagnosis was cardiac arrest?

16 A. Yes, sir.

17 Q. That means that the heart is stopped?

18 A. Yes, sir.

19 Q. Did you contact -- well, you didn't contact Dr. David
20 Smith, did you?

21 A. I did not.

22 Q. And ask him about that finding or that observation?

23 A. I think it was fairly clear his heart was stopped. He had
24 no pulse, no blood pressure, and he was asystolic.

25 Q. Okay. All right. So we talked a little bit about

1 arrhythmias, and we heard that arrhythmias can happen without
2 any drug use, right?

3 A. Correct.

4 Q. If someone just has an enlarged heart, right?

5 A. Correct.

6 Q. And it can also happen -- it can be precipitated by
7 cocaine?

8 A. Correct.

9 Q. And you don't know exactly how much cocaine would have
10 caused an arrhythmia in Mr. Gallagher?

11 A. That's a correct statement.

12 Q. Okay. So because you only saw select text messages from
13 Mr. Gallagher's phone, you didn't see the frequency with which
14 he was seeking out or using drugs?

15 A. That's correct.

16 Q. Okay. I'd like to talk to you a little bit about the
17 fentanyl now.

18 A. Okay.

19 Q. We've heard a lot today about 6.1 nanograms per milliliter
20 in the blood. And I understand that that is within the lethal
21 range. But 6.1 nanograms per milliliter, that doesn't actually
22 tell you what was required for death, right?

23 A. I'm sorry, please restate the question?

24 Q. Sure. 6.1, that just tells you what was detected in the
25 blood?

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	No. 20-CR-2923-LAB
)	
v.	)	August 25, 2021
)	
JAHVARIS LAMOUN SPRINGFIELD,	)	9:03 a.m.
)	
Defendant.	)	San Diego, California
)	

TRANSCRIPT OF JURY TRIAL - DAY 2
BEFORE THE HONORABLE LARRY ALAN BURNS
UNITED STATES DISTRICT JUDGE

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1 Q. There was another clear plastic baggy, correct?

2 A. Yes.

3 Q. Perhaps, this could have been it?

4 A. Yes.

5 Q. Okay.

6 A. Okay. And I don't -- just to clarify, I don't know if we
7 actually seized that -- that smaller one that was more center
8 frame, just because there was nothing in there, but we might
9 have.

10 Q. Well, I appreciate you bringing that up, because that's
11 sort of where I was going with it. You had indicated in direct
12 that someone maybe could have licked the bag to consume it.
13 And by that, I mean the bag that was in the tall dresser,
14 correct?

15 A. Right.

16 Q. You do not know what was in that bag before you arrived?

17 A. Correct.

18 Q. And you do not know the purity -- excuse me, let me
19 withdraw that question.

20 You know from the results of the DEA test that these bags
21 detected fentanyl and heroin, right?

22 A. Yes.

23 Q. You do not know how much fentanyl was previously in these
24 bags?

25 A. No.

1 Q. You do not know how much heroin was previously in these
2 bags?

3 A. No.

4 Q. You do not know how those bags or those drugs became
5 commingled?

6 A. No.

7 Q. Okay. And you don't know the concentration rate of the
8 fentanyl that was in that bag?

9 A. No.

10 Q. Okay. So you responded to 4023 Haines Street the night of
11 the overdose. And did you speak to Mr. Gallagher's roommates?

12 A. Briefly.

13 Q. All right. Neither of them -- let me rephrase. How many
14 roommates did you speak with?

15 A. Two roommates.

16 Q. Mr. Searcy and Mr. Wantz?

17 A. Yes.

18 Q. You understood that there was another roommate, right?

19 A. I did.

20 Q. Okay. He went by -- his name was Marcus Sirna?

21 A. Yes.

22 Q. Okay. None of the roommates knew what Mr. Gallagher had
23 done on February 5th?

24 A. Correct.

25 Q. Was there any attempt to follow up with Mr. Sirna?

1 A. No.

2 Q. I'd like to talk to you now about the text messages with
3 the 8864 number.

4 A. Okay.

5 Q. So Mr. Gallagher reached out to that cell phone number
6 right at the early, early morning hour of February 5th, right?

7 A. I'd have to look at the time to know when.

8 Q. Okay. Well, let me just say it this way. In those text
9 messages, there are no first names identified?

10 A. That's correct.

11 Q. There are no last names identified?

12 A. That's correct.

13 Q. There are no nicknames identified?

14 A. Correct.

15 Q. And you don't have an identity for the prescriber of that
16 phone -- subscriber, excuse me?

17 A. Correct.

18 Q. Okay. So in the text exchange with the 8864 number,
19 Mr. Gallagher was seeking two, and then he changed it to three
20 for \$80, correct?

21 A. Yes.

22 Q. Okay. There's nothing in those text messages about blues?

23 A. Correct.

24 Q. There's nothing in those text messages about M30s?

25 A. Correct.

1 Q. When -- was it you or Group Supervisor Brown that posed as
2 Mr. Gallagher?

3 A. That was me.

4 Q. That was you? Okay. When you reached out to
5 Mr. Gallagher -- excuse me, when you reached out to the 8864
6 number to ask for two more, you did not say blues in your text
7 messages?

8 A. Correct.

9 Q. You did not say M30s in your text messages?

10 A. Correct.

11 Q. Okay. The 8864 number initially texted back, "when,"
12 right?

13 A. Yes.

14 Q. Then there was several hours that went by before there was
15 another incoming text from 8864?

16 A. I'd have to look at the timeframe.

17 Q. Okay.

18 A. But I believe the text messages ranged from, like, around 9
19 p.m. to midnight, is when we ceased communications.

20 Q. Okay. All right. And there was never any actual meet up
21 with the 8864 number, right?

22 A. That's correct.

23 Q. You never attempted to pose as Mr. Gallagher and text the
24 7476 number?

25 A. No.

1 Q. So I'd like to talk to you about the GPS ping evidence --

2 A. Okay.

3 Q. -- for a moment. You started utilizing that GPS evidence
4 on February 12th, 2019, correct?

5 A. Yes.

6 Q. Okay. And you said that the radius of that GPS ping is
7 about 500 to 900 meters, did I hear you correctly?

8 A. Yes, that's correct.

9 Q. And so that the jury has a better understanding, that's
10 approximately one-quarter to one-half mile?

11 A. Yes.

12 Q. Okay. And so that's just the radius, it doesn't
13 encom -- so it's one-quarter to one-half mile in the north
14 direction, the east direction, the south direction, and the
15 west direction.

16 Well, do you know? I don't mean to ask you if you don't
17 know.

18 A. I'm not sure.

19 Q. Okay. All right. That GPS cell site information, it does
20 not tell you who is actually using the phones?

21 A. No.

22 Q. It does not tell you what is said in the conversations?

23 A. No.

24 Q. It does not tell you whether or not the phone is inside of
25 a vehicle or an apartment, or anything other than just the

1 general vicinity in relation to the cell tower?

2 A. Correct.

3 Q. So if I recall correctly, during your surveillance of Gill
4 Village Way, at one point, you saw Mr. Springfield drive the
5 Mercedes, right?

6 A. Yes, I observed Mr. Springfield drive the Mercedes on
7 February 21st.

8 Q. Okay. All right. Before then, in your investigation, you
9 learned that that was not actually his car, right?

10 A. Yes.

11 Q. You learned that it was Sherie Gil's car?

12 A. Yes.

13 Q. And you learned Sherie Gil to be Mr. Springfield's
14 girlfriend?

15 A. Yes.

16 Q. On February 21st, when you were monitoring Gill Village
17 Way, you saw Mr. Springfield walk towards the Mercedes during
18 the morning, correct?

19 A. Yes.

20 Q. You also saw Isaiah Holland and Brandon Hunt, at one point,
21 walk towards the Mercedes as well after Mr. Springfield -- not
22 with him, forgive me, but temporally after him?

23 A. I believe that was in my report.

24 Q. When Mr. Springfield was arrested, that was after the
25 Mercedes left the car wash, correct?

1 A. Yes.

2 Q. At the time, Mr. Springfield was driving the Mercedes?

3 A. Yes.

4 Q. He did not attempt any -- he did not try to flee from law
5 enforcement in his vehicle?

6 A. No.

7 Q. He did not try and park, get out of the car and run?

8 A. No.

9 Q. When you actually looked inside of the Mercedes, you found
10 the 8864 number in the center console, right?

11 A. One of the other agents did.

12 Q. Okay. Do you know where the 8864 and the 7476 number were
13 found in relation to the Mercedes?

14 A. I'd have to look at the report again.

15 Q. Well, then let me just ask you this. Did you actually call
16 both numbers or did another agent do that?

17 A. I believe it might have been me.

18 Q. Okay. Would it -- would it refresh your recollection to
19 take a look at your report?

20 A. It would.

21 Q. Okay.

22 MR. BINNINGER: Showing opposing counsel.

23 BY MR. BINNINGER:

24 Q. Agent Peters, there you are.

25 A. Do you want me to look over where they were located?

1 Q. It's a long report, so I'm just going to direct your
2 attention to page 6.

3 A. Okay.

4 Q. Has your recollection been refreshed?

5 A. Yes, as far as -- I did place calls to both numbers.

6 Q. Okay. The 8864 number didn't get any service, right?

7 A. Yeah, my call didn't go through.

8 Q. The 7476 number did go through?

9 A. Yes.

10 Q. Okay. Forgive me, one second.

11 Okay. The three blue pills that were found in the Ziploc
12 bag in the multicolored pouch in the trunk of the Mercedes, you
13 requested fingerprint analysis of the Ziploc bag?

14 A. Yes.

15 MR. BINNINGER: I'm showing opposing counsel what has
16 been premarked as Defense Exhibits J through N.

17 BY MR. BINNINGER:

18 Q. Agent Peters, I have handed you what's been premarked as
19 Defense Exhibits J through N. Do you know what those pictures
20 are?

21 A. Yes.

22 Q. What are they?

23 A. They're photographs taken by Special Agent Duray of various
24 items found in the Mercedes.

25 Q. Are those fair and accurate depictions of the items found

1 in the Mercedes on the day that the Mercedes was stopped?

2 A. Yes, they were taken that day.

3 MR. BINNINGER: At this time, I would move into
4 evidence Defense Exhibits J through N.

5 THE COURT: Any objection?

6 MR. WONG: No objection.

7 THE COURT: All right. J through N are admitted.

8 (Defendant's Exhibits J through N were received in evidence.)

9 BY MR. BINNINGER:

10 Q. I'm showing you what's been entered into evidence as
11 Exhibit J. Who is that?

12 A. That is Sherie Gil, Mr. Springfield's girlfriend.

13 Q. Okay. I'm showing you what has been entered into evidence
14 as Defense Exhibit L. What is that?

15 A. That was Ms. Gil's purse. And that's the rear passenger
16 seat of the Mercedes. And that's a bag containing numerous
17 smaller bags.

18 Q. And showing you what has been entered into evidence as
19 Defense Exhibit M. Is that --

20 A. Yeah, that's a depiction of all the -- the bag and the
21 smaller clear and green.

22 Q. And finally, showing you Defense Exhibit N. Is this what
23 you found just strewn out?

24 A. Yes.

25 Q. Okay.

1 THE COURT: Can you clarify something for me?

2 MR. BINNINGER: Yes.

3 THE COURT: You said J through M, was there an Exhibit
4 K?

5 MR. BINNINGER: Yes. Yes, there was.

6 THE COURT: Is that --

7 MR. BINNINGER: I just didn't go to it, Your Honor.

8 THE COURT: So K is in evidence, it just hasn't been
9 shown yet. Thank you.

10 MR. BINNINGER: My apologies.

11 THE COURT: No, that's all right.

12 BY MR. BINNINGER:

13 Q. Agent Peters, these are the baggies that we had talked
14 about before that are consistent with drug distribution, right?

15 A. Yes, a lot of times we find those types of bags.

16 Q. Agent Peters, you participated in the execution of the
17 search warrant at Gill Village Way the night of February 21st,
18 correct?

19 A. I did.

20 Q. Okay.

21 MR. BINNINGER: I'm showing the United States
22 Government what's been premarked as Defense Exhibit O through
23 BB.

24 THE COURT: You'll have to speak up again. O through
25 BB?

1 MR. BINNINGER: O through BB.

2 THE COURT: So O through Z, and then what --

3 MR. BINNINGER: And then AA and BB.

4 THE COURT: Okay. And these are photos?

5 MR. BINNINGER: Yes.

6 MR. WONG: No objection.

7 BY MR. BINNINGER:

8 Q. Agent Peters, could you please look through those, and let
9 me know when you've had sufficient time to look at all of them?

10 A. Okay.

11 Q. Do you know what those photos are?

12 A. Yes, these photos were taken during the search warrant at
13 2258 Gill Village Way. And I forgot what the actual unit
14 number was.

15 Q. 1001, is that right?

16 A. That's correct.

17 Q. Are those fair and accurate depictions, as you recall, on
18 February 21st of the Gill Village Way apartment?

19 A. Yes.

20 Q. So to be clear --

21 THE COURT: Do you want to offer them in evidence
22 first?

23 MR. BINNINGER: I am so sorry. Yes, I would move them
24 into evidence, yes.

25 THE COURT: Any objection?

1 MR. WONG: No objection.

2 THE COURT: O through Z, AA, BB are all admitted.

3 MR. BINNINGER: Thank you.

4 (Defendant's Exhibits O through Z, AA, BB were received in
5 evidence.)

6 BY MR. BINNINGER:

7 Q. So this is a picture -- Defense Exhibit O, that's a picture
8 of the outside of Gill Village Way?

9 A. Yes, that's the building. It's a three or four-story
10 apartment building with multiple units.

11 Q. So when you -- when the task force went inside, you saw
12 mattresses on the floor?

13 A. Yes.

14 Q. And your task force team interacted with -- you found 11
15 people in that apartment complex, right?

16 A. In that unit.

17 Q. In that unit. In that unit, yes.

18 A. Yeah, that sounds about right.

19 Q. Okay. In addition to the mattresses on the floor, you saw
20 rooms with suitcases and luggage strewn about?

21 A. Yes.

22 Q. Okay. In the apartment complex -- in the apartment, you
23 found a bag of white powder?

24 A. Yes.

25 Q. There was a back patio, correct?

1 A. There was.

2 Q. And this door led to the back patio?

3 A. Yes.

4 Q. Out on the back patio, you found another bag of white
5 powder?

6 A. Yes.

7 Q. Out on the back patio, you also found a scale?

8 A. Yes.

9 Q. And that scale, just to clarify, since it's a little
10 difficult to see on this screen, is right here?

11 A. Yes. Yeah, it's inside a -- like a little bag.

12 Q. Okay. And like we had talked about before, this is a piece
13 of drug paraphernalia used by dealers to weigh their product,
14 right?

15 A. Yeah, it's a digital scale, yes.

16 Q. Okay. Out on the couch -- there was a couch back there,
17 and you saw a handgun?

18 A. Yes.

19 Q. Okay. Of the 11 people that were in the apartment complex,
20 three of them tried to run past the task force, right?

21 MR. WONG: Objection, foundation. Did he personally
22 see it?

23 THE COURT: Well, that's what he's being asked. Did
24 you see people run?

25 THE WITNESS: I did not.

1 BY MR. BINNINGER:

2 Q. Okay. Were you inside the apartment when the execution was
3 conducted or was that other agents?

4 A. I was inside, but further back, I guess. I wasn't one of
5 the first individuals through the door.

6 Q. Okay. Did you write a report about what happened in this
7 case?

8 A. Yes.

9 Q. Do you recall the details of that report?

10 A. Yes.

11 Q. Do you remember describing how the task force saw people
12 run?

13 MR. WONG: Objection, hearsay.

14 THE COURT: I'm sorry, Mr. Wong, I'm having trouble
15 hearing you.

16 MR. WONG: Objection, hearsay.

17 THE COURT: Put the question to him again?

18 BY MR. BINNINGER:

19 Q. Okay. Did you, in your capacity as part of the task force
20 team, know that anyone in the apartment complex tried to run?

21 THE COURT: The objection is sustained. It's calling
22 for hearsay. He said he didn't see it himself.

23 MR. BINNINGER: Fair enough.

24 BY MR. BINNINGER:

25 Q. Was one of the individuals that you encountered inside of

1 the apartment this gentleman?

2 A. Yes.

3 Q. That's Isaiah Holland, correct?

4 A. Correct.

5 Q. In Mr. Holland's possession, there were several clear and
6 green plastic baggies, correct?

7 A. I don't -- I guess in possession, what do you mean by
8 possession? I don't remember if they were on him, or like in
9 his area, but those were with his -- yes, those were with his
10 belongings, because his identification is there.

11 Q. Thank you. This gentleman was at the apartment -- the
12 apartment, right?

13 A. Yes.

14 Q. That's Brandon Hunt?

15 A. Correct.

16 Q. You indicated that Mr. Hunt had a red bag in his
17 possession?

18 A. Yes, amongst his belongings.

19 Q. Okay. This is a picture of his belongings?

20 A. Yes.

21 Q. And there were two pills found in Mr. Hunt's red bag?

22 A. Yes.

23 Q. Those pills -- and this is a little difficult to see, but
24 those pills were in the shape of the Superman logo?

25 A. Correct.

1 Q. Okay. This individual was at the apartment complex?

2 A. Yes.

3 Q. That's Mr. Hamze Alshawbkeh?

4 A. I believe so.

5 Q. Okay. You know that what was found in his pants pocket was
6 a blue M30, right?

7 A. Yes.

8 Q. And I don't want to ask you something that you didn't see,
9 Agent Peters, but just for my own clarification, Agent Wasser
10 was also part of this execution of the search warrant?

11 A. Yes, he was.

12 Q. Okay. So Agent Wasser perhaps might be able to better
13 answer what he saw when he first walked in and what people did?

14 A. Yes.

15 Q. Okay. The handgun that I showed you, that was submitted
16 for fingerprint testing, correct?

17 A. Yes. I believe -- I know DNA. I don't know what exactly,
18 but it was sent to San Diego Police Department for analysis.

19 Q. Okay. One of those Ziploc bags -- the Ziploc bag that was
20 found on the patio, that was submitted for fingerprint testing,
21 correct?

22 A. Yes.

23 Q. Okay. Kind of going back for a second, but the bags -- the
24 Ziploc bags in Mr. Gallagher's apartment complex, 4023 Haines,
25 none of those were requested for fingerprint testing?

1 A. I don't believe so.

2 Q. All right. I'd like to talk a little bit more about
3 Mr. Gallagher's text messages. Some of those text messages
4 that we've seen indicate for the 7476 number, to come by the
5 crib?

6 A. Yes.

7 Q. Crib meaning the apartment complex, or the apartment?

8 A. That's what I would refer -- crib, it's going to be his
9 house, that's what it's slang for.

10 Q. And there were -- none of the roommates were able to
11 identify Mr. Springfield as someone who had ever given blues to
12 Mr. Gallagher?

13 MR. WONG: Objection.

14 THE COURT: Calls for hearsay, sustained.

15 BY MR. BINNINGER:

16 Q. Okay. Some of those text messages indicate to stop by
17 Mr. Gallagher's place of work?

18 A. Correct.

19 Q. Did you ever go to the Backyard to interview anybody?

20 A. No.

21 Q. On January 30th, Mr. Gallagher tells the 7476 number that
22 he's -- and by he, I mean Mr. Gallagher, is at his boy's place
23 at 3239 Chicago Street, right?

24 A. Yes, I remember that text.

25 Q. Did you ever go to 3239 Chicago Street?

1 A. I did not.

2 Q. So you don't know who lives there?

3 A. I believe that was Mr. Gallagher's first residence when he
4 moved to San Diego. I don't know who exactly lives there.

5 Q. You don't know who he's referring to as his boy?

6 A. I'd have to look over the text messages in more detail.

7 Q. But fair to say, you never went to go interview that person
8 about this case?

9 A. No.

10 Q. Now, there were other text messages in Mr. Gallagher's cell
11 phone, other than the text messages with the 7476 and the 8864
12 number, correct?

13 A. Yes, there was, I think, over 4400 text messages.

14 Q. Right. And those dated back approximately seven months
15 before his death?

16 A. I think the phone was from September, he got the phone.
17 And I believe the first text message was like a welcome to your
18 new phone text.

19 Q. Okay. You know that he -- that he spoke with a contact,
20 Man Dead, about acquiring blues?

21 A. I do.

22 Q. And that based on your rationale of what attributes to an
23 actual meet up for a drug transaction, that on one occasion,
24 Man Dead gave Mr. Gallagher blues?

25 A. Yes.

1 Q. And to be fair, it does seem as though Man Dead stopped
2 communicating with Mr. Gallagher, correct?

3 A. Yes.

4 MR. WONG: Objection. Your Honor, I don't mind him
5 putting in the actual --

6 THE COURT: What's the legal basis for the objection?

7 MR. WONG: He's asking him to summarize --

8 THE COURT: Your legal objection, according to the
9 evidence code, Mr. Wong.

10 MR. WONG: Foundation.

11 THE COURT: All right. Lay a further foundation.
12 Sustained.

13 MR. BINNINGER: Yes, Your Honor.

14 Showing opposing counsel what's been premarked as
15 Government's Exhibit 319.

16 BY MR. BINNINGER:

17 Q. Agent Peters, do you know what that is?

18 A. Just give me a moment to look through it.

19 THE COURT: And I'm sorry, Mr. Binninger, the exhibit
20 letter?

21 MR. BINNINGER: No, that's the government's exhibit,
22 Your Honor.

23 THE COURT: Which one?

24 MR. BINNINGER: 319.

25 THE COURT: 319, okay.

1 mic. Speak directly into the mic. And then state and spell
2 your full name, please.

3 THE WITNESS: Yes, sir. Robert C. Stabley,
4 S-T-A-B-L-E-Y.

5 DIRECT EXAMINATION

6 BY MR. WONG:

7 Q. Dr. Stabley, where are you employed?

8 A. The Office of the Medical Examiner.

9 Q. And what is your position?

10 A. I'm a deputy medical examiner for San Diego County.

11 Q. Are you a pathologist?

12 A. Yes, I am.

13 Q. How long have you held that position?

14 A. With the county?

15 Q. Yes.

16 A. Since August 14th, 2012.

17 Q. And how long have you been a pathologist?

18 A. Since 2003.

19 Q. Could you describe your training?

20 A. So I received a bachelor's degree in chemistry, and also a
21 master's degree in chemistry. I went to medical school. And I
22 am a board certified and licensed California physician. I'm
23 also board certified in anatomic, clinical, and forensic
24 pathology.

25 Q. How long have you been a pathologist?

1 A. Since 2003.

2 Q. Where have you served?

3 A. As a pathologist?

4 Q. Yes, sir.

5 A. So I did all my training in the Armed Forces as a Navy
6 Medical Corps officer. I did my residency training in anatomic
7 and clinical pathology here in San Diego at the Naval Medical
8 Center here. I did my internship here as well. And I also did
9 my anatomic and clinical pathology training here in San Diego.
10 See a trend here.

11 And I did a year of training as a forensic pathologist with
12 the Office of the Armed Forces Medical Examiner in Dover,
13 Delaware, where we performed autopsies on our fallen warriors
14 from Afghanistan and Iraq.

15 Q. Were you ever deployed yourself, sir?

16 A. Small deployments.

17 Q. Now, as a pathologist, you are trained to respond to all
18 sorts of maladies that could cause someone to die, correct?

19 A. As a forensic pathologist, yes.

20 Q. Meaning you respond to everything from gunshot wounds to
21 -- well, let me -- do you respond to gunshot wounds?

22 A. Yes.

23 Q. Overdoses?

24 A. Yes.

25 Q. Falls?

1 A. Yes.

2 Q. Accidents?

3 A. Yes.

4 Q. And a number of other things that can happen to people.

5 A. Correct.

6 Q. Do you have any specialized training in toxicology?

7 A. I have basic training in toxicology for stuff that I deal
8 with. We have a toxicology lab in our office. And there is a
9 supervisor that I can discuss cases with.

10 Q. What is the basic training that you -- you describe? What
11 training have you had in medical toxicology?

12 A. So I've been trained to interpret basic -- basic
13 pharmacology and pharmacodynamics, as well as, you know,
14 certain drugs that we deal with on a regular basis.

15 Q. And would those include street drugs?

16 A. Yes.

17 Q. About how much training did you receive? Did you -- did
18 you do a fellowship?

19 A. No, I did not. Not in toxicology.

20 Q. Okay. So it would be training you received in your general
21 pathology training?

22 A. There was some hospital toxicology as a result of having to
23 run a hospital laboratory. And then there was basic training
24 as part of the one-year-long forensic fellowship.

25 Q. Okay. Which was part of the -- the toxicology was part of

1 that one-year fellowship, it wasn't a year long; is that
2 correct?

3 A. Correct.

4 Q. Do you ever treat people who are living?

5 A. Not now. I did.

6 Q. When did you?

7 A. Primarily when I was in the Armed Forces. That would have
8 been from 1994 until 1999.

9 Q. And was that -- in what capacity, what specialty did
10 you -- did you occupy at that time?

11 A. I was what was called a general medical officer, so I
12 provided oversight for the small ship Navy that had independent
13 duty corpsmen aboard.

14 Q. And was that as a general MD?

15 A. Yes.

16 Q. Any particular residency in preparation for that job?

17 A. Four years of medical school and an internship.

18 Q. Okay. So then it was after that job, after '99, that you
19 specialized in pathology?

20 A. Correct.

21 Q. Okay. Did you conduct the autopsy on Brendan Gallagher?

22 A. Yes, I did.

23 MR. WONG: Your Honor, I would now ask to proceed
24 under 702 as to his findings and opinions as a result of that
25 autopsy.

1 THE COURT: Any objection to that, Mr. -- do you want
2 any opportunity to voir dire?

3 MR. BINNINGER: No.

4 THE COURT: All right. You may.

5 BY MR. WONG:

6 Q. Dr. Stabley, in your autopsy report, what do you note as
7 the cause of death?

8 A. Acute fentanyl and cocaine intoxication.

9 Q. At the time you wrote that report, did you know what role,
10 if any, the cocaine played in Mr. Gallagher's death?

11 A. At the time I wrote the cause of death was the time that I
12 signed the report, so, yes.

13 Q. Okay. And why did you list cocaine and fentanyl as the
14 cause of death?

15 A. There were no other significant exam findings to explain
16 his death, and there was enough fentanyl to cause his death.

17 Q. Okay. Let's go through your examination.

18 Did you note any injury or significant acute trauma?

19 A. The sternum was fractured probably due to cardiopulmonary
20 resuscitation or CPR, but nothing else significant.

21 Q. Did you examine his heart?

22 A. Yes.

23 Q. How much did it weigh?

24 A. 550 grams.

25 Q. And what is the average weight of an adult male heart that

1 you would have expected to find?

2 A. It depends on height and body weight.

3 Q. A person of Mr. Gallagher's height and body weight, did you
4 find -- did you find that his heart was enlarged?

5 A. Yes, I did.

6 Q. How enlarged? What was the reference point you were
7 comparing it to?

8 A. My reference point for his height and body weight was based
9 on absolute weight of 500 grams.

10 Q. So it was enlarged by 50 grams or roughly 10 percent?

11 A. Roughly.

12 Q. Did you do -- conduct a microscopic examination of one
13 section of cardiac tissue?

14 A. Yes.

15 Q. And what was the pattern that tissue showed?

16 A. There was a normal -- what we call a normal syncytial
17 pattern. All of the individual cells in the heart lined up
18 like they were supposed to. There was no disorganization or
19 random distribution of those cells.

20 Q. And based on that lack of disorganization, what conclusion
21 were you able to draw?

22 A. Well, the only conclusion I could definitively come to at
23 that point in time, that he did not have a disease known as
24 hypertrophic cardiomyopathy.

25 Q. And what is that?

1 A. Hypertrophic cardiomyopathy is a disease of the heart that
2 typically manifests itself in the younger years. It results in
3 sudden death while someone is exercising. We can think of
4 famous basketball players that suddenly collapsed on the
5 basketball court and they were unable to be revived.

6 The majority of those cases were determined to be
7 undiagnosed hypertrophic cardiomyopathy, which significantly
8 increases the risk of sudden death, especially during exercise.

9 Q. Did you look for contraction band necrosis?

10 A. Yes, I did.

11 Q. And what did you find?

12 A. There was none.

13 Q. And why is that significant? What does contraction band
14 necrosis signify?

15 A. Contraction band necrosis has two potential reasonings for
16 those. And when we say necrosis, necrosis means death of
17 tissue. And contraction bands is just part of the individual
18 heart cells that shows that those cells are not -- the muscle
19 fibers are not normal.

20 They can result -- that can come about as a result of
21 someone who has decreased blood flow in the coronary arteries.
22 And then all of a sudden that blood flow is increased again,
23 causing some of those cells to die at the point at which the
24 blood flow begins again. That's what's known as a reperfusion
25 injury. Perfusion means just blood flow -- flow through the

1 vessels. So it's a redistribution phenomenon.

2 Another reason you can see it is when someone who is having
3 an impending heart attack, or what we call an myocardial
4 infarction, and the cells are starting to die, one of the early
5 findings that you see, or can see under the microscope is
6 contraction band necrosis or early cell death.

7 Q. And you didn't see any of that?

8 A. Not in the section I looked at, no.

9 Q. Did you see any other evidence to suggest Mr. Gallagher
10 suffered from a heart attack?

11 A. No.

12 Q. Do you believe he did?

13 A. No.

14 Q. Did you look -- did you examine his respiratory system?

15 A. Yes, I did.

16 Q. Did you note the weight of his lungs?

17 A. Yes.

18 Q. What did his right lung weigh?

19 A. I believe it was 1300 grams.

20 Q. And how about his left lung?

21 A. I don't remember. I think it was 11 something, but I'd
22 have to go back and look.

23 Q. Okay. Sir, could you take a look -- the binder to your
24 right, Exhibit -- tab 204 is your autopsy report.

25 A. Which volume, I or II?

1 Q. Volume I, tab 204.

2 A. I'm there.

3 Q. And I believe your findings of the respiratory system are
4 on page 4 of that report. If you could turn there.

5 A. I'm there.

6 Q. So what did the left lung weigh?

7 A. Exactly 1100 grams.

8 Q. Now, what is a normal weight for a person of
9 Mr. Gallagher's age, height, and weight.

10 A. A lung should weigh approximately 450 to 550 grams, without
11 any significant pathology.

12 Q. So did you determine these to be -- these lungs to be
13 abnormally heavy?

14 A. Yes.

15 Q. And this phenomenon of heavy lungs, are you able to
16 deduce -- are you able to draw any deductions or conclusions
17 from that phenomenon?

18 A. It's a nonspecific finding, but it indicates that there's
19 decreased -- or increased flow of fluids and blood to the lungs
20 because other things are slowing down. The heart and lungs are
21 actually, if you know anything about electricity, interestingly
22 enough, they're wired in series. So anything that happens to
23 the heart can directly affect the lungs, especially the right
24 lung.

25 Q. Okay. Are heavy lungs such as those, are they consistent

1 with a person having a -- a heart arrhythmia or heart attack?

2 A. They can.

3 Q. Okay. Are they -- are they something you would expect to
4 find from a heart arrhythmia?

5 A. Again, it can, depending on how long the arrhythmia lasts
6 and whether or not there's treatment for it, whether the person
7 survives.

8 Q. Okay.

9 A. Many factors.

10 Q. If a person has -- experiences sudden death as a result of
11 a heart arrhythmia, would you expect to find heavy lungs in
12 such a person?

13 A. Well, let's give an example. Say somebody's out mowing the
14 grass, and they're 70 years old, and suddenly collapse and die.
15 And it's determined it's from a sudden cardiac arrhythmia, I
16 would not expect to see the lungs heavy, because there's no
17 time for the fluids to accumulate.

18 Q. And how about in a 26-year-old person who otherwise
19 presents in good health, would you expect to see -- if, in the
20 hypothetical, that person had a heart arrhythmia and died a
21 sudden death, would you expect to see heavy lungs?

22 A. If they had a sudden cardiac arrhythmia and died
23 immediately, you know, passed out within 20, 30 seconds, and
24 then passed away, no.

25 Q. Okay. How does fentanyl affect the body?

1 A. Fentanyl is what's called an opiate or an opioid. It is
2 like morphine. It has approximately 100 to 200 times the
3 potency of morphine. So if you've ever had morphine before,
4 you know how it feels, and what it can do. It can lower blood
5 pressure. It can make you dysphoric, feel kind of spacey when
6 you take it.

7 Well, fentanyl does that 100 to 200 times more than what
8 the comparison morphine sulfate does. And it causes death by
9 respiratory depression. A person slowly fades away and dies as
10 a result of respiratory depression.

11 So it's more like -- it's a longer drawn out process, which
12 is -- you know, you would compare to someone dying of morphine
13 or in the world of pain control, oxycodone, hydrocodone, things
14 like that. They're all opioids.

15 Q. Are heavy lungs, such as the lungs you described finding
16 with Mr. Gallagher, those heavy lungs, is that consistent with
17 respiratory depression?

18 A. It can be, yes.

19 Q. Why so?

20 A. Again, the person is experiencing a more longer drawn out
21 death. And as a result, there's time to accumulate fluids in
22 the lungs. And heavy congested lungs is a very consistent and
23 common finding in someone who dies from an opioid intoxication
24 like fentanyl.

25 Q. Such as a fentanyl overdose?

1 A. Yes, sir.

2 Q. What is the half-life of cocaine in the human body?

3 A. I do not know that number.

4 Q. Okay. Did you -- you've studied many cocaine-induced
5 deaths, correct?

6 A. Unfortunately, yes.

7 Q. What does a typical cocaine-induced death look like? What
8 do you see?

9 A. You mean when the person is alive?

10 Q. When the person is alive, right, what are the symptoms and
11 what does a person experience?

12 A. The cases I've seen in the emergency room, they're
13 tachycardic. They have an increased heart rate. They have
14 increased blood pressure. They can be combative, be very
15 agitated. They can be hot and sweaty. They can have an
16 elevated temperature.

17 Q. And what does a fentanyl-induced death -- how does that
18 manifest itself in the person in the last moments?

19 A. They typically exhibit respiratory depression. It's very
20 difficult to ventilate them because they are experiencing heavy
21 and congested lungs. They're very dysphoric. They can be just
22 flat out unconscious.

23 Q. Okay. Now, you've examined the toxicology report in this
24 case in conjunction with your autopsy report, right?

25 A. Yes.

1 Q. And did you note the quantity of fentanyl found in

2 Mr. Gallagher's blood?

3 A. Yes.

4 Q. And what was that?

5 A. 6.1 nanograms per milliliter.

6 Q. And did you note the presence of a cocaine metabolite in

7 Mr. Gallagher's blood?

8 A. Yes.

9 Q. And what was that?

10 A. A compound known as benzoylecgonine.

11 Q. And what was the quantity found?

12 A. I believe it was 0.08 milligrams per liter.

13 Q. How -- did you see any -- did the toxicology report that

14 you relied on contain any actual -- show the presence of any

15 actual parent compound, cocaine, in Mr. Gallagher?

16 A. No.

17 Q. In your opinion, Dr. Stabley, if you take away the fentanyl

18 out of Mr. Gallagher's system on February 5, would he have been

19 alive on February 6th?

20 A. It's possible.

21 Q. Okay. And why do you say that?

22 A. Well, because the concentration -- the concentration of

23 fentanyl relative to benzoylecgonine tells me that he more than

24 likely died from effects of the fentanyl, and not the cocaine.

25 Q. Okay.

1 MR. WONG: Move to admit 204.

2 THE COURT: This is the report?

3 MR. WONG: Yes.

4 MR. BINNINGER: No objection.

5 THE COURT: All right. The -- Exhibit 204, the
6 autopsy report, is admitted.

7 (Government's Exhibit 204 was received in evidence.)

8 MR. WONG: No further questions.

9 THE COURT: Mr. Binninger?

10 CROSS EXAMINATION

11 BY MR. BINNINGER:

12 Q. Good afternoon, Dr. Stabley.

13 A. Good afternoon, sir.

14 Q. I just wanted to follow up right where Mr. Wong left off.
15 He asked, if you took away the fentanyl, would he still be
16 alive on February 6th, specifically Mr. Gallagher. And I
17 believe your answer was, it's possible; is that correct?

18 A. Yes, sir.

19 Q. Does that mean that it's also not possible?

20 A. It's also not possible.

21 Q. Why do you say that?

22 A. Well, there are no definitives.

23 Q. What do you mean by no definitives?

24 A. Well, the cocaine could have been a contributing factor.
25 Obviously, I listed it on the autopsy report. I don't know

1 what contribution it made to the death, but I do know that
2 fentanyl was a major contributing factor, based on the fact
3 that parent fentanyl was in his blood.

4 Q. We've heard testimony in this trial that without the parent
5 compound cocaine in the blood, and only BE, that cocaine did
6 not contribute to the cause of death. Do you agree with that?

7 A. Not necessarily.

8 Q. Why is that?

9 A. Well, if you read the literature, cocaine doesn't have to
10 be present as parent cocaine to produce death by sudden cardiac
11 arrhythmia. We don't know what causes death necessarily in
12 those cases. Anyone who does cocaine is susceptible to death,
13 regardless of whether they have parent cocaine in their blood
14 or whether they have metabolites, the most common of which is
15 benzoylecgonine, which we'll just call BE for short. That way,
16 I don't have to say that 10 more times.

17 Q. Yes, sir. And save the court reporter some time as well.

18 A. Yes, sir.

19 Q. You noted in your autopsy report that Mr. Gallagher's heart
20 was 550 grams. Why did you make note of that?

21 A. Because it was abnormal. It's a pathologic finding,
22 therefore, it needs to be listed on the autopsy report.

23 Q. Is there any way that cocaine can have an impact on an
24 enlarged heart?

25 A. Chronic cocaine use can cause enlargement of the heart.

1 Q. What is the risk of using cocaine with an enlarged heart?

2 A. I don't know what the percentage is, but there is increased
3 risk of sudden cardiac arrhythmia with cocaine on top of an
4 enlarged heart.

5 Q. You also made note in your autopsy report of something
6 referred to as concentric left ventricular hypertrophy of the
7 heart. Could you please explain what that means?

8 A. So we'll call that concentric LVH for short. That is where
9 the left ventricle or the main pumping chamber in the heart on
10 the left side of the heart is abnormally thickened, compared to
11 the muscle in a normal person's left ventricle.

12 MR. BINNINGER: Showing government counsel what's been
13 premarked as Defense Exhibit DD.

14 BY MR. BINNINGER:

15 Q. Dr. Stabley, have you seen that picture before?

16 A. Yes, I have.

17 Q. Do you know what it is?

18 A. Yes, I do.

19 Q. How do you know?

20 A. Because I know what the illustration represents.

21 Q. Is it a fair and accurate depiction of left ventricular
22 hypertrophy?

23 A. As a colored illustration, yes.

24 MR. BINNINGER: At this time, Your Honor, defense
25 would move Exhibit DD into evidence.

1 THE COURT: All right. It's an illustration of the
2 heart?

3 MR. BINNINGER: Of concentric left ventricular
4 hypertrophy of the heart.

5 THE COURT: All right. Any objection?

6 MR. WONG: No objection.

7 THE COURT: It's received.

8 (Defendant's Exhibit DD was received in evidence.)

9 BY MR. BINNINGER:

10 Q. Sir, I know that you described for the jury what this is.
11 Is the picture of the heart on the left side, a normal heart or
12 what you would expect to see in a normal heart?

13 A. Based on this illustration, yes. It's only a
14 cross-sectional view from front to back.

15 Q. Okay. And with respect to the heart picture on the right,
16 does that exemplify hypertrophic left LVH?

17 A. As an illustration, yes.

18 Q. Is that what you saw in Mr. Gallagher's heart?

19 A. Yes, that pink area would be the muscle tissue.

20 Q. And what, if any, effect does cocaine have on this
21 condition, if you know?

22 A. So, again, chronic cocaine abuse can actually cause this
23 condition, in which case it is pathologic. It also can be
24 nonpathologic. Runners and weight lifters would be expected to
25 have left ventricular hypertrophy, but it doesn't have a

1 significant increased risk for sudden death due to cardiac
2 arrhythmia, like it would if it was pathologic from chronic
3 cocaine abuse.

4 Q. What do you believe the risks are of someone using cocaine
5 with an enlarged heart and LVH?

6 A. Risk for what?

7 Q. Risk for death.

8 A. Less than 5 percent, probably.

9 Q. All right. Are these the two independent risk factors that
10 led to your conclusion that cardiovascular disease was a
11 contributing cause?

12 A. Yes.

13 Q. Okay. I'd just like to briefly talk to you now about the
14 fentanyl. The 6.1 nanograms per milliliter that you were just
15 asked about, that's the amount that was detected in the blood,
16 correct?

17 A. Correct.

18 Q. That's not actually the amount that was necessary to kill
19 Mr. Gallagher?

20 A. I don't know the answer to that question, because it's
21 variable.

22 Q. Right.

23 A. 1 nanogram per milliliter can kill one person. Someone
24 else that has 10 nanograms per milliliter who does fentanyl all
25 the time and exhibits tolerance, it might not result in their

1 death.

2 Q. Exactly. So it's possible that the amount that actually
3 pushed him over the point of no return could have been less
4 than 6.1 nanograms per milliliter?

5 A. Yes, and it could have been more.

6 Q. Okay. And that 6.1 does not tell you which source of
7 fentanyl it came from?

8 A. You mean whether it was pill or --

9 Q. Yes, sir.

10 A. No.

11 Q. It does not tell you whether or not the fentanyl was a
12 mixture of separate sources?

13 A. No.

14 Q. And it does not tell you how the person consumed the
15 fentanyl?

16 A. No.

17 Q. It does not tell you when the person consumed the fentanyl?

18 A. Maybe a toxicologist could tell you that, but I can not.

19 Q. Okay. One final question, sir. Are you receiving any
20 financial compensation today for your testimony?

21 A. No.

22 Q. All right. Well, then, I'm done.

23 THE WITNESS: Unless you meant the county taxpayers.
24 Thank you.

25 MR. BINNINGER: No further questions. Thank you,

1 Dr. Stabley.

2 THE COURT: You want to follow up?

3 MR. WONG: Yes, Your Honor.

4 THE COURT: All right. You may.

5 REDIRECT EXAMINATION

6 BY MR. WONG:

7 Q. Dr. Stabley, you said you do not know what contribution the
8 cocaine had on the blood, is that what you said?

9 A. The blood had a contribution of 0.08 milligrams per liter.

10 Q. Did you say you don't know what contribution the cocaine
11 had to Mr. Gallagher's death?

12 A. No. Yes, I did say that I don't know.

13 Q. And it is true you don't know, correct?

14 A. Correct.

15 Q. And you mentioned that there are lots of people walking
16 around to this day with left ventricular LVH, correct?

17 A. Yes.

18 Q. And you said the risk is less than 5 percent -- the risk of
19 dying of heart attack for LVH -- Mr. Binninger asked you a
20 question, and your answer was less than 5 percent, do you
21 remember that?

22 A. That would be the risk associated with dying of a sudden
23 cardiac arrhythmia with concentric LVH is less than 5 percent.

24 Q. Okay. But yet you still listed that as a possible factor
25 in your report, correct?

1 A. I listed it as a -- possible contributing condition, yes.

2 Q. Because you would list any possible contributing condition,
3 no matter how slight?

4 A. Not necessarily.

5 Q. Okay. Could you explain?

6 A. So the reason why I listed the cardiovascular disease as a
7 contributing condition, because, again, we know chronic cocaine
8 abuse can cause an enlarged heart with left ventricular
9 hypertrophy. And since there was a metabolite of cocaine in
10 the blood, I was not sure if there was a contributing factor or
11 not. So I was bound to include it on the death certificate as
12 a possible contributing condition.

13 Q. Now, do you agree that since BE, benzoylecgonine, was found
14 in Mr. Gallagher's blood, but no parent compound cocaine, that
15 Mr. Gallagher survived after he took the cocaine, at least long
16 enough to metabolize it into BE?

17 A. Yes.

18 Q. Do you know what a therapeutic dose of fentanyl is, a
19 typical therapeutic dose?

20 A. A therapeutic dose is a dose that doesn't result in
21 someone's death and -- but results in the appropriate effect.

22 Q. And do you know what level that dose is?

23 A. I do not. I haven't prescribed fentanyl for a long time.

24 Q. Okay.

25 MR. WONG: No further questions.

1 THE COURT: Anything else?

2 MR. BINNINGER: No, Your Honor. Thank you,
3 Dr. Stabley.

4 THE COURT: Thank you, Doctor.

5 THE WITNESS: You're welcome, sir. You're welcome,
6 Your Honor.

7 THE COURT: Okay. Thank you. Next witness?

8 MR. WONG: The government calls Dr. Iain McIntyre.

9 IAIN MCINTYRE, M.D., GOVERNMENT'S WITNESS, SWORN

10 THE COURT: Have a seat. Speak directly into the mic.
11 State and spell your full name, please.

12 THE WITNESS: Iain McIntyre, M-C-I-N-T-Y-R-E, Iain,
13 I-A-I-N.

14 DIRECT EXAMINATION

15 BY MS. WEBER:

16 Q. Good afternoon, Dr. McIntyre.

17 A. Good afternoon.

18 Q. What do you do for a living?

19 A. I'm a forensic toxicologist.

20 Q. Where are you a forensic toxicologist?

21 A. A private consultant these days.

22 Q. You say these days. Did you do something before that?

23 A. I was previously employed by the County of San Diego
24 Medical Examiner's Office.

25 Q. Dr. McIntyre, you said that you are a toxicologist, what is

Appendix F

I N D E X

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THURSDAY, AUGUST 26, 2021

P R O C E E D I N G S

-- o0o --

THE CLERK: Calling number one on the calendar,
20-cr-2923, United States vs. Jahvaris Springfield.
Counsel, please state your appearances.

MR. WONG: Good morning, Your Honor. Edward Wong and
Makayla Weber for the United States. Good morning.

MR. BINNINGER: Matt Binninger on behalf of
Mr. Springfield.

THE COURT: Good morning. All right. Agent Byrne is
on the stand. I think when we recessed yesterday you were
about to begin your cross-examination.

-- o0o --

CROSS-EXAMINATION

BY MR. BINNINGER:

Q. Good morning, Agent Byrne.

A. Good morning.

Q. So we heard yesterday that you participated in the
post-arrest interview of Mr. Springfield; correct?

A. That's correct.

Q. I just want to ask you a few questions, sort of about the
broad strokes of that interview. It wasn't just you that was
interviewing Mr. Springfield; right?

A. Correct.

Q. There were two additional agents there as well.

BYRNE - CROSS (BINNINGER)

1 **A. That's correct.**

2 **Q. That's Agent Peters?**

3 **A. Yes, sir.**

4 **Q. Sorry. For the record, yes, sir.**

5 And then also another agent, Oscar Amado?

6 **A. That's correct.**

7 **Q. And Mr. Springfield did not have to speak to you.**

8 **A. No, he did not.**

9 **Q. He waived his constitutional rights. He elected to speak**
10 to the three of you.

11 **A. Correct.**

12 **Q. He also consented for you all to search his iPhone.**

13 **A. Correct.**

14 **Q. And I don't believe it was exactly on the dot three hours,**
15 but it was roughly a three-hour interview. Would you agree
16 with that?

17 **A. It was a long interview, yes, sir.**

18 **Q. Okay. So you asked him about the 8864 and the 7476**
19 numbers.

20 **A. Correct.**

21 **Q. And you, the task force, had learned that Ms. Gill had**
22 shared the 7476 number with Mr. Springfield.

23 **A. That's correct.**

24 **Q. In addition to that, Mr. Springfield told the task force --**
25 well, three of you -- that a couple other people used the 7476

BYRNE - CROSS (BINNINGER)

1 number.

2 **A. Yes.**

3 **Q.** Okay. And he also said that he was always with -- around
4 other people.

5 **A. Yes.**

6 **Q.** And as to the 8864 number, he informed you that he had just
7 been given that phone.

8 **A. Yes. I believe so, yes.**

9 **Q.** He said that he didn't know the number by heart.

10 **A. The only number he -- he actually tried to give us was the**
11 **818 number. But that wasn't even a total number, too.**

12 **Q.** And he informed you that he didn't write the number on the
13 back of the phone.

14 **A. I believe so.**

15 **Q.** Okay. So you showed him a picture of Mr. Gallagher;
16 correct?

17 **A. Agent Peters did, yes, sir.**

18 **Q.** Sorry. Agent Peters did.

19 And Mr. Springfield admitted to giving Mr. Gallagher pills
20 from time to time.

21 **A. That's correct.**

22 **Q.** And when asked how much he made off of the sale, he
23 originally said that it was actually situational.

24 **A. Correct.**

25 **Q.** And he followed up on that, that it was probably

BYRNE - CROSS (BINNINGER)

1 situational.

2 **A. Correct.**

3 **Q.** Because as he said, Mr. Gallagher had indicated he was in
4 pain.

5 **A. Yes. I mean, we usually would take that to mean because of**
6 **the cost that a person would have to buy their pill at, too.**
7 **That's also fluctual [sic].**

8 **Q.** Okay, fair enough.

9 He indicated that the pills, they had a "V" on them.

10 **A. He indicated that on one -- on one transaction that he**
11 **spoke about that it had a "V" on one that came out of the**
12 **medicine cabinet.**

13 **Q.** And there were no instances where he said that he gave M30s
14 to Mr. Gallagher.

15 **A. I don't believe he said -- the reference for Blues and**
16 **M-Boxes was kind of brought through the entirety of the**
17 **interview. To my recollection, I don't believe it being said**
18 **exactly that way.**

19 **Q.** Okay.

20 **A. He may have said it when he referenced it as an M-Box.**

21 **Q.** Okay. But to your recollection, there was no instance
22 where he had said that he gave M30s to Mr. Gallagher.

23 **A. Using that exact verbiage, I don't believe so.**

24 **Q.** Okay.

25 **A. Not to my recollection. I can't remember.**

BYRNE - CROSS (BINNINGER)

1 Q. Okay. And when -- I can't remember, either, if it was
2 Agent Peters or yourself, sir, but one of the -- one of the
3 three of you asked Mr. Springfield about the text exchange with
4 Mr. Gallagher on the 5th, about Mr. Gallagher asking for two,
5 then three. Do you remember that?

6 A. Yes.

7 Q. And Mr. Springfield indicated that he did not respond to
8 that.

9 A. So during that -- during those exchanges, they were kind of
10 a back-and-forth. The word "for sale" kept being kind of
11 erased through it, if that was the word that was being brought
12 up by one of the agents during the interview. We get a
13 little -- we get a little hazy in there, but the discussion he
14 states that up -- "up until the girls."

15 So there was a period of time before, a couple of days
16 before the 5th, where there was no communication. We could see
17 the texts, but there was no dialogue back and forth in a
18 two-way. And then there is dialogue on the 5th.

19 And then he begins -- he pushes us to the reference for --
20 the next communication afterward starts around 9:00 o'clock at
21 night, which is actually us discussing with him with the girls.
22 It's kind of a back-and-forth in that conversation. And I
23 think part of that kind of goes to going back to other
24 referenced times in the past, too. And it was this continuous
25 thing to try to get back to more of a clean path that -- I

BYRNE - CROSS (BINNINGER)

1 **don't know that we got the cleanest path in that discussion.**

2 **But we had it -- we had it in there. There was a dialogue in**
3 **there for pills.**

4 **Q.** Okay. And Agent Peters specifically asked all the times
5 prior, "These are you in the communications?" And "you"
6 referring to Mr. Springfield; right?

7 **A.** He does say that in part in the interview. With the second
8 phone, we have the issue where -- that we come back to the
9 regular number, the 8864. It is Mr. Springfield who brings up
10 the dialogue that other people had the phone.

11 **Q.** I understand that, sir. My point is that when Agent Peters
12 asked if all the prior times in the text communications --
13 regardless of 8864, 7476 -- Mr. Springfield denies that.

14 **A.** He does.

15 **Q.** And he said that if he ever communicated with
16 Mr. Gallagher, it was on his old iPhone, his old black iPhone.

17 **A.** Right, correct.

18 **Q.** Okay. And regarding the three blue pills that were found
19 in the back of the Mercedes, he indicated that someone gave
20 them to him who had bad back pain.

21 **A.** Correct. He said someone -- someone near him, someone
22 close to him had a really bad back problem, and they didn't
23 want the pills anymore.

24 **Q.** Okay. Agent Byrne, in the entirety of this investigation,
25 you never saw Mr. Springfield use the 8864 cellphone number;

BYRNE - CROSS (BINNINGER)

1 right?

2 **A. I did not personally, no.**

3 **Q. You did not see Mr. Springfield use the 7476 number.**

4 **A. No. I don't believe I ever saw Mr. Springfield on a phone**
5 **at all during the course of my interaction with him.**

6 **Q. Okay. And when you interacted with Mr. Springfield on the**
7 **21st, there was not a pill press found in his possession.**

8 **A. Correct, there was not.**

9 **Q. There were no chemical precursors to make pills in his**
10 **possession.**

11 **A. No.**

12 **Q. There was not a scale in his possession?**

13 **A. I do not recall if there was one found in the car or not.**

14 **I don't know.**

15 **Q. Okay. And during this investigation, you did not see**
16 **Mr. Springfield give any blue pills to anyone.**

17 **A. I did not.**

18 **Q. You did not see Mr. Springfield give my pills of any kind**
19 **to anyone.**

20 **A. I did not.**

21 **MR. BINNINGER:** No further questions, Your Honor.

22 **THE COURT:** All right. Anything else of agent Byrne?

23 **MS. WEBER:** Just two brief questions.

24 **-- o0o --**

25 **///**

BYRNE - REDIRECT (WEBER)

REDIRECT EXAMINATION

BY MS. WEBER:

Q. Agent Byrne, Mr. Binninger just asked you if you saw any chemical precursors with Mr. Springfield. In your experience, do dealers usually also make the drugs that they are selling?

MR. BINNINGER: Objection. Lacks foundation.

THE COURT: No, overruled. He has background that he's given that allows him to answer that. Go ahead, if you know from personal experience.

THE WITNESS: No, not for the drugs, especially, that we're talking about here.

BY MS. WEBER:

Q. And Mr. Binninger also asked you if there was a scale found with Mr. Springfield. In your experience do you need a scale -- do dealers use scales to measure pills when they sell them?

A. No.

Q. Why is that?

A. Because one count is considered one dosage unit. So each pill is a -- there's no need to weigh them out because they're not sold by weight; they're sold by pill.

Q. So is a scale necessary?

A. No.

MS. WEBER: At this time, Your Honor, the United States would just like to offer into evidence two phones. It's

BYRNE - RECROSS (BINNINGER)

1 the physical evidence. We've already laid the foundation for
2 these phones.

3 **THE COURT:** Remind me what the exhibit numbers are,
4 Ms. Weber.

5 **MS. WEBER:** Exhibit numbers are 501 and 500.

6 **THE COURT:** Any objection to the two phones?

7 **MR. BINNINGER:** No, no, Your Honor.

8 **THE COURT:** Okay. 5501, the phones are both admitted.

9 **(Government's Exhibits 500 and 501 were admitted.)**

10 **MS. WEBER:** I have nothing further for Agent Byrne at
11 this time.

12 **MR. BINNINGER:** Your Honor, may I just have a quick
13 recross?

14 **THE COURT:** Sure, sure.

15 -- oOo --

16 **RECROSS-EXAMINATION**

17 **BY MR. BINNINGER:**

18 **Q.** I just have one final question, Agent Byrne.

19 Fentanyl doesn't only just come in pills; right?

20 **A. Correct.**

21 **Q.** It comes in powder?

22 **A. It comes in powder, it comes in liquid, and it comes in gel**
23 **and a lollipop.**

24 **Q.** Okay. I did not know that. But with regard to the powder,
25 one might weigh out powder before distributing it; correct?

DINGLE - REDIRECT (WEBER)

1 **A. Correct.**

2 **MR. BINNINGER:** No further questions.

3 **THE COURT:** "One final question."

4 Thank you, you can stand down.

5 **MR. WONG:** Your Honor, at this time the United States
6 recalls agent Nathan Dingle.

7 **THE COURT:** All right. If you'll resume your seat,
8 Agent Dingle. You are still subject to the oath you took
9 yesterday.

10 **THE WITNESS:** Yes, Your Honor.

11 -- oOo --

12 **REDIRECT EXAMINATION**

13 **BY MS. WEBER:**

14 **Q.** Good morning, Agent Dingle. Thank you for coming back this
15 morning.

16 **A. Good morning.**

17 **Q.** You may recall that yesterday there was a little bit of a
18 technical glitch in one of the exhibits, and it was missing two
19 pages. Is that correct?

20 **A. Correct.**

21 **Q.** And that was Exhibit 350?

22 **A. Correct.**

23 **Q.** The United States has now remedied that technical glitch
24 and replaced those two pages that were missing. Have you had
25 the opportunity to review the new Exhibit 350?

DINGLE - REDIRECT (WEBER)

1 **A. I have, yes.**

2 **Q.** And in your opinion, is it a true and accurate copy of the
3 PowerPoint that you made in preparation for this case?

4 **A. It is, yes.**

5 **MS. WEBER:** At this point the United States will move
6 to replace the former Exhibit 350 with the present Exhibit 350.

7 **THE COURT:** Any objection to that, Mr. Binninger?

8 **MR. BINNINGER:** No, Your Honor.

9 **THE COURT:** It may be replaced, then. This was --
10 this is the PowerPoint that contained all of the exhibits, and
11 you've now corrected so it has the right one?

12 **MS. WEBER:** That's correct, Your Honor.

13 **THE COURT:** Okay. So the new one is substituted.

14 **BY MS. WEBER:**

15 **Q.** And when you were last on the stand, Agent Dingle, we were
16 discussing the date of February 5th, 2019; is that correct?

17 **A. That is correct.**

18 **Q.** And I would like to just direct your attention to the last
19 slide that we spoke about, which had the time stamp of
20 2:22 p.m. I won't take you back through that slide, as the
21 jury's already seen it. But just to refresh their
22 recollection, what did that slide show, in your opinion?

23 **A. That showed -- slide showed two phones, the 8864 T-Mobile**
24 **phone number and a T-Mobile phone number ending in 1444, and**
25 **they were both in the same general vicinity of 2254 Moore**

DINGLE - REDIRECT (WEBER)

1 **Street.**

2 **Q.** And do you know what part of San Diego that is in?

3 **A. Midway District-ish.**

4 **Q.** Also close to Old Town?

5 **A. Yes.**

6 **Q.** Agent Dingle, I'd now like to ask you about another slide
7 that you created for that same date, February 5th, 2019. You
8 also spoke with the jury yesterday about some text messages
9 that you reviewed in preparation for creating that slide; is
10 that correct?

11 **A. That's correct.**

12 **Q.** I won't take you through those text messages again, because
13 the jury has already seen them. But just to reorient the jury
14 and remind them, what in those text messages informed your
15 analysis on this slide?

16 **A. The text messages discussed a meeting between the device**
17 **using 8864 and the device using 9912, and traveled to**
18 **Pacific Beach to make a -- some sort of a meeting.**

19 **Q.** And was there a third phone number that you also analyzed
20 for this particular slide?

21 **A. There was.**

22 **Q.** What phone number was that?

23 **A. It was the phone ending in 1444.**

24 **Q.** And agent Dingle, now turning to that slide in
25 particular -- that's Exhibit 350. I believe that's page 14 --

DINGLE - REDIRECT (WEBER)

1 16. I apologize.

2 Is this the slide that we were just discussing?

3 **A. It is, yes.**

4 **Q.** Okay. And you mentioned that there are three phone numbers
5 on -- that were analyzed on this slide?

6 **A. Correct.**

7 **Q.** What is the time stamp on this slide?

8 **A. February 5th, 2019, from 3:45 p.m. to 3:52 p.m.**

9 **Q.** And Agent Dingle, can you tell us what, in your opinion,
10 this slide shows?

11 **A. Again, can I draw on this as well?**

12 **Q.** Yes, you can.

13 **A. Okay. So the first transactions, there's a phone call**
14 **between 8864 and 9212. And those are shown with these boxes:**
15 **One on the bottom, that tower on the bottom, and the one on the**
16 **upper left. So those two people have a phone call between each**
17 **other.**

18 So the times are slightly off. Once again, that's because
19 the time it takes for the transaction to complete. So each
20 record is going to show it slightly differently. But that is
21 the phone call, the same phone call between those two devices.

22 The next item is at 3:46, and that's the device ending in
23 1444, which was previously with the 8864 device. That is now
24 further up closer to P.B. around -- just west of Crowne Point
25 Park.

DINGLE - REDIRECT (WEBER) and RECROSS (BINNINGER)

1 And then at 3:52:06, the 8864 device is in that same
2 general vicinity we've seen in some of the other slides, right
3 around the vicinity of 4023 Haines Street.

4 Q. Agent Dingle, looking at that slide, and looking in
5 particular at the two phone numbers, 8864 and 1144 -- or 1444,
6 excuse me -- does this slide show anything about the direction
7 of travel of those two numbers over time?

8 A. It does. It shows that they started on the bottom of the
9 slide down by Sea World --

10 MR. BINNINGER: Objection, Your Honor. Lacks
11 foundation. Calls for speculation.

12 THE COURT: Overruled. You may complete your answer.

13 THE WITNESS: And move north into Pacific Beach toward
14 the red box, 4023 Haines Street.

15 MS. WEBER: Nothing further for Agent Dingle at this
16 time.

17 -- o0o --

RECROSS-EXAMINATION

19 BY MR. BINNINGER:

20 Q. Good morning again, Agent Dingle.

21 A. Good morning.

22 Q. Just with respect to the last slide that we -- that we saw,
23 I just have a few questions. These areas in which these pings
24 are coming off cell towers, these are not in remote locations;
25 correct?

DINGLE - RECROSS (BINNINGER)

1 **A.** No. So they aren't pings; they're cell-site activations.
2 **There's a difference there. But correct, they are not in a**
3 **remote location.**

4 **Q.** They're in heavily populated areas of San Diego?

5 **A.** Correct.

6 **Q.** Okay.

7 **THE COURT:** The difference between ping and a
8 cellphone activation is, with the latter, someone is calling;
9 and with the former, a ping, you're just driving by, and it can
10 hit?

11 **THE WITNESS:** So a ping is something that the network
12 or the device is doing directly to the phone itself. So the
13 phone itself is trying to give location -- sometimes there is
14 triangulation that's used to hit off multiple cell sites to hit
15 an area, but it's coming from the device. This, it's coming
16 from the cell site that the phone has chosen to use. And it's
17 coming only from that cell site when there's an activation.

18 **THE COURT:** So my question is, does activation require
19 someone to be using the phone, calling or texting, and a ping
20 doesn't require that?

21 **THE WITNESS:** Correct.

22 **THE COURT:** Go ahead.

23 **MR. BINNINGER:** I have no further questions.

24 **THE COURT:** Thank you, Agent Dingle. You may stand
25 down.

1 **MS. WEBER:** At this point, Your Honor, the Government
2 rests.

3 **THE COURT:** All right. The United States rests.
4 Mr. Binninger, any evidence on behalf of the defendant?

5 **MR. BINNINGER:** No, Your Honor.

6 **THE COURT:** Defense rests?

7 **MR. BINNINGER:** Yes, Your Honor.

8 **THE COURT:** Okay. Folks, if you'll give me just a
9 minute, I want to confer with Counsel and get an estimate from
10 them about their length of their summations to you.

11 This completes the evidence in the case. We worked on jury
12 instructions. You'll remember when we began first day, I told
13 you I'd have a packet of instructions. I'm required to read
14 these to you in open court. It's one of the protocols I have
15 to follow even though you're going to get them. But you'll
16 have these to consult.

17 Let me inquire of our jurors, is there anybody who has --
18 there's got to be somebody that's computer friendly, somebody
19 that knows how to -- okay, good.

20 We're going to put the exhibits on a thumb drive; right?

21 **THE CLERK:** Yes.

22 **THE COURT:** And so one of my law clerk's bailiffs will
23 show you the device, and you can take it from there, I assume?

24 **A JUROR:** Yes.

25 **THE COURT:** Not rocket science; right?

1 If Counsel will approach briefly.

2 **(At sidebar.)**

3 **THE COURT:** The only thing I want to ascertain is how
4 long do you think you'll need to argue.

5 **MR. BINNINGER:** Between 20 and 30 minutes, no more.

6 **THE COURT:** Does 30 minutes work for both sides?

7 **MR. WONG:** Yeah. I'll divide it. Can you give me a
8 warning?

9 **THE COURT:** Yeah. At what point do you want me to
10 advise you?

11 **MR. WONG:** Twenty minutes to go.

12 **THE COURT:** All right.

13 **(End of sidebar.)**

14 **MR. BINNINGER:** Your Honor, I apologize. I needed to
15 make a Rule 29 motion. I apologize.

16 **THE COURT:** Okay. I'll take it under submission.

17 **(Jury instructions and closing argument; reported but not**
18 **transcribed herein. Jury sent to deliberate at 10:51 a.m.)**

19 **THE COURT:** Everyone may have a seat. I don't know if
20 it made it on the record; Mr. Binninger made a Rule 29 motion,
21 a timely Rule 29 motion at the end of the Government's case,
22 and the Court reserved on that. Do you want to argue on that?

23 **MR. BINNINGER:** No, Your Honor.

24 **THE COURT:** Submitted on behalf of the Government, as
25 well?

1 **MR. WONG:** Yes. That's old school. I haven't seen
2 anybody use the easel in a long time.

3 **MR. BINNINGER:** Got that old soul, Your Honor.

4 **THE COURT:** Yeah. The standard the Court must apply
5 in ruling on a Rule 29 motion, which calls into question the
6 sufficiency of the Government's evidence and whether the case
7 has been proved adequately to go to a jury is this:

8 The Court must ask, Could any reasonable trier of fact
9 looking at the evidence in the light most favorable to the
10 Government and not making any credibility determinations find
11 all of the essential elements beyond a reasonable doubt? The
12 answer to that, I find, is yes.

13 There's evidence, of course, that the defendant had a
14 relationship with Mr. Gallagher. The relationship consisted of
15 the defendant, by his own admission, giving Mr. Gallagher
16 drugs. A reasonable jury could infer, of course, that among
17 the drugs he gave were Oxycodone pills that had fentanyl in
18 them. There was evidence that some fentanyl residue was found
19 at the -- at Mr. Gallagher's apartment on the 5th in the
20 aftermath of his death, and the jury could reasonably infer
21 that that was the residue from previous pills that the
22 defendant had given him.

23 A little question here that the issue is did the defendant
24 give Mr. Gallagher the pills on the 5th that killed him.
25 Again, reasonable trier of fact taking into consideration

1 everything, including the evidence of the movement of the phone
2 and the defendant's relationship to that phone -- although it's
3 not free from doubt. Others were in proximity to the phone,
4 and there was no definitive evidence that the defendant had the
5 phone on him on the 5th.

6 But a reasonable trier of fact, again looking at it in a
7 light most favorable to the Government, could certainly
8 conclude that the defendant had the phone, that he was the one
9 texting, and that the 5th was a continuation of other activity
10 that he engaged in with Mr. Gallagher.

11 And then finally, as to the resulting-death issue, there's
12 medical testimony in the case that, if believed, Dr. Levine's
13 testimony, if believed, would support a finding that the -- the
14 ingestion of fentanyl was the but-for cause of Mr. Gallagher's
15 death. So the Court finds that there's adequate evidence that
16 a reasonable trier of fact could convict Mr. Springfield.

17 I'm not convicting you. That's not my role,
18 Mr. Springfield. But I have to look at this, as I said,
19 hypothetically. And the balance on this viewing goes to the
20 Government. I have to look at everything in the light most
21 favorable to them, not to you. So the Rule 29 motion, with all
22 respect, is denied.

23 Both sides agree the jury instructions were read to the
24 jury as indicated and agreed upon?

25 **MR. BINNINGER:** Yes, Your Honor.

1 **MR. WONG:** Yes.

2 **THE COURT:** Okay. Anything else, then?

3 **MR. BINNINGER:** No, Your Honor.

4 **MR. WONG:** No, Your Honor.

5 **THE COURT:** Okay. We have your phone numbers. You're
6 in close proximity?

7 **MR. BINNINGER:** Yes, Your Honor.

8 **MR. WONG:** Yes, Your Honor.

9 **THE COURT:** We'll let you know if we get any question
10 or if there's a verdict.

11 **THE CLERK:** Everything is ready to go.

12 **THE COURT:** Okay. Have you checked the physical
13 evidence is going to go in along with the thumb drive? You've
14 looked at the thumb drive, I assume.

15 **MR. BINNINGER:** My exhibits are actually --

16 **THE COURT:** Oh, here.

17 **MR. BINNINGER:** I gave them to Ms. Weisbeck.

18 **THE COURT:** Yours are in hard-copy form?

19 **MR. WONG:** Yes, sir.

20 **THE COURT:** Will you mention that when you go back,
21 just tell the jury that the defense exhibits are in hard-copy
22 form, the Government's are on the thumb drive, except for the
23 physical items that they're being handled.

24 **THE BAILIFF:** Of course, Your Honor.

25 **THE COURT:** I thought everything was going to be

1 contained on the thumb drive. So let them know that
2 distinction, but that's all.

3 **THE BAILIFF:** Of course.

4 **THE COURT:** Anything else?

5 **MR. BINNINGER:** No, Your Honor.

6 **MR. WONG:** No, Your Honor.

7 **THE COURT:** Thank you. Well-trying case. I think you
8 helped me make good on our promise to make efficient use of
9 everybody's time. We'll let you know as soon as we hear
10 anything. We're in recess.

11 **(A recess was taken.)**

12 **THE COURT:** Let's go on the record. Tish, hand me the
13 note again.

14 **MR. BINNINGER:** Your Honor, Mr. Springfield is now
15 present before the Court.

16 **THE COURT:** All right. We're back on the record in
17 the United States versus Springfield. It's 12:30 on the 26th.

18 We've received a note from the jury, and the note is brief.
19 It reads "Stipulated evidence - exhibits," next line, hyphen
20 "Test results of drug" -- "drugs and paraphernalia found
21 (summary table)," next line, hyphen "Results of pills shown on
22 Exhibit K (Mercedes)."

23 Again, I can't tell who signed this, "W" something or
24 other. Let me see if I can figure out who the foreperson is.

25 Well, that didn't help because nobody's name looks like it

1 starts with a "W."

2 Can you make this out, Tish?

3 **THE CLERK:** I cannot.

4 **THE COURT:** Do we have a doctor on the jury? Looks
5 like a doctor's handwriting.

6 As I said, I'm happy to hear from any suggestions Counsel
7 had. It appears to me that they're asking about the
8 stipulation. The stipulation itself in written form did not go
9 in.

10 I mentioned to Counsel while we were waiting for
11 Mr. Springfield that I typically don't send written
12 stipulations in because it's like a memorialization of
13 testimony or something, and I think there's a danger of calling
14 undue attention to it. And in this case, as I recall, a
15 summary table of the substances found and tested was put into
16 evidence, and they should have that. Maybe that's what they're
17 referring to, is Exhibit K.

18 But it appears they're having some confusion about the test
19 results having to do with the controlled substances. And in
20 particular, the last line says "Results of pills shown on
21 Exhibit K," and then there's a reference to the Mercedes.

22 I'm happy to hear from Counsel. And my thought is that
23 I'll call them in, I'll give them appropriate warnings not to
24 mention any discussion of what's -- what they've been
25 deliberating about or why they might want this clarification,

1 and just tell them that we're trying to determine what it is
2 they want to have -- want clarified. And then I'll probably
3 send them back in, and we can discuss what, if anything, we
4 should do with regard to the request.

5 Mr. Binninger.

6 **MR. BINNINGER:** I have no objection to that proposal,
7 Your Honor. I think that's perfectly fair. But I did speak to
8 Mr. Wong.

9 **THE COURT:** Mm-hmm.

10 **MR. BINNINGER:** Given what it seems is the sort of
11 natural inference from that note, I personally don't have any
12 objection if that table is provided to those jurors. That's
13 something Mr. Wong and I proposed.

14 **THE COURT:** Didn't the table itself get provided? Or
15 was it attached to the stipulation?

16 **MR. WONG:** Your Honor is correct; it was attached to
17 the stipulation.

18 **THE COURT:** But none of it went in.

19 **MR. WONG:** No.

20 **THE COURT:** Okay. If both sides are in agreement, if
21 we can just give them the table, I'll give them the table.
22 Because that list, does it identify what drugs came from where?
23 For example, it will identify which one came from the Mercedes?

24 **MR. WONG:** Yes, Your Honor.

25 **MR. BINNINGER:** Yes.

1 **THE COURT:** Okay.

2 **MR. WONG:** Our paralegal has gone to retrieve the
3 table right now.

4 **THE COURT:** I may have it.

5 **THE CLERK:** It's 550; right?

6 **THE COURT:** There's something on the side written.
7 What's this in the margin?

8 **THE CLERK:** I don't know.

9 **MR. WONG:** Your Honor, there was an -- when we
10 prepared it, there was an error in the exhibit number, so
11 Mr. Binninger and I both initialed.

12 **THE COURT:** I see. Okay. Show this to them. If it
13 suffices to just send that in, then I'll do that. And if they
14 want to follow up with another question, then they may, of
15 course.

16 Both sides acknowledge that there's some kind of
17 scribbling? It looks like it just changes the exhibit number
18 to 515.

19 **MR. WONG:** Correct, Your Honor.

20 **THE COURT:** On behalf of the defendant, Mr. Binninger,
21 do you agree that's the way in which we should handle this
22 note?

23 **MR. BINNINGER:** I do.

24 **THE COURT:** And Mr. Wong?

25 **MR. WONG:** We concur.

1 **THE COURT:** Okay. Take this in, tell them just this,
2 that I have conferred with the parties, and we think that this
3 will answer their questions.

4 Mark the note as Court's 1, Tish. If they have additional
5 questions regarding that or we didn't get it right, they can
6 put that to us.

7 **(Court's Exhibit 1 was marked.)**

8 **THE BAILIFF:** I will, Your Honor.

9 **THE COURT:** Okay. Anything else?

10 **MR. BINNINGER:** No, Your Honor.

11 **MR. WONG:** No.

12 **(A recess was taken.)**

13 **THE COURT:** All right. We're back on the record in
14 the matter of the United States against Springfield. The
15 counsel are present. Mr. Springfield is present. The jury is
16 not present.

17 I have just received a note that reads as follows, that
18 "Deliberations are at a standstill. Further deliberations
19 aren't expected to reach a unanimous outcome. How do we
20 proceed?"

21 And it's again signed by the -- whoever it is that I can't
22 read his name, although now I am able to discern there's a "Y"
23 at the end of this person's name. So it could be -- it must be
24 Daniel Mundy, because that's the only -- that's the only juror
25 whose name ends with a "Y." Mr. Guay did, but he's gone. So

1 I'm assuming this is from Daniel Mundy.

2 Anyway, here's what I propose: It's 4:20. The jury went
3 out and began deliberations roughly at 11:00 o'clock, I think,
4 11:00 a.m.

5 **MR. BINNINGER:** Yes, Your Honor.

6 **THE COURT:** So it has been five-and-a-half hours,
7 which is not a disproportionately long period of time for a
8 case that took a little bit over two days to try. I have
9 handed you an instruction, if you'll take a look at it.

10 My proposal is this: That we let them go home today. I'll
11 call them out and tell them to forget about the case for the
12 rest of the day and into the evening, give their minds a rest.
13 They've been concentrating on this, but that I'd have them come
14 back tomorrow morning, 9:00 o'clock. And then I'd have an
15 extra instruction I would give them at that time, and we'll see
16 if -- see if that makes any difference. It has in other cases.

17 I'd like to mention this, I think, to Ms. Betancourt
18 particularly, Mr. Binninger, because she was in here twice when
19 I gave this instruction. I think she maybe opposed it both
20 times. And ironically, after the instruction the juries
21 acquitted in both cases. I remind her of that every time I
22 propose this instruction.

23 Take a look at it. It's my take on an *Allen* instruction.
24 It's very, very neutral.

25 **MR. BINNINGER:** Sorry.

1 **THE COURT:** That's all right. And you don't have to
2 tell me now, but my proposal would be to let them go now, tell
3 them to come back in the morning, and then give this
4 instruction -- I would only do it once. I wouldn't do it more
5 than once -- and see if that may lead to resolution.

6 This instruction incorporates what the Ninth Circuit has
7 said is permissible, and it takes out things that the Ninth
8 Circuit has said in the past are impermissible, such as any
9 indication the case has to be tried again. I don't mention
10 that. Cost, I don't mention that. None of those things is
11 mentioned in this instruction.

12 But take a minute more and take a look at it; tell me if
13 you have any particular objection. As I said, I wouldn't give
14 it now. I would give it tomorrow morning, let them rest and
15 clear their minds a little bit.

16 Mr. Wong, Ms. Weber, do you have any objection to what I
17 proposed?

18 **MR. WONG:** No, Your Honor.

19 **THE COURT:** You've had an opportunity to look at the
20 instruction?

21 **MR. WONG:** We have, Your Honor.

22 **THE COURT:** Are you satisfied with it?

23 **MR. WONG:** We are, Your Honor.

24 **MR. BINNINGER:** I have no objection.

25 **THE COURT:** Okay. Dean or Amanda, if one of you will

1 ask the jurors to come in. Tell them they can leave
2 everything, their notes and everything else in the jury room.
3 They should bring their personal items with them.

4 **THE BAILIFF:** Okay. Thank you, Your Honor.

5 **(The jury entered at 4:24 p.m.)**

6 **THE COURT:** All members of the jury are present.
7 Counsel and the defendant are present.

8 We've, ladies and gentlemen, received a note that indicates
9 "Deliberations are at a standstill, and further deliberations
10 aren't expected to reach a unanimous outcome. How do we
11 proceed?"

12 I don't think we have any medical doctors on the jury, but
13 whoever signed this looks like he has handwriting like a
14 doctor. I see a "Y" at the end. Mr. Mundy, are you the
15 foreperson?

16 **JURY FOREPERSON:** Right here (gesturing).

17 **THE COURT:** Dennis Sigler. Dr. Dennis Sigler?

18 **JURY FOREPERSON:** No.

19 **THE COURT:** Ladies and gentlemen, I've discussed this
20 with the counsel, and I have a proposal to make to you, and it
21 is this: First, you have deliberated now for roughly, what,
22 five -- about five-and-a-half hours; five hours, fifteen
23 minutes or so. Compared to the time the case took to try, it's
24 not a disproportionate period of time for deliberations. I can
25 tell you that from experience of over 40 years now.

1 I have an instruction that I think may assist you. I think
2 it may assist you, and what I propose is this: That you take a
3 recess now. Take the evening recess. Go home. Forget about
4 the case. Go about your business this evening. Have dinner
5 and watch TV, do whatever you would do in the evening. When
6 you come back in the morning, I will give you this instruction,
7 which, as I said, I think will assist in the issue that's been
8 raised by you. And I would have you come back, hear the
9 instruction. I'll send this back with you. Consider what's
10 said in the instruction and then recommence deliberations to
11 see if you can reach a verdict.

12 There's no requirement that you reach a verdict in this
13 case. I don't want anybody to feel that they're being forced
14 or compelled. But I do think in the past this instruction's
15 been helpful to juries who have been at an impasse. And I
16 think it may assist you, too, and I'd like to give that a try.

17 Mr. Sigler, is that an agreeable proposal on behalf of the
18 ladies and gentlemen of the jury?

19 **JURY FOREPERSON:** That sounds good, yes.

20 **THE COURT:** Okay. Everyone agree? All right. I see
21 most people agreeing. I don't see anybody disagreeing; I'll
22 put it that way.

23 So remember the Court's admonition. Your notes,
24 everything's been left in the back. It won't be disturbed. We
25 don't even have cleaning people come in, unless we should

1 probably have somebody empty the trash in there, right, freshen
2 the rolls and coffee for tomorrow. So we'll have that.

3 One final thing. When we have opened court each morning,
4 we've done so formally with my entering, counsel standing, and
5 all. I don't think there's a need to do that tomorrow. What I
6 would suggest is this: That if you'll gather in front of the
7 door tomorrow at about 9:00 o'clock, just before 9:00, you'll
8 be met by one of my law clerks, one of the bailiffs who will
9 show you in and -- well, no. I take that that back because
10 I've got to read the instruction. I forgot about that. This
11 isn't just recommencement. I forgot what I told you before.

12 So 9:00 o'clock tomorrow, we'll give this instruction and
13 have a go again. Have a nice evening. We'll see you tomorrow
14 morning at 9:00 o'clock. Thank you.

15 **(The jury exited at 4:31 p.m.)**

16 **THE COURT:** Have a seat, please. I forgot for a
17 second about the instruction. I was telling them as if it was
18 the end of the day.

19 All right. The jury is not present. Counsel and defendant
20 are present. Anything else we need to discuss before we take
21 our evening recess, Counsel, in the court?

22 **MR. BINNINGER:** No, Your Honor.

23 **MR. WONG:** No, Your Honor. We'll see you at 9:00 a.m.

24 **THE COURT:** We'll see you here tomorrow. Each of you
25 has a copy of the instruction now. I'll give this instruction

1 in the morning. And as I said, we'll see if we can't reach a
2 verdict.

3 I would not give it a second time if they indicate -- even
4 after hearing this and attempting deliberations again, if they
5 can't reach a verdict, I think it's time to say, well, we have
6 to go to Plan B, whatever that might be.

7 **MR. BINNINGER:** Yes, Your Honor.

8 **THE COURT:** All right. Have a nice evening.

9 **(Proceedings adjourned at 4:32 p.m.)**

10 -- oOo --

11
12 **C E R T I F I C A T E**

13 I, Anne Roldan, certify that I am a duly qualified
14 and acting Official Court Reporter for the United States
15 District Court; that the foregoing is a true and accurate
16 transcript of the proceedings as taken by me in the
17 above-entitled matter on August 26, 2021; and that the format
18 used complies with the rules and requirements of the United
19 States Judicial Conference.

20 **Dated: February 25, 2022**

21 /s/
22 Anne M. Roldan, RPR, CRR, CSR
23 U.S. Official Court Reporter
24
25

Appendix G

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
UNITED STATES OF AMERICA,)
) No. 3:20-CR-2923-LAB
Plaintiff,)
)
v.) August 27, 2021
)
JAHVARIS LAMOUN SPRINGFIELD,)
) Courtroom 14A
Defendant.)
) San Diego, California

TRANSCRIPT OF PROCEEDINGS
(JURY TRIAL - DAY 4 - JURY INSTRUCTION AND VERDICT)
BEFORE THE HONORABLE LARRY ALAN BURNS, DISTRICT JUDGE

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(Friday, August 27, 2021; 9:01 a.m.)

P R O C E E D I N G S

THE COURT: All right. This is matter of the United States against Springfield. We are waiting for the jury to come back.

Counsel had an issue they wanted to raise?

MR. BINNINGER: Yes, your Honor. Matt Binninger on behalf of Mr. Springfield.

Your Honor, after further reconsideration and reflection, I would just like to respectfully object to the instruction.

THE COURT: Okay. Is there any particular part of it you object to or just the giving of it at this point?

MR. BINNINGER: Just the giving of it. I think -- just for the record, I think that the second note that was received yesterday was pretty clear, and so I would move for a mistrial.

THE COURT: Well, the first note didn't have anything to do with an impasse.

MR. BINNINGER: It said -- I'm sorry.

THE COURT: No, no. That's all right. So the first note we got that they were at an impasse was the one we discussed last. Correct?

1 MR. BINNINGER: I just meant the second note.

2 THE COURT: Yeah. Okay.

3 MR. BINNINGER: That's all.

4 THE COURT: But the first one was just a
5 clarification on exhibits.

6 MR. BINNINGER: It was.

7 THE COURT: And then you acknowledged that I
8 informally polled the jury as a group, and directed comments to
9 the foreperson; the person that's been identified as the
10 foreperson.

11 MR. BINNINGER: Yes.

12 THE COURT: You acknowledge that -- I didn't see any
13 noes. I didn't see everybody shaking their head yes. But I
14 saw a majority of jurors, when I said, "Might this instruction
15 help," shaking their heads yes.

16 Did you see that too?

17 MR. BINNINGER: I did see that. I did.

18 THE COURT: Okay. All right.

19 Anything on behalf of the United States on this
20 motion.

21 MR. WONG: Our position has not changed, and we would
22 submit on our position.

23 THE COURT: All right. Look, here's the thing. I
24 think, number one, we're -- we're permitted to ask the jury to
25 reconsider. And this isn't a case where I think they're in an

1 intractable position. In fact, my survey and their reactions,
2 I think, probably just the opposite. I think they had some
3 hope and enthusiasm that maybe another instruction would help.

4 I don't know whether it will or not. It has in the
5 past.

6 I've gone over the instruction very carefully. It's
7 been the product of a lot of thought, Mr. Binninger. And I
8 have, as I said, eliminated the things that the Ninth Circuit
9 said should not be in a charge -- supplemental charge to the
10 jury, including costs or inevitability of another trial.

11 It repeats principles that are important, I think, to
12 Mr. Springfield, which is presumption of innocence and burden
13 being on -- and -- and, importantly, it tells the jury several
14 times that there's no requirement. No requirement that they
15 reach a verdict.

16 So I think it's neutral. I don't think it's coercive
17 in any way. I think the circumstances of the case are such
18 that it's justified in giving it now. So I note your
19 objection. But, respectfully, I'll overrule it, and we'll go
20 forward with the instruction as I've indicated.

21 And do you want to bring the jury in?

22 THE LAW CLERK: Yes, your Honor.

23 THE COURT: What's all the noise out there? Is that
24 people talking?

25 THE CLERK: It's the jurors in the hallway.

1 THE COURT: Oh, they're chatting?

2 THE CLERK: Yeah.

3 (Pause, Court and clerk conferring.)

4 (Jurors enter courtroom.)

5 THE COURT: Good morning.

6 THE JURORS: Good morning.

7 THE COURT: Good morning.

8 THE JUROR: Supposed to -- back in the jury room?

9 THE COURT: No. Take your seats here.

10 All right. Have a seat, please.

11 Good morning again, ladies and gentlemen.

12 Thank you for being here on time. And forgive me for
13 not having my black dress on this morning. We were discussing
14 some other matters before you came in.

15 When you left yesterday, I surveyed you. And my
16 sense was -- from informal survey, without going person to
17 person -- that you were willing to take another go at this and
18 embrace the prospect that an additional instruction may help.
19 And so I have that, and I would like to give you this
20 instruction now. I'll send it back with you.

21 Members of the jury, you have -- been reported that
22 you are unable to reach a unanimous verdict in this case. I
23 realize and appreciate that you're having some difficulty in
24 reaching unanimity, but that is not unusual.

25 To attempt to assist you in reaching unanimous

1 verdict, I want to suggest some additional thoughts to you.
2 Sometimes after hearing this additional instruction and
3 engaging in further discussions, jurors are able to work out
4 their differences and agree unanimously on a verdict.

5 Although there's no requirement that you reach a
6 verdict in this case, as jurors, your goal should be to reach a
7 fair and impartial verdict if you're able to do so based on the
8 evidence presented and the principles of law on which you've
9 been instructed.

10 It's your duty, as jurors, to carefully consider, to
11 weigh, and evaluate all of the evidence that's been presented
12 during the course of the trial. It's your duty to discuss your
13 views with -- on the evidence with fellow jurors. And it's
14 your duty to listen to and consider the views of fellow jurors.

15 In the course of your deliberations, you shouldn't
16 hesitate to re-examine your views or request that fellow jurors
17 re-examine their views. Likewise, you shouldn't hesitate to
18 change a viewpoint that you held initially, if you become
19 convinced that that viewpoint is wrong. Nor should you
20 hesitate to suggest that other jurors change their views if
21 you're convinced that they're -- that they're wrong.

22 Keep in mind that while each of you has to decide the
23 case for yourself, you should do so only after an impartial
24 consideration of all of the evidence with fellow jurors and
25 after giving fair consideration to the viewpoints of fellow

1 jurors.

2 However, I remind you that no juror should surrender
3 an honest belief as to the weight or effect of the evidence
4 solely because of the opinion of fellow jurors or merely for
5 the purpose of returning a verdict.

6 I remind you that the defendant is presumed to be
7 innocent and that the Government, not the defendant, has the
8 burden of proof. And that Government must prove the defendant
9 guilty beyond a reasonable doubt.

10 Those of you who believe that the Government has
11 proved the defendant guilty beyond a reasonable doubt should
12 stop and ask yourselves if the evidence is really convincing
13 enough, given that other conscientious members of the jury are
14 not convinced.

15 On the other hand, those who believe that the
16 Government has not proved the defendant guilty beyond a
17 reasonable doubt should stop and ask yourselves if the doubt
18 you have is a reasonable one, given that other equally
19 conscientious members of the jury do not share that doubt. In
20 short, every individual juror should reconsider and re-examine
21 his or her own views.

22 Fair and effective jury deliberations require frank
23 and forthright exchange of views. And as the jury in this
24 case, you have absolute discretion to conduct your
25 deliberations in any way you deem appropriate. However, I

1 would -- want to suggest to you that since you haven't been
2 able to reach a verdict using the methods that you've tried so
3 far, that you consider the possibility of trying some new
4 methods.

5 For example, you may wish to have different jurors
6 lead the discussion for a period of time. Sometimes
7 reconsidering issues from new or a fresh perspective is
8 helpful. Or you may wish to engage in what's called reverse
9 role playing. That is, having those of you on one side of an
10 issue present or advocate the other side's position, and vice
11 versa. Either of these methods might enable you to better
12 understand one another's positions.

13 Now, by suggesting these things to you, that you
14 should consider changing the methods of deliberation, I want to
15 stress that I'm not dictating to you how to conduct
16 deliberations.

17 I'm -- and nor am I attempting to pressure you to
18 reach a verdict or demanding that you reach a verdict at all
19 costs. There's no requirement, of course, that you reach a
20 verdict in this case.

21 Instead, I am merely suggesting that you consider
22 additional or alternative methods of ensuring that each juror,
23 each juror has a full and fair opportunity to express his or
24 her point of view. And that all jurors have the opportunity to
25 consider and understand and engage the views of their fellow

1 jurors.

2 During your further deliberations, you should also
3 reconsider the instructions that I previously gave you and that
4 you have back in the jury room to consider.

5 All of the instructions, I remind you, are important.
6 And you should consider this instruction in conjunction with
7 the other instructions that I have previously given.

8 Now, what I've just said, what I've just read to you
9 is not meant to rush you or pressure you into agreeing on a
10 verdict. I want to stress that. Take as much time as you need
11 to discuss things. There's no hurry. I'm going to ask, now,
12 that you take this instruction with you, you return to the jury
13 room and continue your deliberations with these additional
14 comments in mind.

15 Dean, if you could take this, please.

16 THE COURT: All right. You may return to the
17 deliberation room.

18 Thank you.

19 (Jurors exit courtroom.)

20 THE COURT: All right. The jury is not present.
21 Counsel and the defendant are present.

22 Anything else before we recess again?

23 MR. BINNINGER: No, your Honor.

24 MS. WEBER: No, your Honor.

25 THE COURT: Okay. We'll be in touch as soon as we

1 hear anything.

2 (Recess taken at 9:12 a.m.)

3 (Resuming at 9:58 a.m.)

4 THE COURT: Okay. Counsel and the defendant are
5 here.

6 We've got the message that the jury has reached a
7 verdict.

8 Dean, do you want to bring them in, please.

9 THE LAW CLERK: Yes, your Honor.

10 (Jurors enter courtroom.)

11 THE COURT: All members of the jury are present.
12 Counsel and the defendant are present.

13 You may be seated.

14 Mr. Sigler, I'm informed that the jury has reached a
15 decision now in this case. Is that true?

16 THE JUROR: Yes, we have, your Honor.

17 THE COURT: And have you signed and dated the form?
18 Today is the 27th, I think.

19 THE JUROR: Yes.

20 THE COURT: All right. Dean, if you will retrieve
21 the verdict from the foreperson, please.

22 And, Mr. Binninger, if you and Mr. Springfield will
23 stand for the announcement of the verdict.

24 All right. The verdict appears to be in order.

25 Madam clerk, if you'll announce the verdict.

1 THE CLERK: United States District Court, Southern
2 District of California, United States of America, plaintiff,
3 versus Jahvaris Lamoun Springfield, defendant. Case
4 No. 20-CR-2923-LAB.

5 Verdict, we the jury in the above-entitled cause find
6 the defendant, Jahvaris Lamoun Springfield, guilty of
7 distribution of fentanyl, resulting in death, as charged in the
8 Indictment.

9 Date, August 27th, 2021, San Diego, California.
10 Signed by the foreperson, Dennis Sigler.

11 THE COURT: Ladies and gentlemen, was this and is
12 this your verdict, so say all of you?

13 THE JURORS: Yes.

14 THE COURT: Either side request the jury be polled?

15 MR. BINNINGER: Yes, please.

16 THE COURT: We are going to call your name, and we
17 need you to answer out loud and affirm that this is the verdict
18 that each of you reached individually.

19 Madam clerk.

20 THE CLERK: Yes, your Honor, are these your verdicts
21 as presented and read, as to Dennis Sigler?

22 THE JUROR: Yes.

23 THE CLERK: Douglas Callender?

24 THE JUROR: Yes.

25 THE CLERK: Thomas Raskopf?

1 THE JUROR: Yes.

2 THE CLERK: Amanda McIntyre?

3 THE JUROR: Yes.

4 THE CLERK: Dana Yenawine?

5 THE JUROR: Yes.

6 THE CLERK: John Austin?

7 THE JUROR: Yes.

8 THE CLERK: Robert Hendricks.

9 THE JUROR: Yes.

10 THE CLERK: Ryan O'Connor.

11 THE JUROR: Yes.

12 THE CLERK: Cheryl Greed.

13 THE JUROR: Yes.

14 THE CLERK: Daniel Mundy?

15 THE JUROR: Yes.

16 THE CLERK: Michael Hicks?

17 THE JUROR: Yes.

18 THE CLERK: And Andrew Weil.

19 THE JUROR: Yes.

20 THE COURT: All right. Madam clerk, record the
21 verdict, please.

22 Folks, this concludes your jury service. I want to
23 thank you. You were a conscientious jury, and I appreciate it.
24 I know this is a tough case and you deliberated fairly and long
25 and came to a conclusion. We appreciate that.

1 I hope you found the experience -- even though it's a
2 difficult thing to stand in judgment of somebody else, but I
3 hope you found it to be educational and satisfying to -- to the
4 extent that it illustrates that jury service works and the
5 guarantee of the right to a jury trial is alive and well.

6 Thank you very much. Have a nice weekend. Nice
7 meeting all of you.

8 You can go down to the jury reception area. You'll
9 get further instructions, fill out paperwork to get parking and
10 other things paid.

11 Thank you, again.

12 THE JUROR: Thank you, your Honor.

13 (Jurors exit courtroom.)

14 THE COURT: All right. The jury is not present.
15 Counsel and the defendant are present.

16 Have a seat, please.

17 Madam clerk, can you give us a date for sentencing?

18 THE CLERK: December 14th, your Honor, at ten
19 o'clock.

20 THE COURT: Do you have your calendar, Mr. Binninger?
21 Does that date sound workable, December 14th, 10:00 a.m.?

22 MR. BINNINGER: Yes.

23 THE COURT: The Government?

24 MR. WONG: Yes, your Honor.

25 THE COURT: All right. Sentencing will be set

1 December 14th, 10:00 a.m.

2 Was the defendant detained up to this point?

3 MR. WONG: Yes, your Honor.

4 THE COURT: Okay. The detention will remain in
5 effect pending sentencing.

6 And I will extend the time for filing post-trial
7 motions three weeks before the sentencing date. And the
8 Government's response, if any motions are filed, will be due a
9 week before the sentencing date.

10 Anything else?

11 MR. BINNINGER: No, your Honor.

12 MR. WONG: No, your Honor.

13 THE COURT: We'll need to retrieve -- where is Steve?

14 Okay. Some of the exhibits were paper exhibits.

15 Return the tangible exhibits to the party who offered
16 them, and the exhibits are to be held without alteration,
17 pending any possible appeal.

18 We'll give you the thumb drive back as well.

19 All right. Thank you. We're in recess.

20 MS. WEBER: Thank you, your Honor.

21 (Court adjourned at 10:04 a.m.)

22 (Court resuming at 10:28 a.m.)

23 THE COURT: Okay. Mr. Wong, Ms. Weber, Mr. Binninger
24 are present.

25 We're back on the record in the United States versus

1 Springfield.

2 Mr. Springfield is also here.

3 It was brought to my attention after we released the
4 jury and retrieved the exhibits to give back to counsel that
5 the black phone was out of the bag.

6 I have no understanding or idea of how that came to
7 be. I don't -- I didn't -- I was trying to think back.

8 Were the phones removed from the bag at all when they
9 were shown to witnesses?

10 MR. WONG: They were, your Honor. We cut the bags
11 open before we presented them.

12 And then we put them in the bag because the bag had
13 the exhibit sticker on it.

14 THE COURT: Did the bag still have a slit in it when
15 it went in? Did it have an opening?

16 MR. WONG: It did, your Honor.

17 THE COURT: I just wanted to bring that to your
18 attention. I don't know that there's -- anything happened.

19 Were the phones able to be charged or were the
20 batteries removed or off? Do you know?

21 MR. WONG: I -- I don't know, your Honor. But I
22 don't -- I don't believe we included a charger with them.

23 THE COURT: Okay. Well, I wanted to bring this to
24 your attention. I told the jury don't take the phones out of
25 the bag. The obvious risk is that they'll access the phone and

1 look at something that was not in evidence. I'm not saying
2 that happened. In fact, I think it's very unlikely that it
3 happened.

4 My understanding from other cases, I don't know if it
5 happened here, is that law enforcement usually puts it in
6 airplane mode so no changes can be made. I don't know if that
7 happened at all. But I was made aware that the phone was out
8 of the bag, and I had specifically given instructions, "Don't
9 take it out."

10 I didn't know that -- I couldn't recall that the bag
11 [sic] was out of the phone when the witness handled it.
12 Mr. Wong recalls that it was.

13 You -- is that your recollection, too? That it was
14 actually physically taken out of the bag by the witness at some
15 point?

16 MR. BINNINGER: I don't recall, based on --

17 THE COURT: Okay.

18 MR. BINNINGER: Well, I don't mean to interrupt, your
19 Honor.

20 THE COURT: No, no. That's fine, Mr. Binninger. I
21 just wanted to bring it to your attention.

22 Obviously, if the phone worked and the jury accessed
23 it and looked at something that was not in evidence, that's a
24 problem. But that's also a stretch, at this point, in -- in
25 the realm of possibilities.

1 But I wanted to bring it to your attention and tell
2 both sides that they're authorized, as far as the Court is
3 concerned, to contact Mr. Sigler, the foreperson of the jury,
4 or other jurors to find out how that happened.

5 It may -- it may just be happenstance. That the --
6 the representation by Mr. Wong that there was a slit in the
7 bag, and it could have been -- could have slipped out. Maybe
8 it did.

9 As I said, I only see it as a problem if the phone
10 was accessed. Otherwise, what's the big deal?

11 You're looking at it through a clear plastic bag or
12 you're looking at it, you know, outside of the plastic bag.
13 The problem arises if somebody accessed the phone and looked at
14 other messages.

15 And I -- you know, maybe there are no other messages.
16 Maybe there's nothing to that either. But I -- I was not
17 content to just say, well, I'm going to assume, you know,
18 nothing happened. I wanted to alert you. And you can -- you
19 can go where you think you need to go with this, and --
20 investigation or otherwise, Mr. Binninger.

21 MR. BINNINGER: Thank you, your Honor. I would just
22 like to --

23 MR. WONG: I can make a further proffer for the
24 record, your Honor.

25 THE COURT: Sure.

1 MR. WONG: When I picked up the phone in closing, I
2 picked it up from the wrong side, and it spilled out of the
3 bag.

4 THE COURT: But how did it go back? Did you put it
5 back in the bag then.

6 MR. WONG: Yeah, I put it back into the bag.

7 THE COURT: Yeah.

8 MR. WONG: And I would further proffer that there was
9 no data -- my understanding from the agent is there was no data
10 to be taken from the phone. It was simply a piece of plastic.

11 THE COURT: I just wanted to -- the responsible thing
12 to do here is to alert a side that might be affected by this,
13 which obviously is the defense in this case. And let
14 Mr. Binninger and his investigator follow up.

15 I authorize you to contact the jurors, ask if anybody
16 turned the phone on.

17 I mean, in my view -- unless I'm missing something,
18 Mr. Binninger, the only problem arises if they turned it on and
19 had access to things that were not mentioned in evidence. And
20 I think that's unlikely. I think it's unlikely.

21 I think probably now -- given what Mr. Wong has
22 said -- the most likely scenario is that somebody's looking at
23 the bag and the thing slides out from the open slit in the bag,
24 just as it did when Mr. Wong picked it up. But all of that is
25 subject to investigation. And, you know, if I'm wrong about

1 that, then you can, you know, sort that out. And we can have a
2 hearing, if need be. But, you know, see where that leads you.

3 MR. WONG: We would further make the phone available
4 to Mr. Binninger and his investigator for inspection.

5 THE COURT: Good. Good. Okay. I think that's good.

6 MR. BINNINGER: Can I just lay an objection for the
7 record, please?

8 THE COURT: Yeah. Sure.

9 MR. BINNINGER: I would just object to juror
10 misconduct and request a mistrial.

11 THE COURT: Okay. But we don't know that that
12 happened.

13 MR. BINNINGER: I agree.

14 THE COURT: I think it's premature. So I'll reserve
15 on that objection, at this point. I'm not going to rule on it
16 now.

17 MR. BINNINGER: Yes, your Honor.

18 THE COURT: But I want you to look into the
19 circumstances.

20 MR. BINNINGER: Yes.

21 THE COURT: This may be harmless. It may be that,
22 you know, it was in a bag, and it just slipped out of the bag.

23 If it's something more than that, if there's a
24 nefarious part of this, they ignored the Court's -- I think at
25 least twice I told them, when it comes to exhibits, don't take

1 them out of the bag. Don't take them out of the bag. Maybe
2 they didn't. Maybe they were handling it, and it slipped out,
3 and, you know, nobody put it back in.

4 As I said, the only problem, Mr. Binniger, that I
5 see is if somebody actually turned the phone on. Otherwise,
6 we're dealing with an innate object. Right? And it's either
7 in a bag or it's outside of the bag. But big deal. There was
8 no evidentiary significance to the phone per se. It was just
9 what's on the phone and -- and the risk that maybe something
10 that was not put in evidence -- one of the messages -- if there
11 are any additional messages that were on the phone was looked
12 at and somehow contaminated the -- the verdict here.

13 But that's a matter for you to explore in further
14 investigation. And I'm authorizing that, and the Government
15 says they'll cooperate by giving you the phone.

16 It may start in with the fact that the phone can't
17 even turn on now. I don't know that. But you certainly can
18 look into that.

19 MR. WONG: Your Honor, if I may clarify, just a
20 little bit.

21 The evidentiary significance of the phone is that on
22 a piece of tape, written on the back of the phone was the phone
23 number.

24 THE COURT: No, I understand that.

25 I was just saying, unless I'm missing something here,

1 unless the phone was turned on, who cares. Right?

2 MR. BINNINGER: (Nods head.)

3 THE COURT: It's either in a bag where you can handle
4 and touch and look at and see the phone number on the back, or
5 it's outside of the bag that you can handle and touch and look
6 at. That wouldn't make any difference here.

7 There's no contamination, obviously, in that, and
8 there's a simple explanation. There was a slit in the bag.
9 And, you know, in viewing the evidence, which I told them they
10 could do, it came out of the bag and nobody put threw it back
11 in. If that's it, I don't see a problem.

12 Now, if it goes beyond that, and the phone was
13 accessed and there's material that they considered that they
14 shouldn't have considered, then there's a problem. Then
15 there's a problem.

16 So your objection is noted. I won't rule on it until
17 you've had a chance to investigate and, you know, develop an
18 understanding of what happened.

19 If need be, Mr. Binninger, we can have a hearing on
20 this, and I can summon these folks back in. We can take
21 testimony. I don't know if it's going to come to that. But
22 I'll leave it to you. You're capable, responsible counsel and
23 I'm sure you'll follow up. I just wanted to make sure that was
24 on the record.

25 MR. BINNINGER: I appreciate that, your Honor.

1 MR. WONG: Thank you, your Honor.

2 THE COURT: Okay? All right. We're in recess.

3 (Recess taken at 10:35 a.m.)

4
5 --oOo--

6
7 I certify, by signing below, that the foregoing is a correct
8 stenographic transcript of the oral proceedings had in the
9 above-entitled matter this 21st day of December, 2021. A
10 transcript without an original signature or conformed signature
11 is not certified. I further certify that the transcript fees
12 and format comply with those prescribed by the Court and the
13 Judicial Conference of the United States.

14 /S/ Amanda M. LeGore

15 _____
16 AMANDA M. LeGORE, RDR, CRR, CRC, FCRR, CACSR 14290

Appendix H

CERTIFIED COPY

UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 BEFORE THE HONORABLE JUDGE
 LARRY BURNS SENIOR JUDGE PRESIDING

UNITED STATE OF AMERICA,) CASE NO. 3:20-CR-02923-LAB-1
)
 PLAINTIFF,) MOTION HEARING
)
 v.)
)
 JAHVARIS LAMOUN SPRINGFIELD,)
)
 DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, FEBRUARY 14, 2022

PAGES 1 THROUGH 55

APPEARANCES:

FOR THE PLAINTIFF: UNITED STATES ATTORNEYS' OFFICE
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 San Diego, California 92101
 BY: *STEPHEN H. WONG, ESQ.*
 BY: *MICHAELA L. WEBER, ESQ.*

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 180 West Broadway, Suite 1800
 San Diego, California 92101
 BY: *MATTHEW C. BINNINGER, ESQ.*

REPORTED BY: ABIGAIL R. TORRES, CSR 13700
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 333 West Broadway, Suite 420
 San Diego, California 92101

SAN DIEGO, CALIFORNIA; MONDAY, FEBRUARY 11, 2022; 11:08 A.M.

-oOo-

THE CLERK: Calling Item No. 5 on the calendar,
20-cr-2923, *United States of America v. Jarvis Springfield*.

If counsel could state their appearance for the
record, please.

MR. BINNINGER: Good morning, Your Honor.

Matt Binninger on behalf of Mr. Springfield, who's in
custody and will be present shortly.

THE COURT: All right. Good morning, Mr. Binninger.

MR. WONG: Good morning, Your Honor.

Stephen Wong and Mikaela Weber for the United States.

THE COURT: All right. Good morning.

MR. WONG: And, Your Honor, may I address the Court
and the courtroom deputy. If you might recall, Mr. Gallagher's
father appeared at trial.

(The defendant enters the proceedings.)

THE COURT: Yes.

MR. WONG: His health -- he's very ill, and he is in
Boston.

THE COURT: Uh-huh.

MR. WONG: But just -- and he went back and forth on
this quite a bit over the weekend, which is why I did not
notify the Court before this. But he would like to join us by
phone. I have his phone number here.

1 And he's standing by.

2 THE COURT: Tish?

3 THE CLERK: I would have had to set that up, Your
4 Honor, with --

5 THE COURT: You have to set it up?

6 THE CLERK: -- with our IT department. Yeah. They
7 have to --

8 THE COURT: Do you have his cell phone?

9 MR. WONG: I have his cell phone ready.

10 THE COURT: No. Do you have a cell phone?

11 MR. WONG: I do. Yes.

12 THE COURT: If you want to call him on his cell
13 phone --

14 MR. WONG: Put him on speaker.

15 THE COURT: -- and put it -- well, yeah. Does he want
16 to make a statement, is that what you're saying?

17 MR. WONG: He would like to address the Court.

18 THE COURT: All right. Do you have any objection to
19 him listening to the proceedings by telephone and making a
20 statement?

21 MR. BINNINGER: None.

22 THE COURT: Okay. Let's use -- apparently, Mr. Wong,
23 it takes some setup for us to do that, so if you can do it more
24 expeditiously by using your cell phone and putting it next to
25 the mic, we'll do it that way.

1 MR. WONG: Yes, Your Honor.

2 THE COURT: I don't know -- there's a motion to be
3 resolved first. I don't know if he wants to listen to that.
4 If -- if you want to wait until we resolve the motion.

5 MR. WONG: Very well. I'll ask my victim-witness
6 advocate to go into the hallway and tell him what's going to
7 happen.

8 THE COURT: That's Suzy.

9 MR. WONG: Ms. Naranjo, yes.

10 THE COURT: Yeah. Okay. All right. Mr. Springfield
11 is present.

12 Good morning, Mr. Springfield.

13 THE DEFENDANT: Good morning. How's everybody doing?

14 THE COURT: Good. Good.

15 Mr. Binninger, you have moved for a new trial in this
16 case. The basis for the new trial are statements that were
17 made by the jury foreperson to your investigator. I've
18 reviewed your motion. I've reviewed the declaration by your
19 investigator. The gist of it is that the foreperson, as I
20 understand the interaction, told your investigator that there
21 were jurors who were disappointed, unhappy, that
22 Mr. Springfield didn't testify. They wanted to hear from him.

23 And in his view, speaking from his perception, he
24 believed that maybe that pushed them to vote guilty in the
25 case. That's -- is that a fair summary of what the motion is?

1 MR. BINNINGER: Yes, Your Honor.

2 THE COURT: Did the investigator ever speak to any of
3 the other jurors? Or just the foreperson?

4 MR. BINNINGER: Just to Mr. Seigler.

5 And if the Court is curious as to why the declaration
6 was signed by my investigator and not Mr. Seigler himself, it's
7 because I asked my investigator to follow up. And after that
8 first phone call, was not able to reach Mr. Seigler. He did
9 not answer her phone calls.

10 THE COURT: Oh.

11 MR. BINNINGER: Given the -- given what was relayed to
12 Ms. Sinnigin [phonetic], who -- I understand it's hearsay, but
13 I trust her with my life. I asked her to put it into a
14 declaration and --

15 THE COURT: Yeah. I don't have any question on -- the
16 Government hasn't really questioned that the foreperson said
17 those things to your investigator. I just wondered did -- was
18 she able to identify who the other prospective jurors were?
19 Did the foreperson say it was Smith and Brown who said this?

20 MR. BINNINGER: No. All that we could glean from it
21 was that there was a split of seven to five. And that there
22 were individuals that were wanting to vote.

23 THE COURT: Two? My -- my sense of things was it -- I
24 wasn't given a number. But it sounds like there were two
25 people who had expressed dissatisfaction that Mr. Springfield

1 didn't testify.

2 MR. BINNINGER: Yes. It seemed that way based on what
3 Mr. Seigler represented.

4 THE COURT: Okay. You acknowledge that throughout the
5 case, the jury was repeatedly told by me that they were not to
6 consider the fact that Mr. Springfield did not testify as any
7 evidence against him whatsoever; right?

8 MR. BINNINGER: I acknowledge that. I acknowledged it
9 in my motion.

10 THE COURT: Okay. And during voir dire, it was a
11 subject that was covered too.

12 MR. BINNINGER: Quite in detail with Mr. --

13 THE COURT: Right.

14 MR. BINNINGER: Mr. Galax- --

15 THE COURT: I think the message to the prospective
16 jurors, other than the fellow that got stricken because he
17 couldn't give us an assurance, was this disqualifies you from
18 jury service if you can't let go of the sense that, you know,
19 the defendant has an obligation to testify. Right? That was
20 loud and clear.

21 MR. BINNINGER: It was loud and clear.

22 THE COURT: Here's the other question I have for you:
23 We don't allow a jury to hold it against the defendant because
24 there's a constitutional right not to have to incriminate
25 yourself or speak at all. Right?

1 MR. BINNINGER: Yes.

2 THE COURT: But when we get outside of the legal
3 arena, seems to me that it's human nature and human instinct,
4 putting aside legal protections that apply in Court, that when
5 a person remains silent in the face of serious accusations,
6 most people say, "Yeah, he's got something to hide." And
7 that's the intuition.

8 MR. BINNINGER: I would agree --

9 THE COURT: It's not permitted here. But it's a
10 natural intuition that people say, Very serious accusation, and
11 this person is standing silent, and I'm very suspicious about
12 that. I think he's probably got something to hide.

13 MR. BINNINGER: Which is true, and that's why I made
14 it a point in my voir dire to specifically ask about that
15 point.

16 THE COURT: Right. And, of course, we -- we do our
17 best to disabuse them that that intuition cannot -- cannot come
18 into play at all. In fact, just the opposite here. And I --
19 as I said, they were repeatedly told, even in the final charge
20 of the -- I reminded him again --

21 MR. BINNINGER: You did.

22 THE COURT: -- I think that, "Look, Mr. Springfield
23 doesn't have to testify. And he's presumed innocent. And you
24 can't hold that against him."

25 Here's the problem you run into. I think the case law

1 is just against you. The case law doesn't permit the Court to
2 consider these statements about, you know, who said what during
3 the deliberation process. And I understand that -- the gist of
4 the motion is to try to pigeonhole it into, Well, there was
5 deceit, deceit during the voir dire. When they told you that
6 they would follow the Court's instruction, they didn't really
7 mean that.

8 And I'm not sure that's true. It could be true that
9 it was deceitful or it could just be that they said, Yeah, of
10 course we'll go along with that.

11 But then their instincts -- you know, assuming all of
12 this is true that this was said -- that their instincts took
13 over. And, you know, they said some things that they shouldn't
14 have said and maybe relied on considerations they shouldn't
15 have relied on.

16 But, boy, the law is so strong against doing that.
17 And imagine the ramifications if that became the order of the
18 day that after every jury trial, we run back and interview all
19 the jurors and determine if anybody said anything that was out
20 of line with the instructions and then say, Oh, they didn't
21 tell the truth during voir dire.

22 My problem here is, first off all, I don't think it
23 follows the -- because this may have happened, that there was
24 deceit during voir dire. I don't think that that necessarily
25 follows -- it could be because of that. But it's not

1 necessarily so.

2 And then, second, even if that's the case, this isn't
3 the kind of deceit that would qualify for me to look at the
4 declaration and act on the declaration. It's not racial
5 animus, for example, which the Supreme Court has carved out as
6 an exception. Nothing to do with the fact that Mr. Springfield
7 is African-American. There's no mention of that.

8 All this has to do with is they didn't follow an
9 instruction on whether he has to testify or not, or maybe they
10 didn't. I mean, assuming that the hearsay on hearsay is to be
11 credited.

12 MR. BINNINGER: I understand -- I understand that the
13 case law is strongly against me. I would just say this, that
14 it seems strange to me that the Supreme Court would carve out
15 racial animus such that if my client or my investigator got a
16 declaration where a racial epithet was used against my client
17 in saying that because he didn't testify or his kind don't
18 testify, that that would be a reason for us to ignore the
19 no-impeachment rule under the Sixth Amendment but --

20 THE COURT: That's what they said, though.

21 MR. BINNINGER: I understand. But I just want to say
22 that it seems that -- while I understand that, and that's an
23 important thing, Your Honor emphasized over and over again
24 during trial how important --

25 THE COURT: Yeah.

1 MR. BINNINGER: -- it was not to hold it against
2 Mr. Springfield because those are the rules that we abide by.
3 And that's such an important one, that I wanted to make it a
4 specific part of voir dire.

5 And if it seems as though that they did not follow
6 that, the fact that there wasn't a racial epithet used, and
7 that's preventing us from actually going into and impeaching
8 this, I respectfully disagree with under the Sixth Amendment.

9 But I understand the Court's position. I understand
10 the case law is strong but --

11 THE COURT: You've -- you've preserved the issue here.
12 But I just don't think it has any legs. The Government has
13 asked me to strike the declaration. And I'm not going to
14 strike it. I think it should be part of the record here.

15 And somebody can review it and determine whether this
16 fits into the very narrow exceptions. I don't think it does.
17 I think race is different. Race would be peculiar to
18 Mr. Springfield because he's African-American. But ignoring,
19 ignoring the admonition of, you know, not holding it against
20 someone because they didn't testify, that cuts across racial,
21 gender lines, everything else.

22 So it's a little broader. And I could understand how,
23 you know, they could carve out an exception for race. I mean,
24 particularly with the history of racial prejudice in this
25 country. And, you know, the *Batson* case, and some of the

1 others, the way that African-Americans were systematically
2 excluded from juries for a period of time. All of those things
3 I think led to a unique rule that was a very, very narrow
4 exception to this consideration of what's said during jury
5 selection.

6 I mean, you saw the -- kind of the "flip" statement
7 made in one of the Ninth Circuit cases about even if they flip
8 a coin to determine it, that doesn't render the verdict suspect
9 or subject to challenge. I mean, imagine something as
10 arbitrary as that.

11 MR. BINNINGER: I agree. I guess my only point and
12 response to that, Your Honor, is that there is no -- aside from
13 admonitions about being conscientious and taking, you know,
14 your time in deliberations, there is no specific rule that says
15 you can't -- you can't solve this by flipping a coin. But
16 there are rules that say, You are not to hold it against the
17 defendant for not testifying.

18 And based on what -- the statements made by
19 Mr. Seigler, it seemed that way.

20 THE COURT: Yeah. The flipping the coin is really the
21 outside parameter of what you can't consider. And, you know,
22 that's even more outrageous than -- as I said, if -- I'm right
23 about, you know, people's instincts outside of the court
24 process, which we don't allow here. We forbid. We instruct
25 against.

1 But I think it is human nature to say, you know, Hey,
2 I raised a couple kids, and I confront them, you know. They
3 look down, and I thought, Oh, I'm onto something here. Right?

4 There's no throwing up of the hands, What are you
5 talking about? I don't know what you're saying.

6 It always made me a little more suspicious, when in
7 the face of an accusation, you know, I got silence. I just
8 think that's instinct. And that's why we have instructions
9 that guard against it. That's why five, six times, you know,
10 not just during voir dire, but during the course of the trial,
11 instructions -- preliminary instructions and others.

12 Even at the end, the final instruction that I gave,
13 "Don't hold it against Mr. Springfield. He didn't give his
14 side of the story. He didn't have to."

15 It's enough that he's been accused to say, Prove it.

16 So anything on behalf of the United States?

17 MR. WONG: Your Honor, I'll just note that the defense
18 doesn't argue that the Court is wrong on the law. It's just
19 inviting the Court to disregard the law. And as the Court is
20 aware, that can't be done. So I think it begins and ends with
21 the fact that the Court cannot consider the declaration.

22 THE COURT: I think you're right. I mean -- look,
23 my -- my decision on this has to be guided by precedent, by
24 higher Courts, and I -- I give Mr. Binninger credit. He
25 acknowledges that the law is against him on this.

1 But he has a right to preserve this and argue this
2 novel argument, I suppose, on appeal. But, Well, why should
3 this be treated -- maybe we need to take another look at this.
4 Why should this be treated differently from race? Why is there
5 just one carve-out for improper considerations? Maybe there
6 should be more.

7 He's probably going to lose. The Ninth Circuit is
8 bound by the Supreme Court precedent just as I am. But, you
9 know, it would take the Supreme Court saying, We'll look at
10 this again, and carve out more exceptions.

11 Unlikely that's going to happen. We'll have chaos if
12 that happens. Might as well give up jury trials; right?
13 Because every single one, you're going to find somebody who
14 says something that can be used by a creative lawyer to say,
15 Oh, this is contrary to the instruction so we get a new trial
16 on this.

17 MR. BINNINGER: Perhaps. But given the severity of
18 the situation, I felt that it was important.

19 THE COURT: I don't fault you at all. But with all
20 respect, the motion is denied.

21 MR. BINNINGER: Yes, Your Honor.

22 MR. WONG: I would add also to that, Your Honor. Who
23 would want to serve on jury duty if you were going to be put on
24 trial after serving?

25 THE COURT: Well, I -- yeah. This fellow spoke and,

1 you know, apparently spoke freely about all of this.

2 Mr. Binninger, I have reviewed a pre-sentence report
3 in this case, which included an addendum. And I've looked at
4 that as well.

5 Have you gone over that with Mr. Springfield?

6 MR. BINNINGER: Just a correction of the name of his
7 cousin who can visit.

8 THE COURT: That got taken care of in the addendum;
9 correct?

10 MR. BINNINGER: Yes.

11 THE COURT: The United States has filed a sentencing
12 memorandum. I have reviewed that. You, likewise, have filed a
13 sentencing memorandum. And attached to that were logs of,
14 what, the text messages?

15 MR. BINNINGER: The text messages from Mr. Gallagher
16 was Exhibit B. Exhibit A was Dr. Stabley's autopsy report,
17 Your Honor.

18 THE COURT: Right. And I have -- I have looked at
19 those exhibits. Both sides here have filed sentencing summary
20 charts. I've reviewed those.

21 And I think -- let's see if there was anything else.

22 MR. WONG: Your Honor, if we're moving on to the
23 sentencing, may I --

24 THE COURT: Yeah. Sure.

25 There were excerpts -- of course, these were attached

Appendix I

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

USA

VS

JAHVARIS LAMOUN SPRINGFIELD

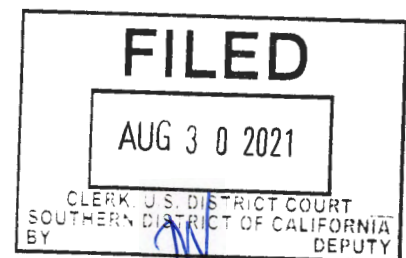
Case Number: 20CR2923-LAB

EXHIBIT LIST

Jury Trial

☐ Plaintiff ☐ Defendant ☒ Court

No.	Date I.D.	Date Rec'd	Description
1	8/26/21	8/26/21	CT exhibit
2	8/26/21	8/26/21	Jury note
3	8/26/21	8/26/21	Jury note
4	8/27/21	8/27/21	Chambers letters to jurors



1
2 1. The United States' Exhibits _____ consist of controlled
3 substances that were analyzed and identified by the United States Drug Enforcement
4 Agency laboratory. The results of the laboratory analyses are as follows:
5

USAO EXHIBIT #	DEA EXHIBIT #	SUBSTANCE IDENTIFIED	SUBSTANCE FORM	AMOUNT	LOCATION WHERE DISCOVERED
511	1	Fentanyl	Tablets (3)	0.3270 grams	Mercedes GLK
520	9	Methamphetamine Cocaine	Residue	Residue	Gill Village Way
519	11	Methamphetamine Caffeine	Tablets (2)	0.7160 grams	Gill Village Way
515 404	16	Cocaine Methamphetamine Heroin Fentanyl Caffeine Acetaminophen	Residue	Residue	4023 Haines St.
516	17	Fentanyl Acetaminophen	Tablets (2)	0.2299 grams	4023 Haines St.
518	19	Heroin Fentanyl	Residue	Residue	4023 Haines St.

515
first
MCB
reference
on file

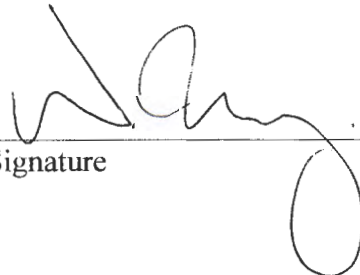
COURT'S	
EXHIBIT NO.	1
IDENTIFICATION/EVIDENCE	2041423
DKT.#	8/26/21
DATE:	8/26/21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

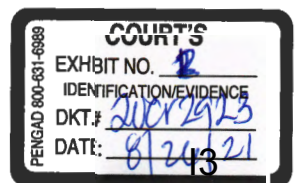
JURY NOTE

Stipulated Evidence - Exhibits
- Test results of drugs & paraphernalia
found (Summary table)
- Results of pills shown on Exh K
(Mercedes)

Dated: 8/26/2021


Signature

Appendix I



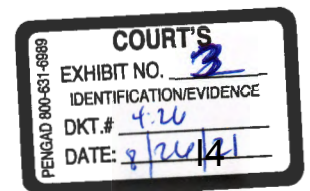
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JURY NOTE

Deliberations are at a standstill,
further deliberations aren't expected
to reach a unanimous outcome.
How do we proceed?

Dated: 8/26/2021

W. Chuly
Signature



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Attorney for Jahvaris Lamoun Springfield

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAHVARIS LAMOUN SPRINGFIELD,

Defendant.

Case No.: 20-CR-2923-LAB

Hon. Larry A. Burns
Courtroom 14A

Date: February 14, 2022
Time: 9:30 a.m.

**DEFENDANT’S MOTION FOR
NEW TRIAL**

I.

STATEMENT OF FACTS

On August 24, 2021, jury trial began in the case of *United States v. Jahvaris Springfield*, based on the single count of distribution of fentanyl resulting in death in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). That morning was spent on voir dire.

The Court began with a brief recitation of the rules of law governing the trial, explaining that the “objective here is to find 12 of you who can try this case on the facts and the law, not have preconceptions, follow the law as I give it to you.” Exhibit A (“Ex. A,” Day One Transcript) at 8. The Court continued, “Mr. Springfield, is presumed to be not guilty. He’s pled not guilty. He has no burden to prove his innocence, *to testify*, to put on any evidence. Instead, throughout this case, the burden of proof, the burden of proving the accusation remains with the accuser, the United States government. You should look to them to prove the accusation. If they don’t, Mr. Springfield is to be found not guilty.” Ex. A at 8-9 (emphasis added).

Turning to the jury selection process, the Court described challenges for cause: “if there’s some cause or good reason that you can’t fairly judge this case, maybe it has to do with the nature of the charge, we’ll find out. But if there’s some reason that you don’t think you can fairly judge this case, or you find yourself tilting toward one side or the other, instinctively, then we wouldn’t want to put you through this. And it wouldn’t be fair to the parties to have someone who was so inclined to sit and judge the case.” *Id.* Consequently, the judge and the attorneys “might suggest it, if, in answers to the questions you give, you have some hesitation about your ability to fairly judge this case, and follow the law as I give it to you.” *Id.* The Court assured everyone that it did not want to go into too great of detail, “but if there’s something that causes you to think that you can’t fairly decide this case on the basis of what’s presented here, in other words, that you’d be leaning in one direction or the other to begin with, then tell us about that.” *Id.* At 12-13.

Once the Court concluded, the parties had fifteen minutes each to ask their own questions. The defense asked, among other questions, “If I advise my client not to testify, is anyone going to hold that against Mr. Springfield...or is anyone going to say, well, he didn’t get up there and testify. And so as a result of that, I’m voting guilty.” *Id.* at 108. One prospective juror, Mr. Galacgac, said that he would “hold it against [Mr. Springfield] for not testifying, because [he would] want to hear [Mr. Springfield’s] side of the story.” *Id.* at 108. Mr. Galacgac elaborated that “it causes some doubt in my thinking, why he’s not testifying.” *Id.* at 110. Quite candidly he admitted that “It casts additional doubt. Because usually the reason you don’t testify is because you’re guilty.” *Id.* at 110.

The Court attempted to educate Mr. Galacgac, reminding him that “a defendant in a criminal case has a constitutional right not to testify, and no presumption of guilt may be raised, no inference of any kind may be drawn from the fact the defendant doesn’t testify.” *Id.* at 111. The Court emphasised the importance of “the fact that you have the protection of the United States Constitution that says you don’t have to

testify.” *Id* at 111. For Mr. Galacgac to sit on the jury, the Court needed him to put out of his mind “that, well, I’m going to hold it against the defendant if he doesn’t testify.” *Id* at 112. Mr. Galacgac had some difficulty with this explanation, causing an even blunter message from the Court: “He has no obligation to testify. And you can’t have an expectation that he will...it should have no bearing on how you evaluate the evidence.” *Id* at 113. Mr. Galacgac again said that he wanted “to hear the whole story from either side.” *Id* at 114. Ultimately, Mr. Galacgac summarized his feelings as “I want to say I’m leaning 70/30 percent that there’s a doubt or questioning why he’s not testifying on his behalf, even though that’s his right.” *Id* at 116. Mr. Galacgac doubled down on this line of reasoning when questioned about it by the prosecutor. *See id* at 120.

Defense counsel challenged Mr. Galacgac for cause because “he can not deal with the burden of proof.” *Id* at 125. The government did not object to excluding Mr. Galacgac for cause. And he was. *Id* at 126. No further challenges for cause were granted, and a jury was impaneled. Of those selected to the jury, none said anything like Mr. Galacgac when presented with the question whether anyone would hold it against Mr. Springfield, or convict, if he chose not to testify. Indeed, none said anything to suggest that they could not apply the law and draw no negative inference from Mr. Springfield’s decision not to testify if he so chose.

The trial lasted just over two days. The jury began deliberations the morning of August 26. Deliberations lasted all day, producing one question and one note. The jury initially wanted to know the different types of drugs found in various locations discussed in the government’s case. Exhibit B (“Ex. B,” Day Three Transcripts) at 23-27. Later in the day, the jury returned a note indicating that “Deliberations are at a standstill. Further deliberations aren’t expected to reach a unanimous outcome. How do we proceed?” *Id* at 27.

The Court suggested sending the jury home and providing an *Allen* instruction in the morning. The parties agreed and the jury was sent home.

The following morning, upon further reflection, defense counsel objected to the reading of the instruction and requested a mistrial. Exhibit C (“Ex. C,” Day Four Transcript) at 3. The Court overruled the objection and read the instruction. *Id* at 5-10. Less than one hour later, the jury returned a guilty verdict. *Id* at 12.

Following the verdict, the Court called both parties back to the courtroom to address an issue regarding the jury. Evidently, one of the cell phones entered into evidence was found outside of its plastic bag in the jury room. *Id* at 15-16. Defense counsel objected to juror misconduct and moved for a mistrial. *Id* at 20. The Court deferred ruling on the request and authorized the parties to contact the jurors to investigate whether any potential misconduct took place in trying to turn on and review the phone after being instructed not to. *Id* at 19-20.

On September 13, 2021, defense investigator, Sean Sinnigen, contacted the foreperson, Dennis T. Sigler, to discuss what took place in the jury room. Exhibit D (“Ex. D,” Declaration of Sean Sinnigen). Mr. Sigler said that no one attempted to turn on the phone, but he did shed light on apparent misconduct committed by members of the jury. Specifically, several members of the jury voted to convict because Mr. Springfield did not testify. *See id* at ¶¶ 8-10.

Despite having several questions and points of confusion regarding the government’s case, ultimately, to at least some jurors, the decision to convict came down to Mr. Springfield’s decision not to testify. *Id* at ¶¶ 8-11. According to Mr. Sigler, the jury “knew it was his right not to testify, but the fact that he didn’t testify swayed some jurors. Some of the jurors expected a defense, some of the jurors wanted to hear from the defendant. We wanted to hear him say, ‘I’m not guilty.’” *Id* at ¶ 10. When the jury sent the note indicating that it was unlikely to reach a unanimous verdict, they were split: five not guilty and seven guilty. *Id* at ¶ 13.

The following morning, after the Court provided its instruction to continue deliberations, the jury returned to deliberate, took a vote, and voted guilty.

This motion follows.

II.

THE COURT SHOULD GRANT A NEW TRIAL IN THE INTERESTS OF JUSTICE

Federal Rule of Criminal Procedure 33 states that “upon a defendant's motion, a court may vacate any judgment and grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a). Newly discovered evidence is an explicit statutory basis for a new trial under Rule 33. *See United States v. Harrington*, 410 F.3d 598, 601 (9th Cir. 2005); *United States v. Kulczyk*, 931 F.2d 542, 548 (9th Cir. 1991).

To obtain a new trial based on newly-discovered evidence, a defendant must show that (1) the evidence is newly discovered; (2) the defendant was diligent in seeking the evidence; (3) the evidence is material to issues at trial; (4) the evidence is not cumulative nor merely impeaching; and (5) the evidence indicates that the defendant would probably be acquitted in a new trial. *Harrington*, 410 F.3d at 601.

In the instant case, Mr. Springfield should be granted a new trial based upon newly discovered evidence because he can satisfy the five requirements for prevailing on such motion.

A. The Evidence is Newly Discovered.

It is undisputed that none of the new evidence presented was known to or in the possession of the appointed counsel, and further, was not in the hands of Mr. Springfield until after the trial had concluded. This evidence thus qualifies as “newly discovered.” *See United States v. Hinkson*, 526 F.3d 1262, 1278 (9th Cir. 2008).

B. Mr. Springfield Was Diligent in Seeking the Evidence.

This evidence could not have been obtained by the exercise of ordinary diligence in preparing for trial. It is only through sheer happenstance that a piece of evidence was found out of its packaging, warranting Ms. Sinnigen to discuss with Mr. Sigler what took place in the jury room. (See Ex. D at ¶ 4). No degree of diligence could have yielded discovery of this evidence before or during the trial. And

Ms. Sinnigen was diligent in obtaining the newly discovered evidence within a few weeks after the verdict.

C. The Evidence is Material to the Issues at Trial.

The new evidence demonstrates improper bias by members of the jury; specifically, “so-called *McDonough*-style bias, which turns on the truthfulness of a juror’s responses on voir dire” where a truthful response “would have provided a valid basis for a challenge for cause.” *Fields v. Brown*, 503 F.3d 755, 766-67 (9th Cir. 2007) (en banc) (citing *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 554-56 (1984)). To obtain a new trial in such a situation, “a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause.” 464 U.S. at 556.

What Mr. Sigler’s behind-the-scene account demonstrates is that some jurors, despite being instructed several times not to, held Mr. Springfield’s decision not to testify against him. They—just like Mr. Galacgac—could not follow the law as instructed and set aside their preconceived notions about a defendant’s decision not to testify. Unlike Mr. Galacgac, they failed to honestly answer a material question during voir dire. Had they answered truthfully, they—just like Mr. Galacgac—would have been challenged and excused for cause. *See* Ex. A at 125-26.

Mr. Sigler’s recounting of events also exemplifies juror misconduct. It is well-established that a juror commits misconduct that may warrant dismissal when he or she disobeys the trial court’s instructions. *See United States v. Eldred*, 588 F.2d 746, 752 (9th Cir. 1978). Regardless of the classification as bias or misconduct, Mr. Sigler’s account of jurors holding it against Mr. Springfield for not testifying showcases and inability to follow the law as instructed by this Court.

D. The Evidence is Not Cumulative or Merely Impeaching

No evidence similar to that recently discovered was presented at trial. Thus, the new evidence is neither cumulative nor impeaching.

E. The Evidence Indicates Mr. Springfield Would Probably be Acquitted in a New Trial.

The newly found evidence highlighted in this motion alone undermines the sufficiency of the verdict in what was already a close case. Nearly half of the jury originally felt that he was not guilty, and of the seven who voted to convict, some used an improper basis to convict. Based on the list of questions and concerns that Mr. Sigler said the jury discussed about the government's case, a jury properly applying the law as instructed by this Court would probably have acquitted Mr. Springfield.

**III.
CONCLUSION**

For these reasons, Mr. Springfield requests that the Court grant his motion for new trial. Or, in the alternative, the Court should hold an evidentiary hearing to determine the extent of juror bias and misconduct to determine if the interests of justice require a new trial.

Dated: January 7, 2022

Respectfully submitted,
/s/ Matthew C. Binninger
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Attorney for Jahvaris Lamoun Springfield

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
	)	CASE NO.: 20cr2923-LAB
Plaintiff,)	
vs.	)	Hon. Larry Alan Burns
	)	Courtroom 14A
	)	Date:
JAHVARIS SPRINGFIELD,	)	Time:
)	
Defendant.	)	DECLARATION OF
	)	Sean Sinnigen

DECLARATION OF SEAN SINNIGEN

I, Sean Sinnigen, do hereby declare the following under the penalty of perjury:

1. My name is Sean Sinnigen. I am a licensed private investigator in the state of California (CA PI # 188039).
2. I assisted Attorney Matthew Binniger on case 20CR2923-LAB with the defense of Jahvaris Lamoun Springfield.

- 1 3. Mr. Springfield's trial began on August 24, 2021 and ended on August 26,
2 2021. Deliberations started August 26, 2021 and continued through August
3 27, 2021.
4
- 5 4. On August 27, 2021, the courtroom deputy announced the verdict in the
6 Springfield trial, and then Judge Burns excused the jury. Shortly after, Mr.
7 Binninger received a phone call from the court requesting his presence in
8 Judge Burns' courtroom. Once both parties were present, Judge Burns
9 explained that his court staff found an unsealed exhibit, an evidence bag
10 containing a cell phone, in the jury room. Judge Burns then gave me and
11 defense counsel permission to contact the foreman on the jury to inquire
12 about the unsealed evidence bag.
13
- 14 5. On September 13, 2021, I successfully reached Dennis T. Sigler [REDACTED]
15 [REDACTED] the jury foreman, on Mr. Springfield's trial. Mr. Sigler relayed the
16 following comments.
17
- 18 6. Mr. Sigler explained that none of the jury members ever opened the
19 evidence bag containing the cell phone, and no one activated the phone.
20
- 21 7. Mr. Sigler also shared that when closing arguments concluded on August 26,
22 2021, the jury began deliberations with some confusion and questions.
23
- 24 8. Some of the questions and concerns that came up during deliberations were:
25 Why did law enforcement not collect fingerprints from Mr. Gallagher's
26 bedroom?
27
28

1 Surveillance by law enforcement seemed incomplete.

2 What did the decedent, Mr. Gallagher, consume in the hours leading up to
3 his death?

4 What kinds of narcotics did Mr. Gallagher have access to in his bedroom,
5 and who was the supplier of the various narcotics?

6 Were the blue pills found in Mr. Gallagher's bedroom all the same chemical
7 compound and dosage?

8 What did Mr. Gallagher consume the day he died?

9
10 9. Mr. Sigler informed me that some jurors voiced disappointment that Mr.
11 Springfield chose not to testify. Some of the jurors wanted to hear Mr.
12 Springfield defend himself. The jurors discussed and understood that Mr.
13 Springfield has the right not to testify in his trial.

14
15 10. Mr. Sigler said to me, "We knew it was his right not to testify, but the fact
16 that he didn't testify swayed some jurors. Some of the jurors expected a
17 defense, some of the jurors wanted to hear from the defendant. We wanted to
18 hear him say, "I'm not guilty."

19
20 11. Some jurors voiced that if it were their trial, they would testify. Others said
21 they would let their attorney handle the decision.

22
23 12. Mr. Sigler said that on August 26, 2021, the jury sent two notes to Judge
24 Burns during jury deliberations. The second note to Judge Burns read
25 something like,
26

27 We cannot come to a unanimous decision. How do we proceed?
28

1
2 13. When the jury sent the note to Judge Burns, they were split, five not guilty
3 and seven guilty. Mr. Sigler was one of five who felt Mr. Springfield was
4 not guilty at this point in deliberations.
5

6 14. Judge Burns then sent the jury home for the day and asked them to return in
7 the morning to continue deliberations.
8

9 15. On August 27, 2021, jurors returned to Judge Burns' courtroom to continue
10 deliberations. Judge Burns read the Allen instruction to the jury following
11 their previous note, encouraging them to continue deliberating. The jury
12 returned to deliberate, took a vote, and voted guilty.
13

14
15 I declare that the foregoing statements are true and correct.
16
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19
20 Date: December 21, 2021

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAHVARIS LAMOUN
SPRINGFIELD,

Defendant.

Case No.: 20-CR-2923-LAB

DATE: February 14, 2022
TIME: 9:30 a.m.

**UNITED STATES' OPPOSITION TO
DEFENDANT'S MOTION FOR NEW
TRIAL AND MOTION TO STRIKE**

The UNITED STATES OF AMERICA, by and through its counsel Randy S. Grossman, United States Attorney, and Stephen H. Wong and Mikaela L. Weber, Assistant U.S. Attorneys, files its Opposition to Defendant's Motion for New Trial and Motion to Strike. This response is based upon the files and records of the case together with the attached statement of facts and memorandum of points and authorities.

I.

INTRODUCTION

Springfield was tried and convicted by a jury of distributing fentanyl to Brendan Gallagher, causing Gallagher's death. Springfield now moves this Court to set the jury's verdict aside and order a new trial based solely on a hearsay statement, made by the jury foreperson to a defense investigator, regarding what other jurors said about how they viewed Springfield's decision to not testify. The Court must deny the motion because Federal Rule

of Evidence 606(b) categorically prohibits the Court from considering the foreperson's statements about what other jurors said and thought during jury deliberations. To avoid this result, the defense attempts to re-frame the issue as a matter of juror bias or dishonesty during *voir dire*, which was merely revealed during deliberations. But both the Ninth Circuit and the Supreme Court have expressly rejected such an end run around Rule 606(b), and both courts have explicitly abrogated the authority upon which the defense relies for that position. The Court must therefore strike from the record any reference to statements made during jury deliberations and deny defendant's motion for a new trial.

II.

BACKGROUND

On September 22, 2020, the Grand Jury returned an indictment charging Springfield with one count of Distribution of Fentanyl Resulting in Death, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). (Dk. 1). Trial commenced on August 24, 2021. (Dk. 57). Defendant did not testify at trial. The Court properly instructed the jury both during *voir dire* and before deliberations, including specifically instructing the jury regarding a defendant's right to remain silent. *See e.g.*, Dk. 74-1 at 111 (Defense Exh. A (Transcript of Proceedings August 24, 2021)). The jury returned a guilty verdict on August 27, 2021. Dk. 61, 62.

After dismissing the jury, as the Court was returning the physical exhibits to counsel, the Court noted that one of the exhibits, a cellular phone, had fallen out of its packaging inside of the jury deliberation room. The Court authorized the parties to contact the jurors for the limited purpose of determining whether the cellular phone was improperly accessed during the jury's deliberations. The Court's September 3, 2021 minute order authorizing that contact left no ambiguity about those limits:

MINUTE ORDER by District Judge Larry Alan Burns as to defendant Jahvaris Lamoun Springfield: The Court has notified each member of the jury that

counsel may contact them for follow-up investigation. Counsel are authorized to do so for the limited purposes of determining: 1) how the cell phone exhibit came out of its plastic bag; and 2) whether the cell phone was turned on or otherwise used during deliberation.

Dk. 68. The parties now agree that the jury did not improperly use or access that cellular phone during deliberations. Dk. 69.

Notwithstanding the Court's minute order, the defense interviewed the jury foreperson not only for purposes set forth in the Court's order, but also inquired into: 1) questions the jurors raised during deliberations, 2) the split between jurors mid-way through deliberations, and 3) jurors' opinions about Springfield's decision to not testify in his own defense, and whether and how that decision factored into their verdict. Dk. 74-4 (Declaration of Sean Sinnigen, Defense Investigator). According to Investigator Sinnigen, the Jury Foreperson told her that, notwithstanding the Court's clear instruction regarding Springfield's right to not testify, "some of the jurors . . . wanted to hear from the defendant."

Now, as the sole ground for a new trial, the defense offers the Jury Foreperson's statements to Investigator Sinnigen regarding the internal thought processes that "some jurors" attached to Springfield's decision not to testify.

III.

ARGUMENT

There is no dispute: 1) that the jury was properly instructed; 2) that the jury did not receive any extraneous prejudicial information; and 3) that the jury was not subjected to any other outside influence. Rather, the defense requests a new trial solely based on the Jury Foreperson's statements to the defense investigator regarding what other jurors said during deliberations. However, binding Ninth Circuit and Supreme Court precedent expressly and unequivocally prohibit the Court from considering such statements. There is therefore no basis whatsoever upon which the Court can consider defendant's motion. Lacking such basis, the Court must deny the motion.

Federal Rule of Criminal Procedure 33(a) allows a court to “vacate any judgment and grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a); *see also United States v. French*, 748 F.3d 922, 934 (9th Cir. 2014). The burden rests with the defendant, *United States v. Alvarez-Moreno*, 657 F.3d 896, 901 (9th Cir. 2011), and “a motion for new trial is directed to the discretion of the [district] judge,” *United States v. Pimentel*, 654 F.2d 538, 545 (9th Cir. 1981).

The Court may not consider, and must strike, the defense investigator’s declaration regarding her discussion with the jury foreperson. Federal Rule of Evidence 606(b) provides:

During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury’s deliberations; the effect of anything on that juror’s or another juror’s vote; or any juror’s mental processes concerning the verdict or indictment.

The Ninth Circuit recognizes that Rule 606(b) imposes “a near categorical bar on juror testimony about statements or events “during the jury’s deliberations.” *United States v. Leung*, 796 F.3d 1032, 1035 (9th Cir. 2015). *Leung* drew this conclusion construing the Supreme Court’s decision in *Tanner v. United States*, 483 U.S. 107, 117 (1987), where the Court rejected the admissibility of a juror affidavit asserting that jurors drank alcohol, smoked marijuana, ingested cocaine, conducted drug deals, and periodically slept throughout a complex criminal trial. *Id.* at 115–16. *Leung* also noted that the prohibition against impeaching a jury’s verdict with post-deliberation statements by jurors about what occurred during deliberations also applies to “[a] postverdict motion for a new trial on the ground of *voir dire* dishonesty.” *Warger v. Shauers*, 574 U.S. 40, 44-45 (2014).

In *Warger*, a juror alleged that, during deliberations, another juror admitted to harboring bias against one of the parties, contrary to their representations during *voir dire*. *Id.* The Court held that Rule 606(b) allowed no exception for juror bias or dishonesty during

voir dire. *Id.* (abrogating *Hard v. Burlington Northern Railroad*, 812 F.2d 482 (9th Cir. 1987)).

Leung pointed out that Rule 606(b) prohibits juror testimony about what occurred during deliberations to impeach a verdict “even when a feckless jury decides the parties’ fates through a coin flip or a roll of the dice.” 796 F.3d at 1032 (citing *Warger*, 574 U.S. at 45). The reasons underlying Rule 606(b) are to “protects jurors from harassment and maintain the integrity and finality of jury verdicts.” *Tanner*, 483 U.S. at 120. The Court explained: “while persistent inquiry into internal jury processes could “in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior,” our very system of trial by jury might not “survive such efforts to perfect it.”

Thus, the Court is categorically barred from considering a juror’s allegation about juror misconduct during deliberations that does not concern any improper outside influence.¹ *See Leung*, 796 F.3d at 1034, 1036 (finding Rule 606(b) categorically barred the court from considering a juror affidavit that other jurors disregarded the trial court’s instruction to not discuss the case prior to final deliberations, and asserting that the jurors regularly talked about the evidence during breaks in the trial and “had already made up their minds that the defendant was guilty”).

The defense tries to avoid this rule by framing the issue as one of juror bias – that certain jurors failed to recognize or acknowledge their predisposition to needing a defendant’s testimony to reach a guilty verdict, or worse, that certain jurors affirmatively misrepresented that predisposition. In support, the defense relies on *McDonough Power Equipment, Inc. v. Greenwood* which allows a new trial where “a juror fail[s] to answer honestly a material question on *voir dire*.” 464 U.S. 548, 556 (1984).

¹ Later, the Court allowed an exception to this rule where a juror is motivated by racial animus. *See Pena-Rodriguez v. Colorado*, — U.S. —, 137 S. Ct. 855, 197 L.Ed.2d 107 (2017).

It is true that, prior to the Supreme Court’s 2014 decision in *Warger*, a minority of jurisdictions did allow juror testimony about deliberations to challenge juror conduct during *voir dire*, an approach that *Warger* recognized as the “Iowa rule.” 574 U.S. at 45-46 (“A number of courts adhering to the Iowa rule held that testimony regarding jury deliberations is admissible when used to challenge juror conduct during *voir dire*”). The Ninth Circuit was one of those jurisdictions, having adopted that approach in *Hard v. Burlington Northern R.R.*, which expanded on *McDonough* to hold that “statements” made during deliberations “which tend to show deceit during *voir dire* are not barred by [Rule 606(b)].” 812 F.2d 482, 485 (9th Cir. 1987) (“in light of the juror affidavits, the district court abused its discretion by not holding a hearing to investigate the allegation that Fraser failed to answer honestly a material question during *voir dire*.”) (citing *McDonough*, 464 U.S. at 556).

However, *Warger* rejected that approach, and also recognized that in promulgating Rule 606(b), “Congress specifically understood, considered, and rejected a version of Rule 606(b) that would have likely permitted the introduction of evidence of deliberations to show dishonesty during *voir dire*.” *Id.* at 48 (quoting *Tanner*, 483 U.S. at 123-125). Not only did *Warger* reject that approach, it also expressly abrogated the line of cases following that approach. *Id.* at 47-48. In *Leung*, for example, the Ninth Circuit recognized that *Warger* abrogated *Hard*, a case in which the Ninth Circuit had adopted the Iowa rule (and by implication *McDonough*, the sole authority cited by the defense upon which *Hard* relied). *See Leung*, 796 F.3d at 1035-36 (recognizing that *Warger* abrogated *Hard*). Applying *Warger*—and its clear rejection of the legal basis for Defendant’s Motion— leaves Defendant without a leg to stand. Defendant’s Motion for a New Trial must be denied.

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IV.

CONCLUSION

For the above-stated reasons, the United States respectfully requests that the Court Strike Exhibit D to Defendant's Motion for New Trial (Declaration of Sean Sinnegen) Dk. 74-4 and deny Defendant's Motion.

DATED: January 19, 2022.

Respectfully submitted,

RANDY S. GROSSMAN
United States Attorney

/s/Stephen H. Wong
STEPHEN H. WONG