

No. 24-1089

---

IN THE  
**Supreme Court of the United States**

---

FEANYICHI E. UVUKANSI,  
*Petitioner,*

vs.

ERIC GUERRERO, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION,  
*Respondent.*

---

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

---

RESPONDENT'S APPENDIX

---

KEN PAXTON  
Attorney General of Texas

TOMEE M. HEINING  
Chief, Criminal Appeals  
Division

BRENT WEBSTER  
First Assistant Attorney  
General

LORI BRODBECK  
Assistant Attorney  
General

JOSH RENO  
Deputy Attorney  
General for Criminal  
ATTORNEY Justice

*Counsel of Record*

OFFICE OF THE  
GENERAL OF TEXAS  
P.O. Box 12548  
Austin, Texas 78711

---

*Counsel for Respondent*

---

## **TABLE OF CONTENTS**

Excerpts from the Reporter's Record for Petitioner's Trial, Volume 8.....	1a
Excerpts from the Reporter's Record for Petitioner's Trial, Volume 9.....	31a
Excerpts from the Reporter's Record for Petitioner's Trial, Volume 10.....	43a
Excerpts from the Reporter's Record for Petitioner's State Habeas Hearing .....	50a



Resp't App. 2a

[ROA.1439, Line 9]

MS. FLADER: There is a motion to require full disclosure of the relationship between the government and all witnesses. And so, I'd like to go through some of those -- those issues. Number one is any witness that has been a paid informer. The answer is: There is none.

The second one is the amount of pay received by said informer. There is none.

Any witness that has been promised immunity from prosecution for admissions made in connection with this case. There has been none.

All discussions, negotiations, concessions, threats, promised, expressed, or implied, or coercive tactics which have transpired between the prosecution or government agencies and any witness, potential witness, or their representatives, and for any other relief as may be equitable or necessary.

[ROA.1440]

There have been discussions between the prosecutor and witnesses and potential witnesses in this case. So, that's the answer to that question.

Number five is: Any relationship that exists between the government and any witness, potential witness, or informant to be inclined, encouraged, or perceived some personal benefit in response to the government or defense request for information or testimony.

Resp't App. 3a

In regards to that, the State's prosecutor has agreed to write the federal judge about one of the witness's cooperation in the case. That witness is currently pending a sentencing for a federal drug charge. And we'll discuss that a little bit more in the future, but the State has agreed to write the federal judge about that witness's cooperation in the case.

MS. KING: I'd like that witness's name on the record, please.

MS. FLADER: Oscar – I'm trying to remember his last name.

MS. KING: I think I wrote it down on this next deal as I know it.

MS. FLADER: I don't know what you wrote it down on.

MS. KING: I know you don't. I'm sorry.

[ROA.1441]

THE COURT: You've got the name, right?

MS. FLADER: Oscar Jerasano.

THE COURT: Okay.

MS. FLADER: All right. The next one is a request --

MS. KING: Let me ask one more question, please, to the prosecutor on that. And Oscar Jerasano, I believe he pled guilty to a federal offense in the federal district -- Southern District of Texas, Victoria, if I'm not mistaken, possibly in 2012 or '13. And the question is for the record: Is his case -- is he awaiting

Resp't App. 4a

sentencing until after he testifies in the State's case against my client, Feanyichi Uvukansi?

MS. FLADER: The information that I have is he is awaiting sentencing and his defense attorney has been asking for continuances on that sentencing until after this case has been completed.

MS. KING: And I just want to make sure it's clear. Based on your information, Madam Prosecutor, Mr. Oscar's defense lawyer is asking the Federal Court to delay sentencing until after he testifies against Uvukansi in this case?

MS. FLADER: Yes.

THE COURT: Okay.

MS. FLADER: The next one is request notice [ROA.1442]

of disclosure of evidence government intends to provide Rule 404. State has complied with that as previously noted.

Motion for discovery of exculpatory, impeachment, and mitigation evidence and supporting case law. This is what's known as Brady disclosure. The State has filed several Brady disclosures previously and an amended Brady disclosure that was given to defense counsel today. So, State has complied with that motion.

THE COURT: Okay.

\*\*\*\*\*

Resp't App. 5a

[ROA.1459, Line 19]

MS. FLADER: Okay. Number four is the federal plea agreement to cooperate with the State in this case for Oscar Jerasano.

There was no plea agreement for that witness to cooperate in this case. Any agreements made with the witness, there have been no agreements other than what was previously put on the record that the State did tell defense counsel for Mr. Jerasano that she would write a letter to the federal judge informing him of the witness's cooperation on this capital murder case.

MS. KING: And I'd ask: Was that done in writing -- by e-mail or in writing, that commitment?

MS. FLADER: I believe I just told him.

MS. KING: If it was via e-mail or any written form, I would ask that that be provided to defense counsel.

MS. FLADER: Sure.

MS. KING: Thank you.

Resp't App. 6a  
REPORTER'S RECORD  
VOLUME 8 OF 14 VOLUMES  
TRIAL COURT CAUSE NO. 1353181  
APPELLATE COURT CAUSE NO. 01-14-00527-CR

FILED IN  
1ST COURT OF APPEALS  
11/7/2014 11:53:50 AM  
CHRISTOPHER A. PRINE,  
Clerk

THE STATE	§	IN THE DISTRICT COURT OF
OF TEXAS	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
FEANYICHI	§	174TH JUDICIAL DISTRICT
EZEKWESI	§	
UVUKANSI	§	

---

CAPITAL MURDER TRIAL

VOLUME 8 OF 14

---

On the 18th day of June, 2014, the following proceedings came on to be held in the above-titled and number cause before the Honorable Frank Price, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.



[ROA.2020, Line 12]

Q. (BY MS. FLADER) What about your personal experience made you decide you wanted to talk to the police?

A. I didn't want other families to go, you know, with this pain. I know how that feels, and I didn't want other families to go with that. I wanted that pain to be solved at least to have some type of closure, the closure we didn't have.

Q. Did you know an [sic] of the people that had been shot?

A. No.

Q. Then why did you care about their families?

A. Because like I say, I know how that feels and I didn't want that pain for nobody.

[ROA.2021]

Q. What is the current status of your federal case?

A. I have pled guilty already, and now I'm waiting for sentencing.

Q. Have you been made any promises for testifying in court today?

A. Nope.

Q. Have they told you that the range of punishment is going to be lowered?

Resp't App. 8a

A. No.

Q. What is your understanding of what the possibilities are for your range of punishment?

A. Ten years to life.

Q. I want to fast forward. You said that you talked to your attorney, and you told him that you wanted to talk to the police. How long after that did you talk to the police?

A. A couple days, I believe it was June 29.

Q. When you talked to the police, did you go to their office; or did they come to your attorney's office?

A. They went to my attorney's office.

[ROA.2092, Line 3]

**CROSS-EXAMINATION**

BY MS. KING

Q. All right. Oscar Jeresano, we have never met before; is that correct?

A. No.

[ROA.2030, Line 13]

Q. And do you have any citizenship rights that could be affected by your case?

A. Yes.

Q. Your federal case?

A. Yes.

Q. So you're facing deportation?

A. Yes.

Q. Let me ask you this: When – in 2012 you got the federal case; is that correct?

A. 2011.

Q. 2011

A. Yeah.

Q. And you're the only person charged in the

[ROA.2031]

federal case. It's not a conspiracy?

A. No. I'm the only one.

Q. And it's ten kilograms of cocaine?

A. That's right.

Q. How much is ten kilograms worth?

A. I don't know.

Q. About 20,000?

A. If you say so.

Q. You had it, but you don't know?

A. I don't know.

Q. So 20 times one – 20 times 10 is about \$200,000?

MS. FLADER: Judge, I would object. This is outside the scope. This isn't relevant.

MS. KING: It's relevant for impeachment, Your Honor as a range of punishment.

THE COURT: You can ask him what he's charged with, but he doesn't know the amount, how much it costs.

MS KING: He might. I mean, he had it.

THE WITNESS: As to this date I haven't been charged yet.

Q. (BY MIS. KING) I'm sorry?

Resp't App. 11a

A. I haven't been charged yet. So --

MS. KING: You haven't been charged yet?

[ROA.2032]

A. No. The case hasn't be [sic] closed yet.

Q. It was in your vehicle, though, right?

A. It wasn't in my vehicle.

Q. In the vehicle you were driving?

A. That's right.

Q. And when you say you haven't been charged, you were charged with the crime in 2011; is that correct, yes or no?

A. If I was charged with the crime?

Q. Yes.

A. Yeah, but I'm not convicted of that

Q. No. You were convicted when you pled guilty in Federal court after you made this identification.

A. Well, as far as I've talked to my lawyer with, until it closes, I'm convicted.

Q. And it's not going to be closed until after you testify in this case; is that correct?

A. I don't know when it's going to be closed.

Resp't App. 12a

Q. Okay. But you pled guilty in July of 2012; is that correct?

A. Sounds right.

Q. It was after you went to your office and said you saw this crime – to your lawyer's office, wasn't it?

A. I don't remember.

[ROA.2033]

Q. Okay. So in July of 2012, you were given a sentencing date to get your time, but it's been reset for two years until you could testify; isn't that correct?

A. Not that I can remember.

Q. Okay. So in July of 2012, when you pled guilty before the Federal Judge Rainey --

A. Yes

Q. – In Victoria or Corpus Christi, which one?

A. Victoria.

Q. In Victoria. What date did they give you for sentencing back in July of 2012?

A. I don't remember.

Q. Okay. You don't remember. So you don't know what date you're supposed to go back to court?

A. It's been awhile. I can't remember the date. You can look through the papers.

Resp't App. 13a

Q. They ain't my papers. I mean, I'm asking you, when are you supposed to report to the Court?

A. Honestly, ma'am, this next court is going to be –what's it called?

Q. The sentencing.

A. September 2nd.

Q. And that's after you testify in this case, right?

[ROA.2034]

A. We don't know if we're going to postpone it still.

Q. Okay. But you've postponed it before; is that correct?

A. Yes.

Q. More than once?

A. Even before this, although this happened, I've been postponing it.

Q. No. I'm talking about July 12th, when you pled guilty, how many times have you postponed the actual sentencing to find out how much time you're going to get?

A. I don't know.

Q. And you did have a plea agreement that says if you cooperated with the State in this case, they would consider giving you a 5K.1 reduction under the Federal sentencing guidelines?

A. Not that I know of.

Resp't App. 14a

Q. Your lawyer never told you that?

A. No.

Q. And the prosecutors never told you that?

A. I never talked to the prosecutor before.

Q. So when you got your federal case, you didn't study what would happen in terms of how much time you could give if you cooperated versus how much you would

[ROA.2035]

get if you didn't?

A. Excuse me.

Q. You have no idea?

A. I don't understand the question. Can you repeat it?

Q. Yes. You know with ten kilograms of cocaine you could get 30 years in federal prison?

A. Yes.

Q. And be deported?

A. I could get more than 30 years.

Q. You can get up to life, right?

A. Uh-huh.

Q. And depending on your criminal history; is that correct?



A. Yes.

Q. and so you know in cooperating with the State in this case, you can get a lot less time; is that correct?

A. Nobody has ever, ever told me that I'm going to get less time for helping this case, nobody.

Q. No one has ever told you that?

A. No. I'm here by my own will, not to help myself. I'm here to help the family's [sic] of the people that died, nothing else.

Q. Would you let your – if your lawyer came to [ROA.2036]

court, would you allow him to tell us that?

A. Yes.

MS. FLADER: Judge, I object. This is improper.

THE COURT: Sustained.

\*\*\*\*\*

[ROA.2067, Line 6]

(Jury outside of courtroom.)

[ROA.2068, Line 13]

MS. KING: And the only other thing I need to do is since he talked to his lawyer, I'm going to, instead of impeaching him with the extensive evidence that I have to go over them again I have. He's gone over the dates and he understands what happened, but I'm going to go over them again since his memory will be refreshed.

Resp't App. 16a

He got to GPS monitor taken off after --

THE COURT: But he didn't remember.

MS. KING: But his lawyer reminded him. He had it. And it was a part of his cooperation.

THE COURT: His testimony.

MS. KING: And it's been out two years.

[ROA.2069]

So his original sentencing date was November 2012 and they've extended it for two years until he testified. And I also have --

THE COURT: Part of that problem, too, Vivian, is when you get somebody in the federal penitentiary it's very, very difficult to get them back in Court, in State Court. It's very, very hard to do. I'm sure that's part of the consideration as well anything else he might do in the way of cooperation.

MS. KING: Right. I just want the Court to be aware, and I have marked it as Defense Exhibit 9 that the lawyers for the Federal -- not the AUSA that's prosecuting him. I subpoenaed her. Her name is Patty Booth, but her lawyer, the lawyer for the lawyer for the United States Government for this region, Victoria, her name is Emilia De Los Santos.

THE COURT: What?

MS. KING: Sent me an e-mail that says that she will not allow under some Federal rule the U.S. attorney to come to court, but if it helps our standard

plea agreement has a provision for Mr. Jeresano in it whereby the Government will recommend to the Court the sentence reduction under U.S. sentencing guideline Section 5.K1.1, if the defendant provides substantial assistance as in the State or Federal prosecution. And

[ROA.2070]

so what that means is that after he testifies and Gretchen e-mails the prosecutor there, the attorney, Patty Booth, and says, yes, he testified, the federal prosecutor will then have to type up a motion and give it to the Court at sentencing for Mr. Jeresano and say, yes he cooperated, and, Judge, the United States Government recommends a sentence reduction below the sentencing guidelines that's authorized under U.S. sentencing guidelines.

THE COURT: That's your recommendation.

MS. KING: I'm just getting this on the record.

THE COURT: Judge doesn't have to go on.

MS. KING: Exactly, exactly. But they wouldn't do it, but for his corporation.

MS. FLADER: And, Judge, I would like to put on the record that I have no knowledge of any of the information she just presented to the Court because there was a discovery motion asking that I give her any information about any plea bargain agreements. I had zero knowledge of any of the potential sentencing reduction of any of that. I had no -- no one ever

Resp't App. 18a

informed me that that was A, was possible, or in any way going to happen in this case.

MS. KING: And no one has said you did

[ROA.2071]

because this is not in your purview.

MS. FLADER: I just want to put it on the record so that it doesn't look like I committed a prosecutorial misconduct by not telling you something that's in the discovery record.

MS. KING: No. No.

MS. FLADER: I'm not saying you're accusing me. I'm just making sure it's on the record that I [sic] no knowledge of any of this possibility even.

MS. KING: But let's be clear, you did e-mail the federal prosecutor that you're asking him to cooperate; is that correct? I mean, you have -- you've shown me an e-mail that you said you're going to let them know after he testifies that he has cooperated with you.

MS. FLADER: Yes.

MS. KING: So you e-mailed Ms. Booth. So I understood that the -- well, you e-mailed the Government.

MS. FLADER: I don't believe I -- I would have to go back and look through my notes. I don't believe I have told the Government, the Federal Government that I'm going to do anything. I informed Mr.

Wasserstein that I would be willing to write a letter telling them all the things that Oscar did in [ROA.2072] this case.

MS. KING: And what I'm telling you is that's why I didn't put it on you. I subpoenaed the Federal prosecutor. I just want the record to be clear and she can't come, but her lawyer has discussed it with her and they have agreed, based on that letter that you gave Mr. Wasserstein because he gave it to --

MS. FLADER: I haven't written anything.

MS. KING: It was e-mail. It was an e-mail. You gave me a copy of the e-mail.

MS. FLADER: Okay. I haven't written a letter.

MS. KING: You wrote an e-mail to him that says exactly what you said.

MS. FLADER: Okay.

MS. KING: And that e-mail, he presented to the Federal prosecutor to get this deal; and it's a deal in the future. As the judge says, in Federal court they don't give you a term. You can't negotiate it. The judge just considers it in sentencing.

THE COURT: When was it done?

MS. KING: When was the letter -- she e-mailed this to me June 17, 2014 at 5:14, but I didn't print it until --

Resp't App. 20a

THE COURT: Wait a minute, say again,

[ROA.2073]

June 17, 2014.

MS. FLADER: Tuesday

MS. KING: Tuesday. And then June 18, 2014 is when I printed it this morning when I came here.

And I brought it to have it exhibited outside the presence of the jury just so that it will be documented. And it's me asking for things.

THE COURT: He made a statement two years ago, didn't he, in two-12.

MS. KING: Yes, sir. And in two-12, when -- he made a statement June 29, he pled in July of 2012. I have all of that with me. I have that. He pled -- he pled, and let me tell you exactly. I probably just put all of this down. The allegation for his drug case was December, 2011. He was indicted January 19, 2012 and he was on a GPS monitor until -- and then July 2, 2012 is when he --

THE COURT: All right. If you have the dates, just go ahead.

MS. FLADER: I have the dates.

THE COURT: As long as you have the dates.

MS. KING: I have the dates on the Federal docket sheet.

Resp't App. 21a

MS. FLADER: The only thing I say, Judge, is that I think that it creates a false sense of the

[ROA.2074]

testimony for the jury when she's presenting this information like this is what he has been promised, when it's not really what he's been promised. It's what the prosecutor said that they would do to defense counsel, not to him. I think it just -- I think it creates a confusion.

THE COURT: Well, the problem is unless somebody told him something, he didn't know anything about it. He said he had no -- he said nobody has ever promised him anything or said anything to him at all, unless she shows otherwise.

MS. FLADER: And so I would ask that this information not be presented to the jury because that's improper impeachment.

THE COURT: Well, I think they're entitled to ask the question. Well, you know --

MS. FLADER: She's already asked that question, did you know that you were going to get a reduced sentence and he said that he didn't know that.

THE COURT: That's right.

MS. FLADER: So I think that's improper impeachment for her to then say, I have this letter from the Federal prosecutor saying that that's what going to happen.

Resp't App. 22a

MS. KING: And that's why I've asked to  
[ROA.2075]

have this hearing now so we can deal with it now.

THE COURT: Sure.

MS. KING: So if you'll let me finish doing what I  
put on here and you can rule on it, so I can preserve it.  
Otherwise when we start over, I'm going to have to do  
it again, he's going to have to stay and we'll do it  
again.

MS. FLADER: Sorry. I didn't know you weren't  
finished.

THE COURT: I thought you were finished.

MS. KING: No. Y'all stopped me. I was trying to  
put it all on the record so we could --

THE COURT: What else?

MS. KING: And the way y'all are coming at me,  
I can't even think. So may I start thinking all over  
again? I've got so many -- I've got to fight you, I've got  
to fight her, I've got to fight Wasserstein, I've got to  
fight everybody in the damn courthouse. Let me just  
figure it out, okay, please.

All right. What I want to put on here, is, I have -- and  
I'm going to mark these as exhibits that will go with  
this. I have an affidavit from the Federal Pacer system  
in Case No. 6:12-CR00003. It's an affidavit from the  
State trooper, Blake Chapman, who conducted the  
traffic stop December 4, 2011 and found



[ROA.2076]

Mr. Jeresano, Mr. Oscar Jeresano, to be in possession of ten kilos of cocaine. I also want to present portions of the Federal document sheet. I also want to show his indictment where he was indicted January 19, 2012 for the ten kilograms of cocaine.

THE COURT: He's already testified that he pled guilty to that.

MS. KING: No. He said that he wasn't even charged with it, Judge, remember?

THE COURT: What did he plead guilty to?

MS. KING: That's what he pled guilty to, but he wasn't charged.

THE COURT: Say it again.

MS. KING: He wasn't sure. He said he didn't remember.

THE COURT: What do you have that he pled guilty?

MS. KING: I have that he pled guilty to the charges that are in the indictment. That's what I have a record of, and I have a record of his pretrial release bond in January of 2012. They put him on a GPS monitor, and he was on that monitor June 20, 2012. I don't have any records that he had permission to be out that night, but I did talk to Scott Cooper, his probation officer that did know that he was working at a

[ROA.2077]

club. And then I have --

THE COURT: Are you talking about -- I thought we were talking about the letter or the e-mail that you got from the --

MS. KING: I was.

THE COURT: -- from somebody in the United States attorney's office.

MS. KING: I was. One other thing that I wanted to be clear on, Judge. Let me just say this: He said he didn't remember. Oscar said when he testified on cross that he didn't remember when he pled guilty to the crime, if it was before he told the police or after. I told him on cross that it was June 29, 2012 that the police came to his lawyer's office and took a statement and he made the I.D. I have the records to show that he pled guilty in the Federal court July 24, 2012 and his sentencing date was set for November 5, 2012. I know from Federal experience that you get sentenced on the day you're supposed to be sentenced. I've spoken with his lawyer, and his lawyer has filed motions -- his lawyer has communicated to the Federal prosecutors that he had information that's assisting the State in this murder trial and his lawyer is filing motions every time that he doesn't testify, every cycle and he's waiting until after he testifies.

[ROA.2078]

THE COURT: Okay.

MS. KING: And I want that to be clear that he's been out for two years with his family and not in prison waiting to testify and so that could be a motive and bias for --

THE COURT: I think he already stated that he's already pled guilty and he's waiting sentencing.

MS. KING: I want the dates, Judge.

THE COURT: What dates?

MS. KING: The dates that I just went over with you because he wasn't sure if it was before or after. I want to show the timeline that he told it on the 29th of June, he pled guilty July 24, and he had a sentencing date for November in 2012 and he's been out in the free world all this time and that his lawyer, on August 23rd, 2012, filed a motion to modify and take the GPS off and his curfew restrictions and that was granted based on his cooperation and that's what I want in the record about his Federal -- and I want the jury to weigh in on whether that would color his testimony in addition to what he said different on the tape. The Federal prosecutor did also send me this. I subpoenaed the Federal prosecutor to court and the DPS trooper out of Victoria to court and the letter -- the e-mail that I got as a response from the Federal prosecutor's lawyer,

[ROA.2079]

just agreeing that she doesn't -- Federal law says I can't subpoena a U.S. prosecutor, but the lawyer says, yes, he does. In his plea agreement he will get -- the Government will file the motion for sentence reduction under the U.S. guidelines.

THE COURT: That's all?

MS. KING: Well, everything in the world is hearsay unless we see it. It's all impeachment.

THE COURT: No. No. Certain things that are permissible with admissibility, but certain things are not.

MS. KING: Right, but to show bias and interest, there are rules.

THE COURT: He doesn't know. He doesn't know.

MS. KING: His lawyer just told him. Do you know now, sir?

THE COURT: He testified -- no. The fact that we've been talking about doesn't mean anything as far as he's concerned. He doesn't know. Does his lawyer know? Maybe so.

MS. KING: But his lawyer and he have counseled with each other.

THE COURT: So what?

MS. KING: I don't know. So what? I want

[ROA.2080]

to go into it. Just rule on it. I can or I can't. That's what I'm trying to do. I'm trying to impeach. I'm trying to --

THE COURT: I'm not going to let you do it through him.

MS. KING: Well, on the witness stand he said his lawyer could come and tell us. Did you say that or not, Mr. Jeresano?

THE COURT: He did say that. I heard him. So go ahead.

MS. KING: Do you want me to call his lawyer to do it? Because he said --

THE COURT: You do what you want to do.

MS. KING: Well, I want to do it through him, but you won't let me.

THE COURT: Well, he doesn't remember. He doesn't know. He specifically stated nobody's ever promised him anything. Nobody's ever said anything to him about it. And then, if you want to put his lawyer to show what kind of communications his lawyer has had with him, I'll let you do that.

MS. KING: All right. I just want to ask one question since you said people can be reminded. He [sic] lawyer and him counseled together. He might be ready to answer that question.

[ROA.2081]

THE COURT: What question?

MS. KING: Do you know the -- are you sure about what happened now; or do I need to do it through your lawyer, sir?

THE COURT: What?

MS. KING: His lawyer talked to him. Brent is here. Brent, does he know? Can he answer, or do I need to do it through you?

THE COURT: What answer are you talking about?

MS. KING: The answer to these questions, Judge.

THE COURT: No.

MS. KING: You're confusing me, but I'm not going to stop until I try to do it. So I want to --

THE COURT: You've already done it on the record.

MS. KING: Okay. So what's my ruling?

THE COURT: Your ruling is you can't do it through him because he's already answered those questions.

MS. KING: But I can ask him if he's had an opportunity to counsel with his lawyer and if his memory has been refreshed.

THE COURT: His lawyer may have told him

[ROA.2082]

all kind of things, but he doesn't know personally whether it's true or not.

MS. KING: Why are you injecting your personal opinion?

THE COURT: Why don't you just put his lawyer on and ask him the questions. I'm trying to tell you what to do without telling you what to do.

MS. KING: Okay. I'll do it. Brent, you can come back. Is that my attorney? I don't put my witness on until Thursday morning.

MR. WASSERSTEIN: Okay. I don't have a problem with that.

MS. KING: I don't know what to do.

MR. WASSERSTEIN: I got a case that got carried.

MS. KING: Until Thursday?

MS. FLADER: Tomorrow.

MR. WASSERSTEIN: Tomorrow.

MS. FLADER: You're picking a jury tomorrow.

THE COURT: Tomorrow's Thursday.

MS. KING: Can we take him out of order?

MS. FLADER: He won't be picking a jury until 10:30. I mean, if we get this going, I should

Resp't App. 30a

[ROA.2083]

finish my case today. You can put him on first thing before he has to go down and pick a jury. We start at 8:30.

MR. WASSERSTEIN: However you guys want to do it.

THE COURT: Be here at 8:30 tomorrow.

MS. KING: Thank you.

\*\*\*\*\*



Resp't App. 31a

REPORTER'S RECORD  
VOLUME 8 OF 14 VOLUMES  
TRIAL COURT CAUSE NO. 1353181  
APPELLATE COURT CAUSE NO. 01-14-00527-CR  
FILED IN  
1ST COURT OF APPEALS  
11/7/2014 11:53:50 AM  
CHRISTOPHER A. PRINE,  
Clerk

THE STATE	§	IN THE DISTRICT COURT OF
OF TEXAS	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
FEANYICHI	§	174TH JUDICIAL DISTRICT
EZEKWESI	§	
UVUKANSI	§	

---

CAPITAL MURDER TRIAL

VOLUME 9 OF 14

---

On the 19th day of June, 2014, the following  
proceedings came on to be held in the above-titled and  
numbered cause before the Honorable Frank Price,  
Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype  
machine.

[ROA.2351, Line 19]

THE COURT: Members of the jury, we have a witness we have decided we are going to take out of order because he's an attorney in another court. So we want to take it now rather than have to wait all day. Would you come up?

THE WITNESS: Yes, Your Honor.

(Swearing in of the witness.)

[ROA.2352, Line 3]

**DIRECT EXAMINATION**

BY MS. KING

Q. Good morning, Mr. Brent. How are you?

A. I'm good.

Q. Can you state your name for the ladies and gentlemen of the jury, and spell your name for the Court?

A. Sure. My name is Brent Wasserstein, B-r-e-n-t, last name, W-a-s-s-e-r-s-t-e-i-n.

Q. And Brent, my name is Vivian King, and I represent Mr. Uvukansi, and I subpoenaed you to court; is that correct?

A. Yes, ma'am.

Q. And you represent Oscar Jeresano; is that correct?

A. Yes, ma'am.

Q. In Federal court?

A. Yes, ma'am.

Q. And some of the details Mr. Jeresano could not remember about his case in Federal court, but you do remember that and you do represent him; is that correct?

A. I do and I do remember and if I can say, I've spoken to him. I have an attorney/client privilege,

[ROA.2353]

which he's waived the privilege. So I'm free to speak about it.

Q. Yes, sir. And the judge previously ruled details of the actual offense. So I'm not even getting to that part, just more the dates and the agreements and the things that's public record on the United States Government's system that I was able to print like anybody else can.

A. Yes, ma'am.

Q. Just to have it in the record, your client Oscar Jeresano was stopped by a trooper December 4, 2011 at 5:49 p.m. on Highway 77 by DPS Trooper Blake Chapman of Refugio County; is that correct?

A. Yes, ma'am.

Q. And he was found to be in possession of, at that time the weight as 10.9-kilograms of cocaine that was in a hidden compartment of the car; is that correct?

A. Yes, ma'am.

Q. And he was alone in the car?

A. Yes, ma'am.

Q. According to the United States Government's docket sheet, he was actually formally indicted in Federal court on or about -- lost my page -- the complaint was filed against him December 22, 2011. Do you agree with that, sir, according to docket sheet [ROA.2354]

unless you have a different date?

A. I agree with your assessment, yes.

Q. Thank you. And your client made an initial appearance on December 29, 2011?

A. Yes.

Q. Before Judge Magistrate, Judge Owsley, O-w-s-l-e-y; is that correct?

A. Yes. That was in Corpus Christi, Texas.

Q. And one of the -- were you appointed or retained?

A. I was retained.

Q. And you were retained by Mr. Jeresano. And officially in Federal court his name is Oscar Armando Jeresano-Bethencourt; is that correct?

A. Yes, ma'am.

Q. And January 3, 2012 Mr. Jeresano was released on Federal bond with a home detention, with an active GPS monitoring system; is that correct? If I need to

Resp't App. 35a

approach you to refresh your memory according to the Federal Government certified copy of the docket sheet, I can show that to you.

A. Would you, please?

Q. Sure.

MS. KING: May I approach, Your Honor?

THE COURT: Sure.

[ROA.2355]

A. Okay.

Q. So was January 3, 2012 the date of his home confinement -- home confinement GPS monitoring system?

A. Yes.

Q. And if it's going to be easier, I'll just leave the docket sheet here for you. I know you have your file with you. But, also, according to the U.S. Government, January 19, 2012, he was formally indicted; is that correct?

A. Yes, ma'am.

Q. And then July 24, 2012, your client was rearraigned in Federal Court; is that correct?

A. Yes, ma'am.

Q. And that means to this jury that that's the day he pled guilty?

A. Yes, ma'am.

Q. And he was scheduled to be sentenced on November 5, 2012 before Judge Rainey in Victoria, Texas?

A. That's correct.

Q. And on August 23, 2012, you filed a motion to modify the conditions of his release, and the judge granted that on August 28, 2012, so that he would no longer be on GPS curfew and home confinement?

A. That's correct.

Q. And you have filed motions -- at one point your [ROA.2356]

client came to you and asked you, told you about an allegation that he witnessed a crime; is that correct?

A. Yes, ma'am.

Q. And you arranged for him to speak with the police officers; is that right?

A. Yes, ma'am. We called the homicide division of the Houston Police Department.

Q. And the meeting was set up at your office; is that right?

A. Yes, ma'am.

Resp't App. 37a

Q. And when it was set up at your office, you -- after he spoke with the police, you also contacted or -- you contacted the prosecutor, the United States prosecutors and informed them that he was cooperating with the State in this case; is that correct? In some manner you contacted them?

A. Yes. I can't tell you the exact date, but it was down road.

Q. Right. And you had -- and this case -- his Federal case, what is he facing?

A. Minimum of ten years -- ten years to life.

Q. Life in prison, and he is not a citizen of the United States; is that correct?

A. He's not a citizen. He's a permanent resident.

Q. Right. But he's still facing -- his consulate

[ROA.2357]

has been notified?

A. Yes, ma'am.

Q. And he's facing deportation potentially?

A. Potentially. I'm not his immigration attorney but potentially.

Q. And you have reset his sentencing date continuously to wait for him to testify in this trial; is that correct?

A. That's correct.

Q. And after he testifies in this trial, you will inform the prosecutor, the United States prosecutor that he did testify in exchange for the prosecutor to file a Federal motion for the judge to reduce his sentence; is that correct? If you would like I could show that to you.

A. Well, for the most part I'm going to let Patty Booth, who is the assistant U.S. attorney know that he's testified and ask them to file a motion. It's called a 5K1 motion in which the Government will file and the judge will see it and he'll decide if he's going to reduce the sentence based on his cooperation with the United States Government.

MS. KING: Pass the witness.



[ROA.2357]

**CROSS-EXAMINATION**

BY MS. FLADER

Q. When Oscar first came to you, did he tell you why he didn't talk to the police at the scene?

A. Yes.

Q. And what was that reason?

A. He said that he was afraid the police wouldn't believe him because of his criminal case.

Q. And is that in your experience common for civilians that are unfamiliar with the system and unfamiliar with police officers to have that fear? And is it common for them to come to, you the person representing them that they trust, in order to get some advice?

A. Yes.

Q. Okay. Is that what he did?

A. Yes. And in this particular case, Oscar was very scared. He has – he's the type of client that will come every couple of weeks just to ask about his case and he called me and said that he wanted to speak to me immediately about something that happened.

Q. And did he ask you if helping the police would help his case?

A. No.

Q. Did he ever ask you anything about his

[ROA.2359]

willingness to cooperate having any kind of influence on his Federal case?

A. No.

Q. Why did he tell you he wanted to talk to the police?

MS. KING: I'm going to object to that being hearsay.

THE COURT: I think it's already in evidence.

MS. KING: It is in evidence. No dispute on that.

THE COURT: I'll let him answer.

A. To do the right thing.

Q. (BY MS. FLADER) And as his attorney are you trying to get him the best possible deal?

A. Absolutely.

Q. Have you ever explained the potential for this, I don't even know what it's called, 5K1; is that right?

MS. KING: Yes, ma'am.

MS. FLADER: 5K1.

MS. KING: 1.1.

Q. (BY MS. FLADER) 1.1 to be filed after he has cooperated with this case?

A. I haven't explained to him what a 5K1 is. I have told him that him testifying will probably help him

[ROA.2360]

when it comes time for the judge to do the sentencing, but that there's no agreement between the Government and the defendant as to what the sentencing is going to be. It's going to be up to Judge Rainey in Federal Court.

Q. And are the Federal sentencing guidelines very complicated and sort of difficult to understand?

A. Absolutely.

Q. Now, defense counsel asked you about his -- I believe she asked about his ankle monitor being removed? When was that removed? Do you remember?

MS. KING: I have it. Judge, let the record reflect, I'm tendering to State what has been marked as Defense Exhibit 11.

Q. (BY MS. FLADER) So you filed on August 23, 2012 a request that the conditions be changed?

A. Conditions of his bond, yes.

Q. Okay. Now, is that common for you to request that?

A. Yes.

Q. And is it common for someone that doesn't have any criminal history, that has been complying with the pretrial, the bond release requirements to be granted that, that change?

A. In my experience, yes.

Q. Okay. So it's not that he was a witness on

[ROA.2361]

this case and that's why it was granted. It was because he doesn't have any criminal history, and because he was complying with his bond requirements?

A. I can't answer why the judge granted it. I didn't put specifically in the motion that he is a witness in a capital murder case.

Q. So it couldn't have been because of that?

MS. KING: Objection, speculation.

THE COURT: Sustained.

Q. (BY MS. FLADER) And you testified that you've asked for resets, for his sentencing to be reset. Why have you done that?

A. For a few reasons, number one, I'm hoping that his cooperation with the State is something that I can ask the assistant U.S. attorney to file this 5K1 motion to possibly get his sentence reduced. Also, from my understanding and from practicing that once somebody goes into Federal custody, it's difficult to get them out to testify in court.

Q. So for those reasons you asked for the resets?

A. Yes.

MS. FLADER: I pass the witness.

MS. KING: No further questions, Your Honor. Thank you.

Resp't App. 43a

REPORTER'S RECORD  
VOLUME 8 OF 14 VOLUMES  
TRIAL COURT CAUSE NO. 1353181  
APPELLATE COURT CAUSE NO. 01-14-00527-CR

FILED IN  
1ST COURT OF APPEALS  
11/7/2014 11:53:50 AM  
CHRISTOPHER A. PRINE,  
Clerk

THE STATE	§	IN THE DISTRICT COURT OF
OF TEXAS	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
FEANYICHI	§	174TH JUDICIAL DISTRICT
EZEKWESI	§	
UVUKANSI	§	

---

CAPITAL MURDER TRIAL

VOLUME 10 OF 14

---

On the 20th day of June, 2014, the following  
proceedings came on to be held in the above-titled and  
number cause before the Honorable Frank Price, Judge  
Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype  
machine.

[ROA.2520, Line 19]

**CLOSING STATEMENT**

MS. KING: May it please the Court, Judge, and the family of Mr. Uvukansi, my volunteers. Thank you so much for your help. Mr. Prosecutor, Madame Prosecutor, the family, and the jurors.

[ROA.2521, Line 15]

Everybody there, everybody described that they talked to that was there said that when they heard the shooting they hit the ground. Nobody was looking except Oscar, the one with 10-kilograms of cocaine case that he needs to work out. That you know that when I tried to show him from the jury stand from here a picture of what was on a big old board, he couldn't even see it. He was squinting. I had to bring it closer to him, but he wants you to believe that he didn't hit the ground. He was focused, and he could see. Just think about that. He was focused and he could see, doesn't

[ROA.2522]

remember if he had his glasses. Police officers don't recall if he had glasses on. But he told you his glasses were broken and he hasn't gotten any new ones. Remember him telling us that, but he never told us when he had his glasses or not and the officers never thought it was an issue. They never thought it was an issue that there was if 930-grams of cocaine or 9.3 grams because the cop is not sure. Really? If people are having a drug war -- I mean having a war, wouldn't you think it would be about drugs? Isn't that what

Resp't App. 45a

gangs do, illegal activity? Really? You think somebody would just leave those on the floor, really?

You know what Oscar was doing out there. You know that's why there's no verification of the supervisor, this Mike guy that he's working for. The man that he said he's working for. He's freelancing out there. You know that. That's why his cousins aren't here. You know that.

I understand families need closure. We all do, but we all want to be fair. Everybody out in the audience, everybody here would want the jurors to be fair to them and their family members if they were sitting in the same spot as Mr. Uvukansi is sitting in. I'm not trying to say anything else other than that.

[ROA.2523]

We've got to go with the facts that we have that came from that witness stand and all of the documents that go into evidence.

And I do want to clarify, that a portion of Oscar's statement is in evidence because it's inconsistent with what he said on the witness stand because on the witness stand he said he heard two shots. Now, he's supposed to be doing some valet, talking to a lady, he hears two shots, looks at somebody and freezes. He sees sparks of fire, and he freezes and looks. And you know human nature, if someone is shooting, you're going to duck. You're not going look them in the eye and it's so -- and it's so frightening, he could describe them.

[ROA.2536, Line 11]

**CLOSING STATEMENT**

MS. FLADER: Ladies and gentlemen, this is a case about gun violence and a lack of respect for human life.

There's a rap concert. There's a bunch of people at a rap concert. This defendant was there. Carlos Dorsey was there. Trae the Truth was there. Erica Dotson was there, and Coy Thompson was there. And during this concert people start getting worked up. R-I-P, Tremane, R-I-P, Trae Bush.

You know what that means. You know that Bloods that were in the club that night were getting worked up about Poppa C being there and their friends being dead. They see Poppa C and they say, here's our chance. So they run out of the club and they go get

[ROA.2537]

their guns. Poppa C realizes his life is in danger. He's trying to get somebody to bring a gun to the club so he can protect himself.

Clearly that didn't happen. And so, he walks out of the club, and he knows somebody is gunning for him. So what does he do? He uses that crowd a cover because he thinks, there's no way that somebody is going to shoot all these innocent people to get to me.

But, you know what? That's exactly what that defendant did. That's exactly what he did. He didn't care. He didn't care about who else he murdered that night in order to get his target, in order to get Poppa C



Resp't App. 47a

and he did it. He killed Poppa C. He killed Coy Thompson. He also killed innocent people that had nothing to do with this beef. He killed Erica Dotson, and he killed Carlos Dorsey.

And you know what he counted on? He counted on the fact that people would be scared, that people wouldn't be able to identify him, and that his friends wouldn't talk. He counted on that.

But you know what? He was wrong because there was somebody at the club that night that didn't have anything to do with those neighborhoods. This guy was working, trying to make a living working as a valet; and he told you what he saw. He.

[ROA.2538]

saw this defendant, the gun in his hand, shooting, this defendant's face trained on his target, this defendant jumping, moving, trying to hit his target. That's what he saw.

Five to six seconds, think about how long that is, to be able to train on someone's face and be able to remember it and that's what he did and then he came to and ran and hid under that car. Fifteen to twenty shots is what he said. Guess what? Eighteen shots in total, at the minimum that we know about at that scene.

\*\*\*\*\*

[ROA.2540]

After they created those photo spreads, they got a second big break. They got Oscar, and they talked to Oscar, and they interviewed him. Did they ask him what the person looked like? No. You know what? They had possible suspects. They were going to see if those suspects were correct; and he said, that's him. I'm 100 percent sure that that is the shooter. I am certain. That is the shooter. That is the man I saw with the look on his face as he is trained, shooting at his target.

What else did he say? He said, you know what? I recognize Dexter Brown, too, didn't know his name. I recognize him, too, but I don't -- I didn't see him doing anything, but he was at the club. He was at the club that night. I saw him. Do you know who he wasn't able to recognize? Todrick Black. Do we know he was there? There's no evidence that he was there. He wasn't able to pick him out.

So based on the information that Oscar gives and let's -- let's think about it a little further. Oscar tells you why he came forward, why he talked to the police. You know it wasn't because he thought that he was going to get a good deal because even his lawyer said that he said, I just want to help these people. Did you tell him that it could help his

Resp't App. 49a

case? No. Only after he had pled guilty and after he came in here and testified is there even a possibility that he's going to get a deal. We don't even know.

There's no promise, but he came forward because he said, you know what? I don't want these people to be like me, to not know who killed my loved one. That's why he came forward. That's why he told what he saw that night.

She says he was inconsistent in the statement. If you listen to the recording that is in evidence, it's exactly what he told you from the stand. He looked up, and the gun was here. That's what he said. That's what he said on the statement. That's what he said on the stand.

Resp't App. 50a

REPORTER'S RECORD  
TRIAL COURT CAUSE NO. 1353181-A

EX PARTE ) IN THE DISTRICT COURT  
 )  
 ) HARRIS COUNTY, TEXAS  
 )  
 FEANYICHI UVUKANSI ) 174TH JUDICIAL DISTRICT

# WRIT OF HABEAS CORPUS HEARING

On the 6th day of August, 2018, the following proceedings came on to be held in the above-entitled and numbered cause before the Honorable Hazel B. Jones, Judge presiding, held in Houston, Harris County, Texas'

Proceedings reported by computer-aided transcription/ stenotype shorthand.

Resp't App. 51a

[ROA.5232, Line 7]

**DIRECT EXAMINATION**

**BY MR. SCHAFFER:**

Q. Tell us your name, please.

A. Gretchen Flader.

Q. What's your educational background?

A. I graduated from law school.

Q. What school, what year?

A. I graduated from South Texas College of Law in 2004.

Q. When were you licensed to practice law?

A. 2005.

Q. What's your employment history as a lawyer?

A. I worked for Robert Pelton. He's a defense attorney. I worked for him for a little under a year. And then I got hired on with the Harris County District Attorney's Office where I worked for 12-ish years. And I currently work for the Bexar County District Attorney's Office.

\*\*\*\*\*

[ROA.5239, Line 6]

Q. And were you aware that Mr. Jeresano was awaiting sentencing on a possession with intent to distribute 10 kilos of cocaine case in a federal court in Victoria?

Resp't App. 52a

THE COURT: And just one second. Could you let me know who Jeresano is as it relates to the relevancy?

MR. SCHAFFER: He's the State's sole eyewitness in this case.

Q. (By Mr. Schaffer) And were you aware of the punishment range for that offense was ten years to life in prison without parole?

A. No, I did not.

Q. Were you aware that Mr. Wasserstein and Mr. Jeresano met with the detective investigating the murder in question?

A. I believe that was in the offense report. So I don't know when I became aware of it, but at some point, yes, sir.

Q. And you became aware that Mr. Jeresano

[ROA.5240]

identified Mr. Uvukansi in a photospread, correct?

A. Yes, sir.

[ROA.5241, Line 17]

Q. So Natalie Tise had been prosecuting the case before you did?

A. Yes.

Q. She was turning it over to you?

A. Yes. And she was going to be my division chief.

Q. All right. And she's referencing in this e-mail having a meeting with Brent Wasserstein's client scheduled for a particular day, correct?

[ROA.5242]

A. Yes.

Q. And Brent Wasserstein's client, of course, is Oscar Jeresano, correct?

A. Yes.

\*\*\*\*\*

[ROA.5244, Line 15]

Q. You made a deal with Mr. Wasserstein to secure Mr. Jeresano's testimony, did you not?

A. I did not. I told him that I would write a letter to the judge. I don't consider that a deal.

Q. Well, what is your definition of a deal, ma'am?

A. A deal is if your client testifies, then this is the punishment that he will get.

Q. So you don't think a deal is, "If your client testifies, here's the benefit I'm going to bestow upon him"? You think there has to be a specific punishment agreement to be a deal?

[ROA.5245]

A. Or some sort of, like, reducing the charge or something along those lines. And I did -- I did tell her that I would write a letter to the federal judge. So if you could consider that a deal, then yes, I did. But I don't consider that a deal.

Q. Okay. So -- well, do you think if a prosecutor agrees to confer a benefit on a witness in exchange for testimony, that is a deal?

A. I don't consider that a deal.

\*\*\*\*\*

[ROA.5246, Line3]

Q. You couldn't control his sentence because he was being sentenced in federal court, correct?

A. Absolutely.

Q. You could only try and help him get it reduced, couldn't you?

A. I didn't know -- I did not try to help him get it reduced.

Q. You didn't?



A. No.

Q. So did you think writing a letter to the federal judge was going to cause that sentence to be increased?

A. No, I did not.

Q. Did you think writing a letter to the federal judge would cause that sentence to be reduced?

A. No. I thought it would be in the punishment range.

Q. So what's the purpose of writing the letter if it wasn't intended to help the witness?

A. It was intended to explain to the federal judge exactly what he did so that he could decide what was an appropriate punishment for somebody based on that information. And I know -- I don't really understand

[ROA.5247]

the federal system. I know there's a range of punishment. So I thought that the letter -- me writing the letter would encourage the judge to give him on the lower side of that punishment range.

Q. So it was intended in leniency for the witness, correct?

A. Yes, sir.

Q. All right. Now, your agreement with Mr. Wasserstein was if Mr. Jeresano cooperated and testified against Mr. Uvukansi, you would write a

letter to the federal court advising the judge of that cooperation before he was sentenced, correct?

A. Yes.

Q. And that the federal prosecutor would file what's called a 5K1.1 motion, correct?

A. I had never heard of that. I didn't know anything about that.

Q. Did Mr. Wasserstein tell you that the only way Mr. Jeresano could get a sentence below the guidelines was if the federal prosecutor filed a motion?

A. He never talked to me about that.

Q. You disclosed that agreement to Vivian King before trial, did you not?

A. I disclosed that I had agreed to write him a letter, yes, sir.

[ROA.5248]

Q. And did you want the jury to know that you were going to write a letter for Mr. Jeresano to help him in his sentencing?

A. I didn't think it was a big deal. I didn't care if they knew.

Q. Did you want the jury to know that, yes or no?

A. I can't answer that with a yes or no.

Q. How can you answer it?

THE COURT: I couldn't hear you.

Q. (By Mr. Schaffer) I said: How can you answer it?

A. Like I just did. It didn't matter to me whether or not the jury found out that I was going to write a letter to the federal judge.

Q. Well, it would be your preference the jury not find out, correct?

A. No. I would not agree with that.

Q. Well, so then did you want the jury to know about it?

A. I believe I answered that it didn't matter to me either way if the jury found out that I was going to write a letter.

Q. Well, which would be more beneficial for the State, for the jury to know you were going to write a letter or for the jury not to know that?

[ROA.5249]

MR. SMITH: Objection, Your Honor, asked and answered.

THE COURT: Overruled.

A. I don't think it mattered. I didn't think it mattered.

Q. (By Mr. Schaffer) Did you feel you had an obligation as an officer of the court and a professional prosecutor to disclose to the jury the agreement you made with Mr. Jeresano's lawyer, yes or no?

A. No.

Q. Why not?

A. Because they knew that he was awaiting a trial, they knew what he was charged with, and they knew that based on Mr. Wasserstein's testimony that he was trying to get a better deal, that he was trying to get as little punishment as possible.

Q. So did you think this would be up to Vivian King to bring out to the jury?

A. No.

Q. But you certainly didn't think it was your responsibility?

A. I didn't think it was something that was important.

\*\*\*\*\*

[ROA.5251, Line 3]

Q. Did you tell Oscar Jeresano before he testified that you were going to write a letter to the federal judge requesting leniency on his behalf?

A. I don't recall ever talking to him about it. I know that I talked to Mr. Wasserstein. I don't recall ever talking to Mr. Jeresano about writing a letter for him.

Q. Did you intentionally avoid telling Mr. Jeresano you were going to write the letter?

A. No.

Q. Why would you not have told him you were going to write the letter?

A. Because he had an attorney, and so anything regarding the case -- and anytime that I'm talking to a witness who has a criminal case, I do everything I can not to talk about it because it then makes me a witness. And so because he had a defense attorney, I would talk to the defense attorney about his criminal case. I wouldn't want to go into anything with him that could cause him to tell me something that then I would be required to pass along because then I would be a witness.

Q. Well, let me see if I've got this right. Had

[ROA.5252]

you told Mr. Jeresano you were going to write a letter to the federal judge on his behalf, he would have had to admit that if asked about it under oath, would he not?

A. Yes.

Q. And if he had denied it, you would have had a duty to correct that false testimony, wouldn't you?

A. Yes.

Q. So did you deliberately not tell him you were going to write a letter so he could get up there and say he knew nothing about the letter and you didn't have to correct him?

A. Absolutely not, sir.

\*\*\*\*\*

[ROA.5253, Line 25]

Q. Why didn't you elicit on direct examination

[ROA.5254]

from Mr. Jeresano that you were going to write a letter in exchange for his testimony?

A. Because I didn't think it was important, and I didn't know if he knew that.

Q. Well, why not ask and see if he knew it?

A. I didn't think it was important.

Q. Important to whom?

A. I didn't think it was important for the jury to know about that.

Q. So you made the decision as to what would be important or not important for the jury to know about the benefit you were going to confer on a witness for his testimony in a capital murder. Is that your testimony?

A. During my direct examination of the witness, I did not think that it was something that was important for the jury to know about.

\*\*\*\*\*

[ROA.5257, Line 12]

Q. (By Mr. Schaffer) Did you expect Mr. Wasserstein to tell his client he was going to get a letter from you in exchange for his testimony?

Resp't App. 61a

A. I assumed he would.

Q. Okay. So your belief, then, is at the time Mr. Jeresano testified that his lawyer had told him he was going to get a letter from you?

A. I had no idea.

Q. But you expected that, did you not?

A. I mean, if it were me, if I were his attorney, I would have told him, but I never asked Mr. Wasserstein if he had discussed it. I never talked -- I never asked him if he had told Mr. Jeresano about that.

\*\*\*\*\*

[ROA.5259, Line 15]

Q. So what Mr. Wasserstein was bargaining for was the letter in exchange for testimony, correct?

A. No. There was never a question as to whether Mr. Jeresano was going to testify. He was always going to testify no matter what. And it was -- I discussed with Mr. Wasserstein -- he asked if I would write a letter after Mr. Jeresano testified, and I said absolutely, I'll do that. I'll tell the judge whatever he does in the trial.

\*\*\*\*\*

[ROA.5266, Line 10]

Q. You assumed that a guy facing ten to life in federal court for being a drug smuggler was telling you the truth about why he came forward?

MR. SMITH: Objection, Your Honor, asked and answered.

THE COURT: Overruled.

A. I believed him.

Q. (By Mr. Schaffer) Okay. And since you believed him, you didn't bother to check it out, correct?

A. I did not check it out.

Q. Page 35, you elicited that Mr. Jeresano pled guilty in federal court and was awaiting sentencing, correct?

A. Yes.

Q. You elicited no one promised him anything for his testimony, correct?

[ROA.5267]

A. Correct.

Q. And you elicited no one told him the punishment range of ten to life could be reduced as a result of his cooperation, correct?

A. Correct. Yes.

Q. But you did make the promise for his testimony, didn't you?



Resp't App. 63a

A. I told his attorney that I would write a letter. I don't consider that to be a promise, just like the deal that we described -- or what we talked about earlier. I don't think a promise and a deal are the same as what I said I would do.

Q. Did you promise his lawyer you would write a letter in exchange for his testimony?

A. I told his lawyer I would write a letter telling the judge about his testimony.

Q. Well, you intended to do that?

A. Yes.

Q. So that was a promise, wasn't it?

A. I told him that I would do that.

Q. Was that a promise? Was your word good?

A. Yes.

Q. So if you told Brent Wasserstein you were going to write a letter for Jeresano, you promised him you were going to do it, didn't you?

\*\*\*\*\*

[ROA.5268, Line 11]

Q. (By Mr. Schaffer) How did you know at the time that Mr. Wasserstein didn't tell Mr. Jeresano about the letter?

A. I didn't know. I asked him the question, and he said he didn't know.

\*\*\*\*\*

[ROA.5271, Line 5]

Q. Well, wait a minute. You don't know the reason he testified, do you?

A. Yes, I do. Because he said that the reason he did is because he wanted to help the victims' families.

Q. And you bought that, huh?

A. Yes. I believed that 100 percent, and I still do.

Q. If he had refused to testify, would you have written the letter to the federal judge?

A. No.

Q. If he had gotten on the stand and testified and then admitted on cross that he made it all up to try and come out better on his federal case, would you have written the letter to the federal judge?

A. Yes.

Resp't App. 65a

Q. So if he got on the stand and admitted his testimony was a lie, you still would have written the letter?

A. I would've written a letter saying that he got up on the stand and lied about what he had told the police. Absolutely I would have done that.

\*\*\*\*\*

[ROA.5273, Line 7]

Q. Did the State do anything to help him avoid deportation?

A. No. I did not. I don't know if the Federal Government did. I literally wrote the letter to the federal judge. That's all that I did.

Q. Look at Page 48. Mr. Jeresano testified, did he not, that he did not know whether his plea agreement provided that if he cooperated, he might receive a reduced sentence, correct?

A. He said he didn't know.

Q. And he said Mr. Wasserstein did not tell him that, correct?

A. Correct.

Q. Did you believe at the time that testimony came out that Mr. Jeresano would not know the content of a document he signed before he pled guilty?

A. I didn't know that he had signed any document.

\*\*\*\*\*

[ROA.5274, Line 11]

Q. (By Mr. Schaffer) Let me try that again. Are you aware that Mr. Jeresano testified that Mr. Wasserstein did not tell him that under his plea agreement, if he cooperated, he might receive a reduced sentence?

A. He said, "Not that I know of."

Q. And do you agree that if Mr. Wasserstein did tell him that he could get a reduced sentence by cooperating, then that testimony was false?

A. I can't answer that with a yes or no. May I explain?

Q. Sure.

A. Mr. Jeresano was not -- he was not a very intelligent person. So even if his lawyer explained this 5K1.1, I don't know that he necessarily would have

[ROA.5275]

understood or known what that meant. And I still don't know what that is, and so I don't know what he knew or what he didn't know.

\*\*\*\*\*

[ROA.5280, Line 15]

Q. All right. You then told the Court that you had zero knowledge of any potential sentence reduction including whether it was possible in this case, correct?

A. Yes.

Q. And you're telling us you never saw Jeresano's plea agreement?

A. Never.

Q. Mr. Wasserstein never told you what was in it?

A. No.

Q. Mr. Wasserstein tell you how the letter was going to be used?

[ROA.5281]

A. He said he was going to give it to the judge. I was supposed to address it to the judge.

Q. And then it would be used to try and get a lesser sentence, correct?

A. He told me that it was going to be presented to the judge when the judge was deciding the sentence. I presumed that it would be in the lower range of the punishment. That's what he was hoping to get.

Q. So you did know there was a possibility of a sentence reduction based on the letter, correct?

A. I didn't know a sentence -- so what I'm talking about is what my understanding is with the federal sentencing guidelines, that there's a range. So I assumed that they were hoping my letter would get him the lower range, not a reduced range. I didn't know that a reduced range was possible. I thought it would be within the sentencing guidelines for that offense. I didn't know that there was anything different.

[ROA.5282, Line 5]

Q. You objected -- Page 87 and 88, you objected to Ms. King asking Jeresano about the letter you agreed to write, did you not?

A. On Page 87?

Q. 87 and 88.

A. Oh. Yes, because it was improper impeachment.

Q. Your position was, you made the deal with Mr. Wasserstein, not with Jeresano, correct?

A. This is referring to -- I believe this is referring to what Ms. King talked about with the -- I don't know that the federal guidelines, what we just talked about -- hold on. I'm sorry. What is that called?

Q. 5K1.1.

A. Thank you. That was what we were referring to here, is the existence of that.

Q. Well, the context is that you -- your position was you made the agreement, the arrangement with Mr. Wasserstein, not with Mr. Jeresano, correct?

A. I never -- I told Mr. Wasserstein that I would write the letter based on his testimony.

[ROA.5283]

Q. And your position was, it was not proper to cross-examine Jeresano about a letter you agreed to write for Wasserstein?

A. I don't think that's what we were referring to here. I think what was being referred to here was the 5K -- that -- I think that's what they were referring to here.

MR. SCHAFFER: If I may approach, please?

THE COURT: Yes.

A. Because she never asked about...

Q. (By Mr. Schaffer) You're saying here on 88, "The problem is unless Wasserstein told Jeresano, he didn't know anything about it," correct?

A. And that's referring to that 5K-whatever deal with the federal prosecutor.

Q. So you're saying Ms. King did not want to ask Mr. Jeresano about the letter at all?

A. I don't know what she wanted to do, but she never did ask him about it.

Q. Well, we'll get to that in a minute.

A. Okay.

Q. The Court ruled that Ms. King could not ask Mr. Jeresano about a letter he didn't know about, correct, Pages 88, 93 and 94?

A. Because it was improper impeachment.

\*\*\*\*\*

[ROA.5290, Line 10]

Q. Right. And Mr. Wasserstein testified that the federal judge would then decide whether to reduce the sentence, correct?

A. Yes.

Q. Is that the first you ever heard of that?

A. Yes.

Q. So Mr. Wasserstein never told you before trial that the federal judge could go under the guidelines if the government filed a 5K1.1 motion?

A. No.

Q. So when you told the Court the day before that you had zero knowledge of any potential sentence reduction, including whether it was possible in this case, you're saying you found out the next day you were wrong?

A. I never knew anything about it. So when he was

[ROA.5291]

testifying and when Vivian was asking Mr. Jeresano those questions, that's the first I had heard -- I knew anything about any sentence reduction.

Q. Now, Ms. King did not elicit that you had agreed to write a letter to the federal judge, did she?

A. No.



Resp't App. 71a

Q. Were you surprised at that?

A. No.

\*\*\*\*\*

[ROA.5296, Line 24]

Q. Why did you allow the defense lawyer to write the letter?

[ROA.5297]

A. I've never practiced in federal court, and I didn't really know how to begin to formulate a letter to a federal judge. And so I assumed that he would know what form and what was going to be important to that judge.

Q. You'd been practicing law for ten years at the time, had you not?

A. When was it?

Q. June of '14.

A. I was licensed in November of '05. So I think less than ten years at that time.

Q. So you're saying that you had to rely on a defense lawyer to write the letter for you?

A. I didn't have to, but I did.

\*\*\*\*\*

Resp't App. 72a

[ROA.5313, Line 9]

Q. He asserts in his affidavit that he informed Jeresano of the arrangement he had made with the respective prosecutors. Do you have any way of agreeing or disagreeing with that?

A. I have no idea of what he did or didn't tell Mr. Jeresano.

[ROA.5314, Line 18]

**CROSS-EXAMINATION**

**BY MR. SMITH:**

Q. Good afternoon, Ms. Flader. How are you?

A. Good. How are you today?

Q. Doing well.

How did you become involved in the Uvukansi case?

A. I was moved into the 174th, and I think it was

[ROA.5315]

a promotion. So I was promoted into the Court, and so when I got into the Court, it was a case that was already pending.

Q. And then during that time, you became aware of a witness named Oscar Jeresano, correct?

A. Yes.

Q. And you indicated earlier that you might have become aware of him by reading the offense report, correct?

A. Yes.

Q. And you're aware that his attorney was Mr. Wasserstein, who's been discussed at length today?

A. Yes.

\*\*\*\*\*

[ROA.5317, Line 21]

Q. (By Mr. Smith) And you're actually cc'd on this, correct?

A. Yes.

Q. All right. And this was an e-mail that was actually contained within the State's file, correct?

[ROA.5318]

A. Yes.

Q. So at least in February of 2013, Ms. King was aware of Mr. Jeresano having the federal case as well as sentencing being pushed back a couple times at that point?

A. Yes.

Q. And the trial occurred, I believe, in June of 2014?

A. Yes.

Q. And what was the arrangement between you and Mr. Wasserstein regarding Mr. Jeresano?

A. There was -- I told him I have no control over what happens with his federal case. I said, "But as long as he testifies truthfully, I will write a letter so that you can use that at his sentencing."

\*\*\*\*\*

[ROA.5318, Line 19]

Q. Did you ever inform Mr. Jeresano that he would receive a lot less time for cooperating and testifying in the case?

A. I never told him that.

\*\*\*\*\*

[ROA.5320, Line 24]

Q. Did you ever inform Mr. Jeresano that he would receive a 5K1.1 reduction?

[ROA.5321]

A. I never did. I didn't know what that was.

Q. Did you agree that Jeresano would receive any reduction in his federal sentence?

A. No.

\*\*\*\*\*

[ROA.5323, Line 20]

Q. All right. And then further within that same pretrial hearing, with regard to Ms. King's -- one of her notices is No. 4, which is the federal plea agreement to cooperate with the State in this case for Oscar Jeresano. And you say: There is no plea agreement for the witness to cooperate in this case.

[ROA.5324]

Any agreements made with that witness -- there have been no agreements other than what has been previously put on the record, that the State did tell defense counsel for Mr. Jeresano that she would write a letter to the federal judge informing him of his cooperation.

A. Yes.

Q. And then Ms. King asked whether or not that was done by e-mail or in writing, and then you advised that you believed you had just told him.

A. Correct.

Q. All right. So Ms. King was aware of all that at least in February of 2014.

A. Yes.

Q. Did you ever specifically request Mr. Jeresano's federal sentencing date to be pushed back or continued?

A. No.

\*\*\*\*\*

[ROA.5327, Line 5]

Q. (By Mr. Smith) And in reviewing State's 2 and 3, you'd agree with me that you had disclosed that Mr. Jeresano again had that pending federal possession of a controlled substance case that was --

A. Yes. It's on both of those documents. I don't know why I filed the same document twice. There are some

Resp't App. 77a

differences, but in regards to Mr. Jeresano, it's the same information about his pending case.

Q. And so why would you file Brady vs. Maryland disclosures?

A. This one specifically was to inform the defense attorney about the criminal history of all potential witnesses that might testify in the case.

\*\*\*\*\*

[ROA.5330, Line 17]

Q. All right. So I believe that you had not been given an opportunity to explain an answer whenever you were on direct by Mr. Schaffer with regard to your understanding or your belief about a promise. With regard to your question as to "have you been made any promise of testifying in court today" and the context of your direct within those follow-up questions, what would you like to tell the Court?

A. What I was referring to was, is if he believed

[ROA.5331]

that he was going to get a specific sentence for his testifying. That's what I meant by "promise." Or that it would be lowered.

Q. All right. And I believe that on the record later on, you make it clear that you had zero knowledge of any of the potential sentencing reduction of Jeresano's offense; is that true?

A. Yes.

Q. And not only is it true that you make it clear on the record, but is it actually factually true that you did not have any knowledge?

A. It is absolutely true that I had no knowledge of any potential chance that the sentence was going to be reduced. I assumed he was going to go to prison for at least ten years, to federal prison.

\*\*\*\*\*

[ROA.5333, Line 23]

Q. Ms. Flader, it seems like what you were saying with regard to the promise, that you were saying that basically there was no quid pro quo with regard to

[ROA.5334]

Mr. Jeresano and him testifying with regard to a letter being written by you to the federal judge.

A. Absolutely. So whenever I talked to Mr. Jeresano, he never asked, "Well, what are you going to do for me?" A lot of witnesses do ask that, "Well, what's in it for me, what are you going to do for me?" He never asked that.

And Mr. Wasserstein, the communications were with him about what I was going to do, and it was never a situation where -- for him to testify. A lot of times we have witnesses that don't want to testify, and we tell them, "If you testify and testify truthfully, then we will do X." And that was not the case here. Mr. Jeresano was always going to testify. And it was -- Mr.



Resp't App. 79a

Wasserstein asked me if I would write a letter afterwards saying exactly what he did, and I agreed to that.

So it wasn't, "He will only testify if you write this letter." It was, "He's going to testify, and would you be willing to write him a letter to the federal judge," if that makes sense.

[ROA.5337]

**REDIRECT EXAMINATION**

**BY MR. SCHAFFER:**

\*\*\*\*\*

Q. Why didn't you, then, on cross-examination bring out that you had agreed with Mr. Wasserstein to write a letter to the federal judge in an effort to help Mr. Jeresano obtain a lower sentence?

A. I didn't think it was important.

Q. Okay. So you made that judgment for the jury,

[ROA.5338]

that they didn't need to know about that, correct?

A. It wasn't really a decision to keep it from them. I really just didn't think it was important that I was going to be writing a letter to the judge. Judges get letters from people in sentencings all the time, and the judge gets to decide what they want to do with that letter, and so it wasn't really something that I thought was that important. I really didn't think it was going to affect his sentence.

Resp't App. 81a

[ROA.5381, Line 15]

**DIRECT EXAMINATION**

**BY MR. SCHAFFER:**

Q. Tell us your name, please.

A. Brent Wasserstein.

\*\*\*\*\*

[ROA.5382, Line 9]

Q. Were you hired to represent Oscar Jeresano back in 2011?

A. Yes, sir.

Q. Was he charged in federal court in Victoria with possession with intent to distribute 10.9 kilos of cocaine?

A. Yes, sir.

Q. And did he plead guilty on July 24, 2012?

A. Yes, sir.

Q. And was he to be sentenced initially in December of 2012?

A. Yes, sir.

Q. Was his punishment range ten years to life?

A. Yes, sir.

\*\*\*\*\*

[ROA.5384, Line 23]

Q. All right. So you knew you had a valuable piece of currency there, did you not, vis-à-vis the federal case?

[ROA.5385]

A. I mean, I knew that it would potentially help him in getting a lower sentence, yes.

Q. So you did make an arrangement with Ms. Flader and with Patti Booth before Mr. Jeresano testified, did you not?

A. The way you asked the question, did I make an arrangement with Ms. Flader and Patti Booth, I did make arrangements separately --

Q. I'll break it down.

A. Okay.

Q. Was your agreement with Ms. Flader that if Mr. Jeresano cooperated and, if necessary, testified against Mr. Uvukansi, she would write a letter to the federal judge advising of Mr. Jeresano's cooperation before he was sentenced?

A. Yes.

Q. Did you have an agreement with Ms. Booth that if the State wrote that letter that Ms. Booth would file a 5K1.1 motion asking the Court to sentence Mr. Jeresano below the statutory minimum of ten years?

A. Yes, if he cooperated, correct.

[ROA.5386, Line 23]

Q. And consistent with your ethical duty to keep your client advised of the elements in his case, did you inform Mr. Jeresano of the agreement you made with

[ROA.5387]

Gretchen Flader?

A. At some point I did, yes.

Q. Before he testified?

A. I believe it was when he testified, during trial.

Q. During the trial, you say?

A. During the trial, yes.

Q. And did you likewise inform him of the agreement you had with Patti Booth?

A. Yes.

Q. That she would file a 5K1.1 if she got the letter from Gretchen Flader?

A. I don't know if I was that specific. I just said that he had to cooperate and cooperate all the way through. Because of this type of case, he was helpful and then nervous about testifying, and then I told him that he had to cooperate in order to potentially get the 5K1.

Q. So to make it clear, this was a two-step process, was it not, as far as cooperation was concerned? Step one is Flader had to write the letter.

A. Well, it wasn't that Gretchen had to -- Ms. Flader had to write the letter. It was that -- the letter was helpful in showing that he cooperated with the government. So I used the letter almost as a

[ROA.5388]

character letter that I had put with the memorandum.

\*\*\*\*\*

[Line 11]

Q. All right. And so at the time he testified, he knew that it would be possible that the federal judge could depart below the statutory minimum if the motion were filed.

A. I think during when he testified, that became clear to him. There was a break that was taken, and I specifically went into that.

Q. While he was still on the stand?

A. Yes.

[ROA.5389, Line 3]

A. Right. So what I thought -- could I explain? So I always kept Oscar up to date with his case. I may not have used terms like "5K1." He wouldn't understand that.

Q. Sure.

A. I was actually able to sit in and watch part of the trial. At one point, defense counsel -- it was getting confusing, and she wanted me to be able to speak to

Oscar about what was happening. At that point, I started using the terms "5K1" and "downward departure" and that type of verbiage.

Q. So you made it clear to him at a break during his testimony what was going to happen afterwards if he cooperated.

A. Correct. I think he had a general idea, and then we reinforced it.

Q. Now, did you tell Gretchen Flader that you had informed Mr. Jeresano about the letter she was going to write?

A. I don't recall.

Q. Did you tell Gretchen Flader that you told Mr. Jeresano about the 5K1.1 motion?

A. I don't recall.

[ROA.5390]

Q. Did she ever tell you not to tell him about the letter?

A. No.

Q. What was the purpose of asking Gretchen Flader to write a letter to the federal judge?

A. To help the government understand that he -- his cooperation. And also, in a sense, a memo or letter from a district attorney about his character would go a long way, in my opinion.

\*\*\*\*\*

[ROA.5406, Line 5]

Q. (By Mr. Schaffer) Were you present when Ms. Flader elicited that no one told him the punishment range of ten to life could be reduced as a result of his cooperation?

A. Is the question, "Have they told you that the range of punishment could be lowered"? That's the question?

Q. Yeah.

A. Yes, I was there when he answered "no."

Q. But you had told him it could be, didn't you?

A. Yes.

Q. So that testimony was likewise false, was it not?

A. Well, if you look at the question "is going to be," there was no promise of what was going to happen. So I'm not saying that when he said "no" to that, that that's an untruthful answer.

\*\*\*\*\*

[ROA.5407, Line 11]

Q. -- this is Vivian King questioning him now on cross-examination. Were you present when Ms. King elicited that he didn't know if a plea agreement provides that if he cooperated, he might receive a reduced sentence?

A. Yes.

Q. And in fact, he testified "Brent Wasserstein didn't tell me this," correct?



A. Those weren't his exact words. He said, "Not that I know of" -- or "Your lawyer never told you that?" He said, "No."

Q. Well, you were his lawyer, correct?

A. Correct.

Q. So he's saying Brent Wasserstein didn't tell him that, correct, without using your name?

[ROA.5408]

A. Yeah, with those questions, that's what it seems like.

THE COURT: What volume are you on?

MR. SCHAFFER: Volume 8.

THE COURT: What page?

MR. SCHAFFER: Page 48.

Q. (By Mr. Schaffer) So that testimony was false, was it not?

A. If you go to the sentences before it, her question was, "And did you have a plea agreement that says if you cooperate with the State in this case, they would consider giving you a 5K1 reduction under the federal sentencing guidelines," I'm not sure if he knew at that point what a 5K1 actually was.

Q. Well, you had told him the effect of it, did you not?

A. Yes.

\*\*\*\*\*

[ROA.5413, Line 10]

Q. (By Mr. Schaffer) Is what Ms. Flader told the Court about that matter consistent with what you told her?

A. When I approached Gretchen about writing the letter, the letter was to do two things. One was to show that he cooperated with the government; and two, it was a character letter. When he testified, it was very stressful and he was courageous in his testimony. So I wanted that to come out to the judge.

Did I talk to Gretchen specifically about 5K1s and reductions? I can't say that I spoke to her specifically about that, but I could – you're asking my opinion. I would infer that she would probably realize it would help him sentencing-wise.

\*\*\*\*\*

[ROA.5414, Line 9]

Q. Now, why didn't you mention that Flader was going to write a letter to the federal judge?

A. I don't know. It wasn't asked specifically, I guess.

Q. I'm sorry?

A. It wasn't specifically asked of me. I don't think her question asked "did Gretchen say she was going to write a letter."

[ROA.5419]

**CROSS-EXAMINATION**

**BY MR. SMITH:**

Q. Mr. Wasserstein, you prepared an affidavit in this case?

A. Yes.

Q. And did anyone assist you in preparing that affidavit?

A. Mr. Schaffer sent me kind of an outline of our conversation.

Q. Kind of like you sent an outline to Gretchen Flader of that letter?

A. Yes.

\*\*\*\*\*

[ROA.5420, Line 18]

Q. What was Mr. Jeresano's motivation whenever he came to you in late June of 2012 and informed you that he had witnessed the shooting at the club?

[ROA.5421, Line 4]

A. When he came to the office, he said that he wanted to help the families of the victims.

Resp't App. 90a

Q. (By Mr. Smith) Okay. So his very first motivation wasn't about himself, it was to help the victims of the family?

A. Right. He didn't mention anything about his federal case.

And then at that point, did you contact Gretchen Flader first or did you contact the AUSA first?

A. About his cooperation?

Q. About his cooperation.

A. I contacted Natalie Tise. She was the prosecutor at the time before Gretchen.

Q. Okay. And was that before or after you had already contacted HPD to inform them of him being a witness?

A. It was after.

Q. All right. And whenever you spoke with --eventually after Ms. Tise was involved, then you began to deal with Ms. Flader, correct?

A. Correct.

Q. And then what did Ms. Flader advise that -- I

[ROA.5422]

guess what did Ms. Flader advise that she would do on behalf of Mr. Jeresano?

A. She said that she would write a letter about his cooperation.

Resp't App. 91a

Q. All right. Do you have any specific recollection of ever discussing with Flader the 5K1.1 motion?

A. No.

Q. All right. Do you have any specific recollection of Flader ever being present during any conversation between yourself and Jeresano where the letter to the federal judge would be sent?

A. No.

Q. When did you actually – you've reviewed your defense file, is that correct, before you testified here today?

A. Yes.

Q. So when did you and Ms. Booth come to an agreement that the 5K1.1 would be filed?

A. The day of sentencing.

Q. All right. So Ms. Booth never actually confirmed or ever came to an agreement that the 5K1.1 would actually be filed before Jeresano would testify?

A. Could you repeat the question?

Q. Sure. The 5K1.1 motion was never agreed to be

[ROA.5423]

filed before Jeresano testified, correct?

A. Correct.

\*\*\*\*\*

[Line 17]

Q. Did Ms. Booth ever indicate to you that Ms. Flader's letter, I guess, of cooperation was a condition precedent of the 5K1.1 motion?

A. No.

Q. They were two separate things, right?

A. Correct.

\*\*\*\*\*

[ROA.5427, Line 5]

Q. And you also indicated, as you were saying before -- because I think on direct, you stated that he thought it was a promise of a specific sentence with regard to one of Ms. Flader's earlier questions, correct?

A. Correct.

Q. All right. And again, there's a difference between a -  
- was he going to get something as opposed to the possibility of him getting something, correct?

A. Correct.

Q. And in fact, Judge Rainey had admonished him whenever he had initially pled guilty that only Judge Rainey would be doing -- is the one who would sentence him, correct?

A. Correct.

Q. And that even if you had told him what he was going to receive, that he should not rely upon even what you tell him, correct?

A. Correct.

\*\*\*\*\*

[ROA.5430, Line 7]

Q. Sure. How many times did you talk to Mr. Jeresano about the 5K1.1 language?

A. Using the term "5K1," it would have been just the day before he was rearraigned. So I think July the 23rd. It was actually -- the plea agreement was sent to my office by fax and it was signed and then faxed back. Then the next day we went to Victoria, Texas, to do the plea. So I went over the 5K1 language with him in reading it. I don't know if he understood what 5K1 actually meant, but -- because I didn't speak to him in terms of 5K1 and I didn't use legal standard terms in talking to him about what he was pleading to. He understood about cooperation. But using 5K1, we probably read over it, but I didn't go specifically into it.

[ROA.5435]

Q. So let me ask you this question: While you were there and you were watching this trial and you're watching how Ms. Flader and Ms. King were going through this trial, did you ever think in your head, "Hey, Ms. Flader is committing prosecutorial misconduct in the way this trial is occurring"?

A. No.

[ROA.5442, Line 8]

**DIRECT EXAMINATION**

**BY MR. SCHAFFER:**

Q. Tell us your name, please.

A. It's Vivian King.

[ROA.5454, Line 14]

A. I believe that Mr. Jeresano's lawyer told him that he would get a benefit from testifying. So, plead guilty, testify, and then you'll have sentencing and receive a downward departure in the federal system.

[ROA.5457, Line 13]

Q. (By Mr. Schaffer) You're aware that he testified no one told him that the range of punishment would be reduced as a result of his testimony -- of his cooperation.

A. I can't answer that directly. I remember I thought he left a false impression to the jury that he didn't know when I thought he knew.

Q. And you knew that Flader had promised to write a letter for him, correct?

A. Yes.

\*\*\*\*\*



[ROA.5473, Line 10]

A. I did not make a bill because I believe that Judge Price sustained -- he did sustain the objection. But my trial strategy was to bring in his lawyer, to talk to his lawyer about the agreement because I really believe that Mr. Jeresano just wasn't smart enough to understand what his agreement was. I mean, he knew what he was doing. So I went as far as to call the lawyer, which is unusual in trial, but I did, and his lawyer testified. So I was going to get to it another way.

\*\*\*\*\*

[ROA.5476, Line 2]

Q. Now, why didn't you ask Mr. Wasserstein whether Ms. Flader had agreed to write a letter to the judge regarding Jeresano?

A. Because I thought by Jeresano's lawyer explaining that his client was testifying and expecting to get a downward departure answered -- that was what I wanted. I wanted the jury to know that was the bias and that the lawyer explained it.

\*\*\*\*\*

[ROA.5478, Line 5]

Q. Well, but Flader had disclosed to you before trial that she had made an agreement with Wasserstein to write the letter to the judge.

A. Yes, sir. But in my mind, that wasn't the dispositive fact. To me, I mean, the federal prosecutor could have asked anybody on that team. Gretchen didn't try that case by herself, she had a co-counsel. So the federal prosecutor, based on my experience, could have talked to either one of them or the federal prosecutor could have looked on JIMS and saw there was a conviction and just gave him the 5K. I didn't think a letter was dispositive of giving a 5K. I thought it was his testimony and conviction.

\*\*\*\*\*

[Line 23]

Q. (By Mr. Schaffer) How could you have used the letter to impeach his testimony on direct examination regarding his motive?

[ROA.5479]

A. I could have used it to further my theory that he was doing it only to get a benefit, but I didn't think that was the only way. I thought the best way was to show that the night of the melee with hundreds of people in the parking lot, he did not come forward and tell the police what he saw. I never -- it was always suspicious to me that he would wait and go to a lawyer that's representing him on his federal case to then get

Resp't App. 97a

with the prosecutors instead of being a good citizen that night and reporting what he saw that night.

I thought -- that was my trial strategy to show that he wasn't right, that he was a liar because he didn't come forth that night. I didn't get into the details that you're getting into because that's obviously what your trial strategy would have been. Mine was different.