

APPENDIX A
COURT'S OPINION
(28 U.S.C. § 2255)

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-2932

Marcrease Delance Farmer

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - Cape Girardeau
(1:24-cv-00081-SRC)

JUDGMENT

Before SHEPHERD, ERICKSON, and STRAS, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

October 16, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARCREASE DELANCE FARMER,)
Petitioner,)
v.) Case No. 1:24-cv-00081-SRC
UNITED STATES OF AMERICA,)
Respondent.)

Memorandum and Order

Petitioner Marcrease Farmer asks the Court to vacate his sentence under 28 U.S.C. § 2255. He makes two arguments: that he suffered from constitutionally ineffective assistance of counsel during the *voir dire* phase of his trial, and that the Court erred in denying his motion for a new trial due to alleged juror bias. Having carefully reviewed the record, the Court holds that Farmer has not demonstrated entitlement to relief or an evidentiary hearing under Section 2255, and accordingly denies his motion.

I. Statement of facts¹

After a jury found Farmer guilty on three counts, doc. 90, the Court held a sentencing hearing at which it overruled Farmer's objections, doc. 119, to the presentence report, *see* doc. 120; doc. 145, Sentencing Tr. 11:14–37:6. The PSR describes the following facts:

1. On July 22, 2021, [Farmer] was found guilty by jury trial of three counts of a three-count Indictment. Counts 1 through 3 charged Distribution of Methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B).

...

6. According to government records and investigative reports of the Missouri State Highway Patrol (MOSHP) and the Drug Enforcement Administration (DEA),

¹ The "doc." cites in this section are from *United States v. Marcrease Delance Farmer*, 1:19-cr-00183-SRC-1.

on or about July 15, 2019, July 24, 2019, August 2, 2019, August 8, 2019, and August 21, 2019, in Stoddard County, Missouri, within the Southeastern Division of the Eastern District of Missouri, Marcrease Delance Farmer[] knowing[ly] and intentionally distributed fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine. . . .

7. On July 16, 2019, a MOSHP Trooper was conducting an undercover narcotics investigation. As a result of the investigation, the trooper, acting in an undercover capacity, contacted [Farmer] via text and asked him if he was able to sell one ounce of methamphetamine for \$500 on July 16, 2019. Farmer told the trooper to "pull up whenever." On July 16, 2019, the trooper sent [Farmer] a text stating he was going to meet Farmer to purchase the one ounce of methamphetamine. The defendant replied, "K." The trooper drove to Farmer's house located at 200 Peck Street, Malden, Missouri. The trooper texted [Farmer] when he got to the residence. Farmer sent a text back requesting the trooper give him some time, and he would be there. The defendant later sent a text to the trooper stating he was home and to come to the residence. A MOSPH Trooper and a Southeast Missouri Drug Task Force (SEMO DTF) Officer provided surveillance. Upon arrival, the undercover trooper observed Farmer's vehicle pull underneath the carport. The trooper waited a short period of time for [Farmer] to exit the residence. The trooper walked to the door under the carport and knocked on the door. Farmer answered the door, and the trooper entered the residence. The lighting in the residence was very poor; however, the trooper was able [to] see several other males standing in the kitchen. The defendant and the trooper stood by the wall of the kitchen. Farmer told the trooper that the product was light, and his supplier stated that was all he had left. [Farmer] stated he was told by the supplier that it was approximately 27 grams, but he still needed \$500. The trooper stated he would take it, and they would make it up on the next transaction, to which Farmer agreed. [Farmer] pointed at a paper towel sitting in a kitchen chair behind an unknown male. The trooper tried to give the requested money to Farmer, but he told the trooper to put it on the kitchen table. The trooper picked up the paper towel, which contained a baggie of suspected crystal methamphetamine. The trooper placed the product into his pocket and walked toward the door. Before he left the residence, the trooper talked with [Farmer] about future drug transactions. The trooper then exited the residence and vacated the area. The crystal substance field tested positive for the presence of methamphetamine with a field weight of 28.1 grams. . . .

8. On July 24, 2019, the trooper contacted Farmer via text and stated he needed one half ounce. They agreed to meet at the former Cross Roads convenience store at 3037 State Highway H. Bernie, Missouri. A MOSPH Trooper and SEMO DTF Officers provided surveillance. Upon arrival, the undercover trooper observed [Farmer]'s vehicle, a green Mercury Grand Marquis, parked on the north side of the parking lot facing east. The trooper pulled next to Farmer's vehicle. [Farmer] handed the trooper a Newport cigarette box containing suspected crystal methamphetamine. The trooper handed Farmer the money. He asked if the price was \$250. [Farmer] counted the money and stated the trooper did not give him

enough. Farmer handed the money back, and the trooper realized he had only given the defendant \$210. The trooper added \$40 and handed the money back to Farmer. The trooper talked with [Farmer] about doing future transactions at the same location. They both then vacated the area. The crystal substance field tested positive for the presence of methamphetamine with a field weight of 14.9 grams.

9. On August 2, 2019, the trooper contacted [Farmer] via text, and agreed that the trooper would purchase two ounces of crystal methamphetamine for \$950. They both agreed to meet at the former Cross Roads convenience store. SEMO DTF Officers provided surveillance. While the undercover trooper was traveling to the meet location, he received a call from Farmer stating he was locked out of his residence, and he needed to postpone the meet. [Farmer] agreed to reduce the price for the methamphetamine by \$20 for the trooper's troubles. Farmer sent the trooper a text stating he would be at the meet location at approximately 3:50 p.m. [Farmer] then called the trooper at approximately 3:48 p.m. stating he was close, and they agreed to me[et] at the same location. Upon arrival, the trooper observed Farmer's vehicle pulling into the parking lot. The trooper pulled next to [Farmer]'s vehicle. Farmer asked the trooper if he liked chips and handed the trooper an orange Sun Chips bag containing suspected crystal methamphetamine. The trooper handed [Farmer] \$930. The trooper asked Farmer about getting the product cheaper in the future. [Farmer] encouraged the trooper to partner up with him. Farmer stated they could go in on one pound together for \$3,500, which would cost each party \$1,750. [Farmer] stated once the trooper paid him, he would have to go get it, and the trooper would have it within an hour or two. The trooper stated he was interested and would contact him later. They both vacated the area. The crystal substance field tested positive for the presence of methamphetamine with a field weight of 62 grams. . . .

10. On August 6, 2019, the trooper was in contact with Farmer via text stating he had \$1,750 for one half pound of crystal methamphetamine and would be ready to do the drug transactions on August 8, 2019. [Farmer] stated, "K let me know." On August 8, 2019, the trooper began to communicate with Farmer via text and decided on an approximate [time] to meet at the former Cross Roads convenience store. Surveillance was provided by MOSPH Troopers and SEMO DTF Officers. The undercover trooper parked on the parking lot of the convenience store and waited for [Farmer] to arrive. Farmer arrived at the parking lot and informed the trooper that he was getting over three and one[-]half ounces. The trooper asked [Farmer] about the eight ounces that they agreed to. Farmer stated he did not have the money to hold up his end of the agreement, which was to go in together on approximately one pound. [Farmer] handed the trooper a "Red Jordan" fanny pack. Inside the fanny pack was the suspected methamphetamine along with some loose small denominations of U.S. currency. Farmer told the trooper to take \$50 out. The trooper took . . . the suspected methamphetamine out of the fanny pack. The trooper placed \$1,700 into the fanny pack and gave it back to [Farmer]. They both vacated

the area. The crystal substance field tested positive for the presence of methamphetamine with a field weight of 105 grams. . . .

11. On August 15, 2019, the trooper was in contact with Farmer via text and eventually talked about going in together on one pound. On August 19, 2019, the trooper was in contact with [Farmer] via [text] and asked him how much it was going to cost to purchase one half pound. Farmer stated he was "waiting for word back." On August 20, 2019, [Farmer] stated, "My ppl [sic] bad I had to link up with you my cousin's they [sic] on the same tip." The trooper told Farmer he would be around the next day and needed a price on the one half pound. [Farmer] indicated he wanted to talk about the details face to face. The trooper stated he would not be back in the area until later. The trooper told Farmer he would call him. The trooper called [Farmer]. During the conversation, Farmer stated his supplier was moving, and [Farmer] could not travel. Farmer stated his supplier was coming that night. The trooper told [Farmer], he was not going to be around. They discussed that Farmer hold the methamphetamine until August 21, 2019, when the trooper would return to the area. [Farmer] stated he was going to text the trooper a price and agreed to meet on August 21, 2019. On August 21, 2019, Farmer sent the trooper a text stating, "Green light they asking 22 8piece." This was understood to mean that [Farmer]'s supplier wants \$2,200 for eight ounces. After some additional texts, Farmer called the trooper stating he was going to call his supplier and call the trooper back. The trooper also confirmed the price of \$2,200 for approximately eight ounces. [Farmer] called the trooper back and stated he would be at the meet spot in ten minutes. Surveillance was provided by the MOSHP Officers and SEMO DTF Officers. The undercover trooper parked on the parking lot of the former Cross Roads convenience store and waited for Farmer to arrive. [Farmer] arrived in a silver Ford Mustang and pulled up next to the trooper's vehicle. Farmer requested that the trooper get in with him. The trooper exited his vehicle and entered the passenger seat of [Farmer]'s vehicle. The trooper observed a black plastic sack on the passenger side floorboard. The trooper asked Farmer if the black bag was the product, and [Farmer] indicated it was. The trooper picked up [the] sack and observed a clear plastic baggie containing suspected crystal methamphetamine inside. The trooper gave Farmer the \$2,200. After some small talk, the trooper and [Farmer] vacated the area. The crystal substance field tested positive for the presence of methamphetamine with a field weight of 228 grams.

12. The controlled substances were submitted to the MOSHP Crime Laboratory for analysis with the following results: 26.72 grams of methamphetamine, which was seized on July 16, 2019; 13.57 grams of methamphetamine, which was seized on July 24, 2019; 50.9 grams of methamphetamine (actual), which was seized on August 2, 2019; 92.7 grams of methamphetamine (actual), which was seized on August 8, 2019; and 210 grams of methamphetamine (actual), which was seized on August 21, 2019. The total amount of methamphetamine (actual) was 353.6 grams, and the total amount of methamphetamine was 40.29 grams.

Doc. 120 at ¶¶ 1, 6–12 (emphasis omitted). Having presided over the trial, the Court finds that the facts stated in the PSR reflect the evidence adduced at trial. And at sentencing, the Court adopted the PSR as its findings of fact and conclusions of law regarding the advisory guidelines.

Doc. 145, Sentencing Tr. 43:14–16.

II. Procedural history

A. Criminal proceedings²

In December 2019, a federal grand jury returned a three-count indictment against Farmer, charging him with three counts of knowingly and intentionally distributing fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine, a controlled substance, in violation of 21 U.S.C. § 841(a)(1). Doc. 1. Farmer pleaded not guilty, doc. 11, and after a two-day jury trial, *see* docs. 85–86, the jury found him guilty on all counts, doc. 90.

The United States Probation Officer then prepared a PSR, calculating Farmer’s total offense level as 32 and his criminal history category as V, resulting in a guidelines range of 188 to 235 months of imprisonment. Doc. 120 at ¶¶ 28, 40, 70. In December 2021, the Court held a sentencing hearing at which it sentenced Kimble to a within-guidelines sentence of 210 months, followed by a four-year term of supervised release. *See* docs. 130–31. Before imposing its sentence, the Court confirmed that Farmer was satisfied with the services rendered him by defense counsel throughout the criminal proceedings in this case:

THE COURT: [S]ince the trial have you had enough time to speak with [defense counsel Zachary] Borowiak and have him answer all of your questions relating to sentencing?

[FARMER:] Yes, Your Honor.

THE COURT: Are you fully satisfied with the services of Mr. Borowiak that he’s provided to you in this case?

² The “doc.” cites in this section are from *United States v. Farmer*, 1:19-cr-00183-SRC-1.

[FARMER]: Yes, Your Honor.

Doc. 145, Sentencing Tr. 3:3–10.

After sentencing, Farmer appealed, arguing that a biased jury and improper judicial factfinding violated his Sixth Amendment rights, and challenging three evidentiary rulings the Court made during his trial. *See* doc. 153. The Eighth Circuit affirmed, *see id.*, and denied Farmer’s request for a rehearing, doc. 154. The Supreme Court then denied Farmer’s petition for certiorari. Doc. 159. Farmer is currently serving his sentence at Yazoo City Medium FCI in Mississippi with a projected release date of November 2, 2034.³

B. Civil proceedings

In April 2024, Farmer timely filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Docs. 1, 2. He makes two arguments: that he suffered from ineffective assistance of counsel because counsel failed to question and then strike an eventual juror during the *voir dire* process; and that the Court erred in its denial of his motion for a new trial due to juror bias. *Id.* The United States timely filed its response, doc. 7, and Farmer timely filed his reply, doc. 8, rendering Farmer’s motion to vacate, doc. 1, ripe for the Court’s review.

III. Standard of review

A. Section 2255

Under Section 2255, a federal prisoner “may move the court which imposed [his] sentence to vacate, set aside or correct the sentence” on the grounds that the court imposed “the sentence . . . in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). If a

³ Find an inmate, Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited August 21, 2024).

petitioner claims his sentence violates the Constitution or laws of the United States, the petitioner must establish that the violation constitutes “a fundamental defect which inherently results in a complete miscarriage of justice.” *United States v. Gomez*, 326 F.3d 971, 974 (8th Cir. 2003) (first quoting *United States v. Boone*, 869 F.2d 1089, 1091 n.4 (8th Cir. 1989); and then citing Fed. R. Crim. P. 32(d) advisory committee notes to the 1983 amendments). Generally, to obtain section 2255 relief, a petitioner must have raised the underlying error on direct appeal. *See Roundtree v. United States*, 885 F.3d 1095, 1097 (8th Cir. 2018). If a petitioner failed to do so, the Court considers the claim procedurally defaulted, rendering it ineffective in establishing a right to section 2255 relief. *See id.*

If the petitioner’s claims are not procedurally barred, the Court must hold an evidentiary hearing to consider the claims “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b); *see also Shaw v. United States*, 24 F.3d 1040, 1043 (8th Cir. 1994). A petitioner is entitled to an evidentiary hearing “when the facts alleged, if true, would entitle [the petitioner] to relief.” *Payne v. United States*, 78 F.3d 343, 347 (8th Cir. 1996) (quoting *Wade v. Armontrout*, 798 F.2d 304, 306 (8th Cir. 1986)). However, a court may dismiss a claim without a hearing “if the claim is inadequate on its face or if the record affirmatively refutes the factual assertions upon which it is based.” *Shaw*, 24 F.3d at 1043 (citing *Larson v. United States*, 905 F.2d 218, 220–21 (8th Cir. 1990)).

B. Ineffective assistance of counsel

A petitioner may raise an ineffective-assistance-of-counsel claim for the first time in a § 2255 motion, even if he could have raised the same claim on direct appeal. *Massaro v. United States*, 538 U.S. 500, 504 (2003). This exception to the procedural-default rule exists to prevent petitioners from being forced “to raise the issue before there has been an opportunity fully to

develop the factual predicate for the claim.” *Id.* Additionally, a petitioner’s attorney may serve as counsel for both trial and appellate proceedings, and it is unlikely that the attorney would raise a claim of his own ineffective assistance on appeal. *See United States v. Rashad*, 331 F.3d 908, 911 (D.C. Cir. 2003).

To establish ineffective assistance of counsel, a petitioner “faces a heavy burden.” *DeRoo v. United States*, 223 F.3d 919, 925 (8th Cir. 2000) (quoting *United States v. Apfel*, 97 F.3d 1074, 1076 (8th Cir. 1996)). He must show both that his counsel’s performance was deficient and that the deficient performance prejudiced the petitioner’s case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *United States v. Sera*, 267 F.3d 872, 874 (8th Cir. 2001). An attorney’s performance is deficient only if it falls “below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 687–88; *see also Sera*, 267 F.3d at 874. Two substantial impediments exist to making such a showing. First, “a ‘strong presumption’” exists “that counsel’s conduct falls within the wide range of reasonable professional assistance.” *United States v. Rice*, 449 F.3d 887, 897 (8th Cir. 2006) (quoting *Strickland*, 466 U.S. at 689). Second, “[s]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable.” *Id.* (quoting *Strickland*, 466 U.S. at 690).

IV. Discussion

Farmer’s § 2255 petition makes two distinct arguments. *See* docs. 1–2. The Court addresses each in turn.

A. Motion for a new trial

Farmer argues that the Court erred by denying his motion for a new trial on juror-bias grounds. Doc. 2 at 3–7. But his argument rehashes the same claims of juror bias that the Court already addressed in its order denying Farmer’s motion for a new trial, *see United States v.*

Farmer, No. 1:19-cr-00183-SRC-1, doc. 128 at 6–19, and that the Court further addresses below in the ineffective-assistance-of-counsel context. In its order, the Court carefully analyzed Farmer’s claim under the Eighth Circuit’s juror-bias test before denying his motion. *Id.* at 17–19. And when Farmer appealed the Court’s denial of his motion, the Eighth Circuit affirmed, explaining that it could not conclude “that the situation here was ‘extreme’ enough that an ‘average person’ in Juror 11’s shoes would have been ‘highly unlikely’ to ‘remain impartial.’” *United States v. Farmer*, No. 21-3906, 2023 WL 2397028, at *2 (8th Cir. March 8, 2023) (per curiam) (quoting *Manuel v. MDOW Ins. Co.*, 791 F.3d 838, 843 (8th Cir. 2015)).

Having lost on appeal, Farmer cannot now relitigate the same claims under § 2255. *See Bear Stops v. United States*, 339 F.3d 777, 780 (8th Cir. 2003) (“It is well settled that claims which were raised and decided on direct appeal cannot be relitigated on a motion to vacate pursuant to 28 U.S.C. § 2255.” (quoting *United States v. Shabazz*, 657 F.2d 189, 190 (8th Cir. 1981)) (internal quotation marks omitted)). Accordingly, the Court denies Farmer’s request for relief under Section 2255 on the basis of his claim that the Court erred in its denial of his motion for a new trial.

B. Ineffective assistance of counsel

Farmer also argues that defense counsel provided constitutionally ineffective assistance of counsel by failing to question or strike Juror 11 from the venire panel based on information Farmer’s sister provided counsel during the *voir dire* process. Doc. 2 at 1–3. He alleges that his sister, Jahvashea,⁴ spoke to defense counsel during a break in the *voir dire* process, telling counsel that she recognized Juror 11 from a “prior altercation . . . over [Jahvashea’s] filing felony charges for the destruction of property against” Juror 11. Doc. 2 at 1–3. And he

⁴ Where the Court uses first names, it does so for the sake of clarity, not to imply familiarity.

complains that based on that conversation, defense counsel should have “question[ed] Juror 11] regarding the information he obtained [or] move[d] to strike for cause.” *Id.* at 2.

But “the record affirmatively refutes the factual assertion[] upon which [Farmer’s claim] is based.” *Shaw*, 24 F.3d at 1043 (citing *Larson*, 905 F.2d at 220–21). Instead, the record reflects that no such conversation between Jahvashea and defense counsel regarding Juror 11 occurred during *voir dire*: in his motion for a new trial based on the same argument, Farmer himself argued that “[i]t is fair to conclude that the negative interaction with [Farmer]’s family caused [Juror 11] to be biased against [Farmer]. [And h]ad this bias been known, [Juror 11] would have been struck for cause due to her bias.” *United States v. Farmer*, No. 1:19-cr-00183-SRC-1, doc. 99 at 5. If, as the record reflects, defense counsel did not know of the prior interactions between Jahvashea and Juror 11 during *voir dire*, then the record refutes Farmer’s contrary assertion that Jahvashea spoke to defense counsel about those interactions during *voir dire*. Further, if defense counsel did not speak with Jahvashea during *voir dire* about her prior interactions with Juror 11, defense counsel could not have been constitutionally ineffective for failure to question Juror 11 about “the information he obtained” from that conversation. Doc. 2 at 2.

Even if defense counsel’s conduct had been deficient during *voir dire*, Farmer still fails to demonstrate that he suffered from ineffective assistance of counsel, because Farmer cannot satisfy the second prong of the *Strickland* test—namely, that he suffered prejudice as a result of defense counsel’s deficient performance. *Strickland*, 466 U.S. at 687. Farmer argues that defense counsel’s failure to strike Juror 11 during *voir dire* left “this obviously bias[ed] Juror” impaneled to hear his case. Doc. 2 at 3. But “[b]ecause ‘courts presume that a prospective juror is impartial,’ establishing juror partiality is a high hurdle.” *United States v. Needham*, 852 F.3d

830, 839 (8th Cir. 2017) (quoting *Moran v. Clarke*, 443 F.3d 646, 650 (8th Cir. 2006)).

“Essentially, to fail this standard, a juror must profess his inability to be impartial and resist any attempt to rehabilitate his position.” *Id.* (quoting *Moran*, 443 F.3d at 650–51).

Here, by contrast, as the Court explained in its order denying Farmer’s motion for a new trial, the record demonstrates Juror 11’s impartiality, not her bias. *See United States v. Farmer*, No. 1:19-cr-00183-SRC-1, doc. 128 at 17–19. After seeing Jahvashea outside of the courtroom during a break in the *voir dire* process, Juror 11 came forward on her own initiative during *voir dire* to disclose to the Court that she had recognized Farmer’s sister, then stated multiple times that recognizing Jahvashea would not affect her ability to be an impartial juror. *See id.*, doc. 93, Trial Tr. 66:24–74:7; *United States v. Ruiz*, 446 F.3d 762, 770 (8th Cir. 2006) (“the juror’s honesty is reflected by her self-disclosure”). That sequence of events demonstrates the opposite of the standard expounded in *Needham* for showing juror bias.

Finally, Farmer appears to argue that Juror 11’s relationship to Jahvashea gives rise to an implied inference of bias. *See* doc. 1 at 13. Juror 11, he claims, “was related to the Farmers by marriage” because her husband “is a nephew to the Defendant’s uncle . . . by marriage.” *Id.* But even if that were true, no implied bias exists: implied bias occurs only “in certain egregious situations” in which “the relationship between a prospective juror and some aspect of the litigation . . . [makes it] highly unlikely that the average person could remain impartial.” *Needham*, 852 F.3d at 840 (quoting *Manuel*, 791 F.3d at 843). Here, by contrast, Farmer makes no claim that Juror 11 had a relationship with “some aspect of the litigation,” *id.*; in fact, Juror 11 expressly stated at *voir dire* that she did not know Farmer at all, *United States v. Farmer*, No. 1:19-cr-00183-SRC-1, doc. 93, Jury Tr. at 69:4–18.

For these reasons, the Court finds that Farmer has shown neither that defense counsel exhibited deficient performance nor that Farmer suffered prejudice as a consequence of such performance. Accordingly, the Court denies Farmer's request for relief under Section 2255 on ineffective-assistance-of-counsel grounds.

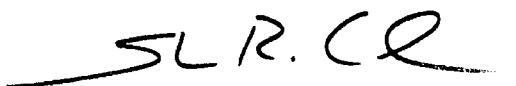
V. Certificate of appealability

For the Court to issue a certificate of appealability, Farmer must make a substantial showing that he suffered the denial of a constitutional right. *See Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997). A substantial showing means one indicating that reasonable jurists could debate the issues, a court could resolve the issues differently, or the issues deserve further proceedings. *Id.* But as shown in the discussion above, Farmer has not made such a showing. Accordingly, the Court declines to issue a certificate of appealability in this case.

VI. Conclusion

The Court finds that the record conclusively establishes that 28 U.S.C. § 2255 does not entitle Farmer to relief or an evidentiary hearing. Accordingly, the Court denies Farmer's Motion to Vacate, Set Aside, or Correct Sentence. Doc. 1. A separate judgment accompanies this memorandum and order.

So ordered this 28th day of August 2024.



STEPHEN R. CLARK
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX B
SWORN STATEMENT
JAHVASHEA FARMER

AFFIDAVIT OF JAHVASHEA FARMER

My name is JAHVASHEA FARMER, I am of sound mind, over the age of 21, capable of making this AFFIDAVIT, and personally acquainted with the facts herein stated:

(1) THAT, I, Jahvashea Farmer, am the sister of Marcrease Farmer;

(2) THAT, I have reviewed Malden Department of Public Safety Report, which is attached hereto as "Exhibit A;"

(3) THAT, the mother of DuMarques Jones, who is referenced in Exhibit A, is Angela Jones;

(4) THAT, the same Angela Jones was a juror in my brother, Marcrease Farmer's, jury trial, which was held at the Rush Hudson Limbaugh, Jr. Federal Courthouse in Cape Girardeau, Missouri, from July 21, 2021 through to July 22, 2021;

(5) THAT, the incident described in Exhibit A, I spoke with Angela Jones within a day later regarding that incident described in Exhibit A. Ms. Jones was explicit in expressing her anger with me for notifying the local police department and reporting the property damage done to my car, which led to her son, DuMarques Jones, being interviewed by the police;

(6) THAT, Angela Jones' husband, Gary Jones, is a nephew to my uncle Lon Jones, by marriage. Lon Jones is married to my grandmother's aunt, Cora Jones. My grandmother's name is Hester Handy (nee Harris);

(7) THAT, my family has attended numerous social events with Angela Jones' family. Marcrease has been present at several of those social events. Marcrease also participated with and socialized with children and family members of Angela Jones' family;

(8) THAT, during the jury selection of my brother's trial, Ms. Jones perjured herself when questioned as to whether or not she knew my brother, Marcrease Farmer, the defendant, in which she answered, "No;"

(9) THAT, I was in attendance during my brother's jury selection, and immediately recognized Ms. Jones;

(10) THAT, a recess was held during the jury selection, in which I immediately notified my brother's attorney, ZACHARY Borowiak, that there was a conflict of interest with Ms. Jones and my brother, due to a prior

Jahwashea Farmer

State of Missouri
County of Greene

EMILY PAIGE HEDDEN
Notary Public - Notary Seal
STATE OF MISSOURI
Greene County
My Commission Expires Aug. 8, 2025
Commission #12345678

Signed before me, Emily Paige Heden
Notary Public on March 13 th 2024.

Emily Paige Heden

altercation I had with Ms. Jones, explaining the events that led to the incident described and stated A, and that Ms. Jones would use this moment as a juror with ~~never~~ ~~any~~ retaliatory motives for calling the police on her son for the destruction of property with my car;

(11) THAT, Zachary Borowiak, my brother's attorney, now knew of the prior altercation I had with Angela Jones and that it was all over her son's charges being filed for damages done with my car. Borowiak told me that he could use this information at a later time;

(12) THAT, because of my work schedule, I had to return to my job and was unable to attend the rest of the jury selection. However, upon discussing the conflict of interest with Ms. Jones and my brother, Marcrease, I did notice Ms. Jones recognize me and watching me discussing matters with my brother's attorney, Mr. Borowiak;

(13) THAT, upon return to the courtroom after the brief recess, Ms. Jones immediately informed the court of her recognition of me and a sidebar was held between Ms. Jones, the U.S. Attorney, Mr. Borowiak, and the Honorable Judge presiding;

(14) THAT, I returned to work and relied on Mr. Borowiak to relay my information and the conflict of interest with my brother, because my brother had no knowledge of a prior altercation that I had with Ms. Jones, had no knowledge of that incident with her son damaging my car and that I had pressed charges with the police department against her son, had no knowledge that Angela Jones was very angry and irate with me because I had filed charges against her son and involved the police with the incident, and that he did not know that this was the same Ms. Jones that her family and our family had socialized together at certain events;

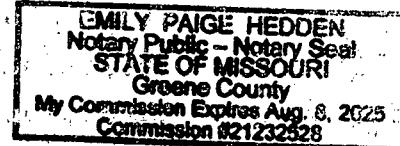
(15) THAT, Angela Jones' perjured answers to not knowing my family or my brother, the defendant, quickly changed when a side bar was held, but she again perjured herself when she informed the court that her kids would stay at my house and that my kids would stay at her house. Her kids never stayed at my house and my kids never stayed at her house;

(16) THAT, Ms. Jones never informed the court of the prior altercation between her and myself over her son and the incident under Exhibit A;

(17) THAT, Mr. Borowiak never informed the court about the conflict of interest and prior altercation because it wasn't until days later after the jury selection that I was able to talk to my brother and find out that

Jahibshea Farmer

State of Missouri
County of Greene



Signed before me, Emily Paige Hedden,
Notary Public on March 13 2024.

Emily Paige Hedden

altercation

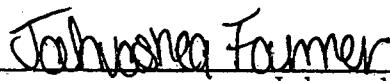
his attorney, Borowiak, never informed him about meeting me during the recess, never informed him of our discussion about Ms. Angela Jones and the conflict of interest due to a prior altercation, and never informed him of the prior altercation and the fact that because I had pressed charges on her son for destruction of property with my car, would be a retaliatory motive for her to go against my brother;

(18) THAT, this was the first time my brother heard of the conflict of interest, the incident under Exhibit A, and the fact that her family has had prior events socially with our family;

(19) THAT, my brother informed me of the side bar between Ms. Jones, his attorney Borowiak, the U.S. Attorney, and the Honorable Judge presiding and the fact that he was not present at the sidebar, which would be the reason for my brother having no knowledge of the conflict of interest with Ms. Angela Jones, all withheld from him by attorney Borowiak;

(20) THAT, foregoing is true and correct to the best of my knowledge

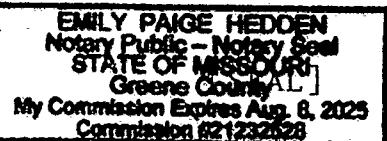
I, Jahvashea Farmer, being of lawful age, and having been first duly sworn, state upon my oath that I have read the foregoing, and that the facts and matters set forth therein are true and correct according to my best information, knowledge, and belief.



Jahvashea Farmer/Affiant

Subscribed and sworn to before me by JAHVASHEA FARMER, who personally appeared before me and is known to me to be the person described in and who executed the foregoing affidavit, and acknowledged that she executed the same as her free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 13 day of March, 2024.



My Commission Expires: 08/08/2025

APPENDIX C

MALDEN DEPARTMENT OF PUBLIC
SAFETY
INCIDENT REPORT

MALDEN
DEPARTMENT OF PUBLIC SAFETY

Page 2

Incident Cont'd

Narrative

Incident #

20-000443

Crime / Incident (Primary)

509.100 - Property Damage - 1st Degree

Attempt

Type

Felony Report

SAC

1

On July 1st, 2020 at approximately 1730 hours Malden Police received a call from 505 Gertie of a vehicle that was damaged by a mortar firework.

Upon arrival I made contact with the vehicle owner Jachuashea Farmer and the driver of the vehicle at the time it was hit with a mortar, Miyasia Castillo. Ms. Castillo stated she was traveling East of Francis Street and a Silver Nissan Altima driven by DuMarques Jones met them and someone in the back seat threw a mortar out of the vehicle hitting the front of her vehicle. She went on to say she drove to her house at 505 Gertie and told the vehicle owner of the incident.

Ms. Farmer stated she did want to press charges on who threw the firework at her vehicle.

I made contact with Billy Jones, DuMarques Jones father and told him I needed to speak with DuMarques at the Police Department. The following day DuMarques Jones came to the Police Department and I asked him what happened and he stated the car that Ms. Castillo was driving someone threw a mortar at his vehicle first. He went on to say a kid named Justin from Sikesfort was the person who threw the mortar.

Photos were taken of the vehicle damage and an estimate of the damage is included with this report.

At this time I have not been able to identify the suspect.

EXHIBIT A
page 3 of 3

Officer ID: Chris Cobb	3510	Reviewed By: Chief Jarrett Bullock	Approved YES	Date 07/16/2020
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APPENDIX D
TIRY TTR. VOL. 1 P. 64-72

1 MR. HAHN: Okay.
 2 VENIREPERSON 16: And I -- that's what I preach
 3 against.
 4 THE COURT: Very good.
 5 VENIREPERSON 16: Live a long, good life, but let's
 6 be fair in how we . . .
 7 THE COURT: Understood. Thank you.
 8 MR. HAHN: Thank you.
 9 THE COURT: All right.
 10 (Venireperson 16 returns to his seat and the
 11 proceedings returned to open court.)
 12 THE COURT: So, again, the question is anyone with a
 13 close friend or close relative or themselves has been arrested
 14 for or charged with a crime or placed on probation. And,
 15 again, it's a case where the punishment was one year or more.
 16 No. 9.
 17 VENIREPERSON 9: I have a nephew that's been in and
 18 out of prison.
 19 THE COURT: I'm sorry?
 20 VENIREPERSON 9: A nephew that's been in and out of
 21 prison for most of his adult life for drug charges.
 22 THE COURT: Okay. And do you believe your nephew
 23 has been treated fairly by the criminal justice system?
 24 VENIREPERSON 9: Yes. Yeah, I think he -- yeah.
 25 THE COURT: Anything about that that would cause you

1 not to be fair and impartial in this case?
 2 VENIREPERSON 9: No.
 3 THE COURT: All right. Thank you.
 4 I saw a couple hands over here. Juror No. 23.
 5 VENIREPERSON 23: Yes, sir. I had a brother in
 6 prison for three years.
 7 THE COURT: How long ago was that?
 8 VENIREPERSON 23: Back in the '70s.
 9 THE COURT: Okay. Do you believe he was treated
 10 properly by the criminal justice system?
 11 VENIREPERSON 23: Yes, sir, I do.
 12 THE COURT: Okay. Is there any reason that you
 13 could not be fair and impartial in this case?
 14 VENIREPERSON 23: No, sir.
 15 THE COURT: All right. Thank you.
 16 Then I saw another one back in the far back in the
 17 corner there, No. 25. Well, I think, 25. So go ahead.
 18 VENIREPERSON 25: No. 25. My brother spent 12 years
 19 in prison. It's been 25 years ago.
 20 THE COURT: And do you think he --
 21 VENIREPERSON 25: Absolutely nothing to do with
 22 this.
 23 THE COURT: All right. Could you be fair and
 24 impartial in this case?
 25 VENIREPERSON 25: Yes, sir.

1 THE COURT: Do you think he was treated fairly by
 2 the criminal justice system?
 3 VENIREPERSON 25: Yes, sir.
 4 THE COURT: All right. Thank you.
 5 And then No. 27.
 6 VENIREPERSON 27: I had two nephews that
 7 committed -- convicted of murder in the '80s.
 8 THE COURT: And do you believe they were treated
 9 fairly by the criminal justice system?
 10 VENIREPERSON 27: Yes, sir.
 11 THE COURT: And is there anything about that that
 12 would cause you not to be fair and impartial in this case?
 13 VENIREPERSON 27: No, sir.
 14 THE COURT: All right. Thank you.
 15 Anyone else? No. 2.
 16 VENIREPERSON 2: I've also had a relative that's
 17 been in prison, too.
 18 THE COURT: Okay. How long ago was that?
 19 VENIREPERSON 2: It's been probably five plus years.
 20 THE COURT: And do you believe that relative was
 21 treated fairly by the criminal justice system?
 22 VENIREPERSON 2: Yes.
 23 THE COURT: And do -- anything about that that would
 24 cause you not to be fair and impartial in this case?
 25 VENIREPERSON 2: No, sir.

1 THE COURT: All right. Thank you.
 2 Anyone else?
 3 Juror No. 21.
 4 VENIREPERSON 21: I have an uncle that spent
 5 probably about 45 years in prison off and on for robbery,
 6 murder.
 7 THE COURT: And do you believe he was treated fairly
 8 by the criminal justice system?
 9 VENIREPERSON 21: I'm not really sure. They let him
 10 out because he lost both of his legs with health issues.
 11 (Court reporter clarification.)
 12 THE COURT: You said --
 13 (Court reporter clarification.)
 14 VENIREPERSON 21: He lost both of his legs with
 15 health issues.
 16 THE COURT: Okay. All right. Thank you, ma'am.
 17 Anyone else?
 18 All right. I see no other hands.
 19 So this next question, a couple of you have already
 20 answered.
 21 MR. BOROWIAK: Your Honor, may I approach.
 22 THE COURT: Yes.
 23 (Counsel approached the bench and the following
 24 proceedings were had:)
 25 MR. BOROWIAK: Your Honor, I apologize to the Court

1 for having to ask this, but my client has informed me that he
 2 is in a situation where he is basically having an emergency
 3 where he needs to go to the bathroom. We are asking the Court
 4 to take a short recess.

5 **THE COURT:** He's what?

6 **MR. BOROWIAK:** He basically feels like he is about
 7 to have an accident; that he needs to go to the bathroom. I
 8 would ask the Court for a short recess to give him the ability
 9 to go. Sorry.

10 **THE COURT:** Let's move this along.

11 **MR. BOROWIAK:** Thank you, Your Honor. Yes, sir.

12 **THE COURT:** All right.

13 (The proceedings returned to open court.)

14 **THE COURT:** Ladies and gentlemen, we are going to
 15 take a brief recess. It will be about five minutes. I am
 16 going to have -- what I am going to do is have you stay in the
 17 courtroom unless you need to take a facilities break. So you
 18 can stand up and stretch your legs and the like, but I would
 19 ask you to stay just so we can do this, take care of this one
 20 issue very quickly.

21 And so with that, we will have a quick recess. All
 22 right. Thank you.

23 (Discussions were held off the record at the bench.)

24 **THE COURT:** Actually, you know what, folks? Why
 25 don't we all just -- you can go out there and you can stretch

1 your legs in the hall out there. They're -- just stay up here
 2 on this floor in the hallway outside the courtroom.

3 All right. Thank you.

4 (At this time, the Court declares a recess.)

5 **THE COURT:** Welcome back, ladies and gentlemen. I
 6 have something I need to talk with the lawyers about real
 7 quickly and I will be right back with you.

8 (Counsel approached the bench and the following
 9 proceedings were had:)

10 **THE COURT:** Juror No. 1, I had Michelle inquire
 11 if she could arrange for anyone to pick up her children and --

12 (Court reporter clarification.)

13 **THE COURT:** All right. So Juror No. 1, I had our
 14 courtroom deputy inquire of her whether she could get anyone
 15 to pick up her children. She's the one who has to leave at
 16 3:00. She said today she -- not today but, yes, tomorrow. So
 17 she has -- said she asked everyone she knows and can't get
 18 anybody today. That's that.

19 No. 27 disclosed to Michelle that she knows the
 20 defendant's family. She saw them out in the hallway on this
 21 break and she said she does not know the defendant, but she
 22 knows at least one of the members of the family. So I want to
 23 leave that to you to inquire further of her about that, but
 24 she has disclosed that.

25 **MR. HAHN:** Should we ask Juror No. -- should we ask

1 Juror No. 7 -- 27 to come up here separately about that?

2 **THE COURT:** Well, I will tell you -- I will tell you
 3 what -- I will tell you what my concern about that is. If we
 4 do that right now, it looks like we are singling her out;

5 **MR. HAHN:** Okay.

6 **THE COURT:** And I'm concerned about that for a
 7 variety of reasons.

8 **MR. HAHN:** I understand.

9 **THE COURT:** Including that she is the only person of
 10 color on the venire panel. So you might call her up, but
 11 doing it right now I am not sure is the appropriate thing to
 12 do.

13 **MR. HAHN:** Right. Okay.

14 **THE COURT:** What do you think?

15 **MR. BOROWIAK:** Your Honor, I agree with that. If we
 16 can call her -- I agree with that. We can call her up at a
 17 later time, but right now if the Court feels it's not
 18 appropriate, that's okay.

19 **THE COURT:** All right. And then I just want to make
 20 a record on this. So the -- I originally said and I said on
 21 the record that the jurors, the venire will stay here in the
 22 courtroom while we took this quick break to accommodate
 23 Mr. Farmer, but then Mr. Borowiak -- and I think this was off
 24 the record, so I just want to make sure we have a record of
 25 it, brought to my attention that Mr. Farmer is in leg irons.

1 And so we did excuse all of the venire panel from the
 2 courtroom before we had Mr. Farmer move so the jurors did --
 3 not -- the venire panel is not aware that he's in leg irons.

4 And then also during the opening session, I gave the
 5 jurors essentially the recess instruction about not talking
 6 about the case. So I want to make sure we have that as well.

7 I did ask Mr. Borowiak to inquire of Mr. Farmer if
 8 this is -- we anticipate this may be an ongoing issue or is
 9 this one isolated incident.

10 So, Mr. Borowiak, I will give the microphone back to
 11 you.

12 **MR. BOROWIAK:** And, Your Honor, I spoke with
 13 Mr. Farmer. We don't expect this to be an ongoing issue. He
 14 is not aware of any health condition that he has or anything
 15 like that that would make this an ongoing thing. So, you
 16 know, I don't expect this to happen again, Judge.

17 **THE COURT:** All right. Thank you.

18 Anything further?

19 **MR. HAHN:** Yes, Your Honor. One last question in
 20 that regard. When it's my time to address the jury and ask
 21 questions, I probably will not address that issue with
 22 Juror 27, specifically about -- unless I guess maybe I could
 23 ask does anybody know any relatives of the -- I'm not sure how
 24 to couch that.

25 **THE COURT:** Well, what I'll do is I will ask that

1 question.

2 MR. HAHN: Okay. Thank you.

3 THE COURT: And then I suspect she will answer, and
4 we can bring her up. And if not, we will figure out what to
5 do after that.

6 MR. HAHN: Thank you. Yes, your Honor. Yes, sir.

7 THE COURT: All right.

8 (The proceedings returned to open court.)

9 THE COURT: Ladies and gentlemen, thank you again
10 for your patience. As I told you earlier, what's critical
11 here is that we ensure that we have a fair trial for both
12 parties. So any time I'm talking with the attorneys up here,
13 we are doing that to ensure that we have a fair trial for both
14 parties and the attorneys are following my instructions in
15 that regard.16 So I want you to be aware of that, and that we are
17 not trying to waste your time. In fact, I'm very sensitive to
18 and appreciative of your time and I will continue to do that
19 throughout the trial process here.20 All right. So with that, I believe, where we were
21 is we were on the question of you or a close member of your
22 family or a close friend had any experience involving the use
23 or possession of illegal drugs or narcotics.24 And, again, you yourself, any close member of your
25 family or any close friend. And if you've already answered1 about that, I don't need you to answer again. So this is just
2 for anybody who has not answered a question that called for.
3 that or the like.4 So if there is anyone, please raise your hand. I
5 see Juror No. 27.6 VENIREPERSON 27: I have a son that was going to --
7 I have a son that's going to court now for narcotics.8 THE COURT: And is that something that -- where the
9 potential punishment is more than a year?

10 VENIREPERSON 27: No.

11 THE COURT: Okay. And would that cause you in any
12 way not to be able to be fair and impartial in this case?

13 VENIREPERSON 27: No.

14 THE COURT: All right. Thank you.

15 Anyone else?

16 Couple other somewhat related questions. Has any of
17 you -- and again, this is one of those questions that if
18 you've already answered something to this effect, I don't need
19 you to answer again; but do you or a close relative or a close
20 friend have a negative experience with a law enforcement
21 official? And if so, raise your hand.

22 All right.

23 I see no hands.

24 One other question. I'm going to circle back to a
25 topic I was on earlier, which is knowledge of the folks in the1 courtroom. So you were introduced to the lawyers in the
2 courtroom and the parties that are at the table. And so does
3 anyone have any knowledge of or relationship with any close
4 family member of any of the lawyers or parties in the
5 courtroom?

6 Juror No. 27.

7 VENIREPERSON 27: Yes. May I approach the bench,
8 please.

9 THE COURT: You may.

10 (Venireperson 27 approaches the bench and the
11 following proceedings were held:)12 THE COURT: All right. There's a microphone right
13 here. So I'm going to make sure you speak into that so our
14 court reporter can hear you. Go ahead.15 VENIREPERSON 27: As we went to the bathroom, I had
16 noticed the family members are out there and I do know -- if
17 those are his family members, I do know them. They are from
18 the Malden surrounding area. Me and my husband served as
19 foster parents and we have our kids that stay the night over
20 at this woman's house that's outside. And I -- so I think
21 she's family. So if she's some kin to him and everything, you
22 know. Like I say, I stay in Malden and everybody knows us
23 because of what we did, foster parents and adoptive parents.24 THE COURT: So to make sure I understand, so, you
25 know --1 VENIREPERSON 27: I know her. Uh-huh. I know her
2 from the Malden surrounding area.

3 THE COURT: Okay.

4 VENIREPERSON 27: And she have sisters and stuff
5 that stays in Malden, too.6 THE COURT: Okay. And the part I didn't understand
7 was about being a foster parent. You said kids stay? Can you
8 clarify that?9 VENIREPERSON 27: Yes. Yes, me and my husband, we
10 was foster parents and some of our foster kids just stayed
11 over, you know, over at her house.12 THE COURT: Okay. So and do you know how this woman
13 is related to Mr. Farmer?14 VENIREPERSON 27: I really don't. I don't really
15 know a lot of people. My husband does. And, you know, like I
16 said, I know her.

17 THE COURT: Okay.

18 VENIREPERSON 27: I don't know how.

19 THE COURT: Let me ask you this: Do you know for a
20 fact that she's related to Mr. Farmer or do you just suspect
21 that based on --22 VENIREPERSON 27: I suspect because she is there.
23 Now I'm thinking she's, you know, something related.24 THE COURT: Okay. So let's -- let me ask you a few
25 more questions. So other than having seen her here, do you

1 have any reason to believe she's -- or any knowledge that
2 she's related to Mr. Farmer?

3 VENIREPERSON 27: No.

4 THE COURT: Okay. Do you -- and I will ask the
5 question: Do you know Mr. Farmer or have any association with
6 him?

7 VENIREPERSON 27: I don't --

8 THE COURT: I will just ask you that again.

9 VENIREPERSON 27: I don't know him or anything. I
10 don't know if he knows me because like I said, we are
11 well-known in the Malden area because of what we do but other
12 than that --

13 THE COURT: But you have no reason to know him or
14 believe you had any prior contact with Mr. Farmer; is that
15 correct?

16 VENIREPERSON 27: Yeah, I don't know him.

17 THE COURT: So that's correct?

18 VENIREPERSON 27: That's correct.

19 THE COURT: All right. All right. Thank you.
20 Counsel?

21 MR. HAHN: Juror No. 27, do you believe that you
22 know members of Mr. Farmer's family?

23 VENIREPERSON 27: Oh, yes.

24 THE COURT: And more than one?

25 VENIREPERSON 27: If that's her out there -- if

1 that's her out there, I know her --

2 MR. HAHN: Okay. Someone --

3 VENIREPERSON 27: -- people.

4 MR. HAHN: -- here that's associated with the trial
5 present in the courthouse waiting just outside the courtroom,
6 you recognize --

7 VENIREPERSON 27: I recognize her.

8 MR. HAHN: -- people that -- and you do know members
9 of Mr. Farmer's family?

10 VENIREPERSON 27: Okay. If she's kin -- I mean, if
11 she's here for him or with him, I don't know.

12 MR. HAHN: Yeah. And I guess what I'm asking,
13 though, a little more general --

14 VENIREPERSON 27: That's what I'm afraid of.

15 MR. HAHN: Okay. You do know members of
16 Mr. Farmer's family --

17 VENIREPERSON 27: Okay.

18 MR. HAHN: -- is that correct? I'm not putting
19 words in your mouth. I'm just trying to figure out --

20 VENIREPERSON 27: Okay. Let me say here: If she is
21 a kin to him, yes, I do.

22 MR. HAHN: Okay. Do you know any other members of
23 Mr. Farmer's family?

24 VENIREPERSON 27: Just mostly kids that hang around
25 the Malden area.

1 MR. HAHN: And you said that --

2 VENIREPERSON 27: I don't know if they are Farmers,
3 but if -- you know, I know her and her kids.

4 MR. HAHN: And you said based on what you and your
5 husband do in the community, you are well-known?

6 VENIREPERSON 27: Uh-huh, we're well-known.

7 MR. HAHN: And what is it that you do in the
8 community in Malden?

9 VENIREPERSON 27: We were foster parents and adoptive
10 parents for 30 years in that area.

11 THE COURT: And what about your work, your
12 livelihoods or social organizations or things. I mean, are
13 you well-known otherwise or it's primarily based on foster
14 children you are saying that you are well-known?

15 VENIREPERSON 27: Well, we lived there for over
16 35 years, so a lot of people know us in general. So --

17 MR. HAHN: And I guess my next question is: If this
18 lady that you know is here and is in some way connected with
19 Mr. Farmer, would you feel uncomfortable sitting in this case?
20 And let's say further that you believe the evidence was
21 sufficient to convict him, Mr. Farmer. Would it make you
22 uncomfortable sitting and making that kind of decision and
23 then having to meet people back in the community --

24 VENIREPERSON 27: I will. I would. Yes, I would.

25 MR. HAHN: Okay. And that's what we are trying to

1 get at.

2 VENIREPERSON 27: Yes, I would.

3 MR. HAHN: Is there anything that may cause you to
4 hesitate or be uncomfortable in this courtroom? Because what
5 we are trying to do is get a jury panel that doesn't have --
6 is free of outside influences --

7 VENIREPERSON 27: Uh-huh.

8 MR. HAHN: -- that may affect your verdict one --

9 VENIREPERSON 27: Right.

10 MR. HAHN: -- way or the other either way.

11 VENIREPERSON 27: Right.

12 MR. HAHN: And do you feel that you would be -- you
13 could be fair -- unfair? You would not be able to be
14 impartial?

15 VENIREPERSON 27: I would not be unfair, but I would
16 be uncomfortable --

17 MR. HAHN: Okay.

18 VENIREPERSON 27: -- sitting.

19 MR. HAHN: And that would -- and let's say that if
20 you were part of a jury that returned a guilty verdict and you
21 saw those people or people that you knew related to Farmer
22 or -- and you are from the same community, right?

23 VENIREPERSON 27: Uh-huh.

24 MR. HAHN: I'm asking sort of two questions at once.
25 Would you feel uncomfortable seeing those people in

1 the community afterwards?
 2 VENIREPERSON 27: No.
 3 MR. HAHN: Would you feel uncomfortable sitting in
 4 this case?
 5 VENIREPERSON 27: I would.
 6 MR. HAHN: Okay. And that's what we are getting at.
 7 VENIREPERSON 27: Okay. I don't associate with a
 8 lot of people. I'm more like a homebody, work home and take
 9 care of my family. So I'm not really out there.
 10 MR. HAHN: But you would feel uncomfortable sitting
 11 here --
 12 VENIREPERSON 27: I would feel uncomfortable; but if
 13 I had to, I would make the, you know, the right decision.
 14 THE COURT: Let me ask you this, ma'am: At the end
 15 of the day the real inquiry here is could you be fair and
 16 impartial in this case --
 17 VENIREPERSON 27: Oh, totally.
 18 THE COURT: -- and decide this case based solely on
 19 the evidence presented here in the courtroom and my
 20 instructions on the law?
 21 VENIREPERSON 27: Totally. Yes, I will.
 22 THE COURT: Okay. Even if you had some discomfort
 23 about --
 24 VENIREPERSON 27: Oh, yes.
 25 THE COURT: -- knowledge of a person?

1 VENIREPERSON 27: Yes.
 2 THE COURT: All right. Thank you.
 3 Mr. Borowiak.
 4 MR. BOROWIAK: No, Your Honor, I have nothing else
 5 to add.
 6 THE COURT: Okay. Very good.
 7 Thank you, ma'am.
 8 (Venireperson 27 returns to his seat.)
 9 MR. HAHN: Let me ask real quick: And I may have
 10 not -- I think when the jury took a break that the question
 11 you had asked earlier was had anybody convicted -- any family
 12 member, close friend been convicted of a crime longer than one
 13 year. And I think you transitioned into asking about drugs.
 14 And I don't know it had been formally asked before then. And
 15 I may be wrong.
 16 MR. BOROWIAK: No. Judge, I think I'm in agreement
 17 with Mr. Hahn, that you were about to start that question and
 18 then something -- yeah.
 19 THE COURT: I appreciate you both reminding me of
 20 that.
 21 MR. HAHN: Oh, okay. I just -- thank you. If we
 22 can go into that a little further probably.
 23 THE COURT: It was convicted of a crime, you or your
 24 close family member or relative convicted of a crime
 25 punishable by more than one year?

1 MR. HAHN: Yes. That's what was pending when the
 2 jury broke.
 3 THE COURT: Okay.
 4 MR. HAHN: Okay.
 5 THE COURT: Yeah, I appreciate that.
 6 MR. HAHN: Okay. Thank you.
 7 (The proceedings returned to open court.)
 8 THE COURT: So that last question was: Anybody know
 9 any of the family members or the like of the parties that have
 10 been introduced to you?
 11 Is there anybody else with that question? And if
 12 you haven't already answered, I know one of you indicated
 13 knowledge of Mr. Hahn's family. Anyone else, though?
 14 All right. I see no other hands.
 15 I am going to circle back to a question that I think
 16 I started to ask before, but didn't finish asking, which was:
 17 Have any of you or any close family member or close friend
 18 been convicted of a crime punishable by a term of imprisonment
 19 for more than one year? So, again, that's you, close family
 20 member or close friend.
 21 And I see no hands.
 22 All right. Thank you.
 23 Now, you have masks on, so this question is going to
 24 be a little difficult to answer, but you have seen each other
 25 a bit. So my question for you is: Does any of you know each

1 other, any of the other members of the venire panel here?
 2 And I see a few of you. All right. Well, we will
 3 take you one at a time.
 4 No. 4?
 5 VENIREPERSON 4: I know No. 14.
 6 THE COURT: You know --
 7 VENIREPERSON 4: No. 14.
 8 THE COURT: Fourteen. Okay.
 9 And so how do you know each other?
 10 VENIREPERSON 4: Through business.
 11 THE COURT: Would that cause you in any way to be
 12 unduly influenced by Juror No. 14 or not to be fair and
 13 impartial in this case?
 14 VENIREPERSON 4: No.
 15 THE COURT: Okay. Same questions for you,
 16 Juror No. 14.
 17 VENIREPERSON 14: No.
 18 THE COURT: All right. Thank you.
 19 I had a couple others back here. So No. 16.
 20 VENIREPERSON 16: Yes, 27. She frequents the
 21 business that I work at.
 22 THE COURT: Okay. And would that cause you not to
 23 be able to be fair and impartial in this case?
 24 VENIREPERSON 16: No, sir, it would not.
 25 THE COURT: All right. And same for you, Juror

1 No. 27.

2 VENIREPERSON 27: No, it would not.

3 THE COURT: All right. Very good. Thank you.

4 Juror No. 22.

5 VENIREPERSON 22: I work at a sister agency with
6 number — what are you, Sue — 38. Both work for USDA but in
7 a different town, but we know each other.8 THE COURT: Okay. And would anything about that
9 relationship cause you to be more or less influenced by her or
10 to be — not to be able to fair and — be fair and impartial
11 in this case?

12 VENIREPERSON 22: No.

13 THE COURT: All right. Thank you.

14 And same for you No. — I am going to have you stand
15 up, No. 38.16 VENIREPERSON 38: Yeah, I know her, not personal,
17 from work.

18 THE COURT: Say again, please.

19 VENIREPERSON 38: Just from work.

20 THE COURT: Right. Anything about that that would
21 cause you to be either more influenced by her or not to be —
22 or less influenced by her or not to be fair and impartial in
23 this case?

24 VENIREPERSON 38: No.

25 THE COURT: All right. Thank you.

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1 Did I have maybe one more? All right. I don't see
2 any other hands.3 I did introduce court staff. Anybody know or have
4 any relationship with any of the folks I introduced to you
5 earlier?

6 No. 4.

7 VENIREPERSON 4: I know Michelle.

8 THE COURT: All right. And how do you know
9 Michelle?10 VENIREPERSON 4: We live in the same small community
11 of 1200 people.12 THE COURT: All right. Would anything about your
13 knowledge of or relationship with Michelle cause you not to be
14 able to be fair and impartial in this case?

15 VENIREPERSON 4: No.

16 THE COURT: Would it cause you not to be able to follow
17 my instructions on the law and to be able to decide this case based solely on the evidence presented here in
18 court?

19 VENIREPERSON 4: No.

20 THE COURT: All right. Thank you.

21 Anyone else?

22 Very good. Thank you.

23 I am going to talk with you a little bit about the
24 law. I'm not going to indicate and I will not — absolutely

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1 not indicate my opinion about the facts of this case. It is
2 the jurors' duty to decide the facts and the judge's duty to
3 decide questions of law.4 So is there anyone on the panel who does not
5 understand that it is your duty, if you are selected as jurors
6 in this case to, number one, follow the law as I instruct you
7 and — on the law, even though you may disagree with that law
8 or, number two, find that law unpleasant to apply? Anybody
9 who would have a problem with that? Or does not understand
10 that?

11 I see no hands.

12 Is there anyone who would have — who would not be
13 able to follow the law as I, as the Court, instruct you?

14 I see no hands.

15 Is there anyone who does not understand that I, as
16 the judge, and not you, as the jurors, are responsible for
17 determining any punishment and sentencing? In other words,
18 you, as jurors, don't determine punishment or sentencing; you
19 determine the facts, guilt or innocence, or guilty or not
20 guilty.

21 Okay. I see no hands.

22 Is there anyone who has not already answered a
23 question that can think of any matter or experience in your
24 lives that would prevent you from being a completely fair and
25 impartial juror in this case? Again, this is if you haven't

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1 already answered.

2 I see no hands.

3 I talked to you about this a little bit before. Do
4 you understand — is there anyone who does not understand that
5 the jurors — or I'm sorry, the lawyers have an obligation and
6 a right to make objections? Anybody who would — who doesn't
7 understand that? Anybody who would hold it against any of the
8 lawyers if they made objections during the trial?

9 I see no hands for either of those questions.

10 Anyone who would hold it against any of the lawyers
11 if they asked for a sidebar, as we've seen happen a few times
12 here today? Anybody who would hold it against any of the
13 lawyers if they did that?

14 All right. I see no hands.

15 Now, is there any of you who — other than reasons
16 you've already given me, is there anyone who would have any
17 difficulty not — difficulty listening carefully to the
18 evidence, not making up your mind prematurely about this case,
19 not making up your mind until all of the evidence has been
20 seen and heard and until after I, as the Court, have given you
21 instructions on the law?

22 I see no hands.

23 So, again, I'm going to — this is in addition to
24 any answers you have already given, but is there anybody,
25 whether I've asked a specific question or not, who for any

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