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

Chicago, Illinois 60604

November 27, 2017

Before

DANIEL A. MANION, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

Nos. 16-3510 & 16-3518

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

VINCENTE QUIROZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 13 CR 21; 13 CR 968 — **Thomas M. Durkin**, *Judge*.

ORDER

On consideration of the petition for rehearing and rehearing en banc, no judge in active service has requested a vote on the petition for rehearing en banc* and the judges on the panel have voted to deny rehearing. It is, therefore, **ORDERED** that rehearing and rehearing en banc are **DENIED**.

* Judge Flaum did not participate in the consideration of this petition.

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v.

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Defendant-Appellant.

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division.
Nos. 13 CR 21; 13 CR 968 — **Thomas M. Durkin**, *Judge*.

ARGUED SEPTEMBERS, 2017 — DECIDED OCTOBER 26, 2017

Before MANION, KANNE, and HAMILTON, *Circuit Judges*.

KANNE, *Circuit Judge*. Defendant-Appellant Vicente Quiroz brokered large drug transactions. For his role in a methamphetamine transaction, he was convicted after a bench trial in January 2015. (Case No. 16-3518.) Then, in a second trial in July of that year, he was convicted by a jury for his role in a marijuana transaction. (Case No. 16-3510.)

Before both trials, Quiroz moved to suppress statements he made after his arrest, arguing that he was not read his *Miranda* warnings. The district court

found that the warnings were given and that Quiroz voluntarily waived his rights. It admitted into evidence Quiroz's statements in both trials.

The district court also admitted several out-of-court statements at both trials. It admitted recorded conversations between Quiroz and the government's confidential informant. And it admitted recordings of other declarants under the hearsay exception for coconspirator statements.

In this consolidated appeal from his convictions in both trials, Quiroz argues that the district court improperly admitted his own post-arrest statements and the out-of-court statements of the confidential informant and coconspirators. We disagree, so we affirm both of Quiroz's convictions.

I. BACKGROUND

In 2011, Benjamin Vance met Vicente Quiroz. In May 2012, Vance was arrested by the Drug Enforcement Agency ("DEA") for trafficking in cocaine and began cooperating with the government. In a series of recorded phone calls from October 2012 through January 2013, Vance and Quiroz arranged the purchase of approximately 70 pounds of methamphetamine and approximately 1,200 pounds of marijuana. Quiroz brokered the transactions, setting Vance up with the sellers.

A. *Investigation and Arrest of Quiroz*

In October 2012, Quiroz told Vance that he had arranged for two suppliers to deliver 50 pounds of methamphetamine to Vance. Under the DEA's direction, Vance told Quiroz that he knew a pilot who could pick up the methamphetamine in Indio, California. Quiroz responded that he would send a

courier named Javier to deliver the methamphetamine to Vance's pilot and gave Vance that courier's phone number. On October 10th, an undercover DEA agent posed as the pilot and called that number. His call was returned by a man who identified himself as Javier. Javier agreed to meet the agent at a McDonald's, where he delivered a box containing 10 packages of methamphetamine totaling nearly 22 pounds in weight. The DEA surveilled the encounter.

About a week later, Quiroz asked Vance if he wanted to pick up more methamphetamine in the Chicagoland area, giving him the number of a courier named Cesar. Cesar and Vance arranged to meet in the parking lot of Rivers Casino near O'Hare airport. Under DEA surveillance, Vance went to the parking lot wearing a recording device. There, Cesar took a box from his car and placed it into Vance's vehicle. That box contained 22 packages of methamphetamine totaling about 44 pounds in weight.

In January 2013, Quiroz told Vance that he had an available marijuana delivery and that he would give the courier, later identified as Hector Barraza, Vance's number. Vance and Barraza arranged the delivery, and they met at a McDonald's outside Berwyn, Illinois. Vance asked to see the marijuana before he agreed to purchase it. Barraza indicated the marijuana was nearby, and the two then met at a Denny's restaurant under DEA surveillance. Barraza delivered a black bag of marijuana to Vance, then left to get the rest. The DEA arrested Barraza after he returned to the Denny's parking lot in a van containing 202 cylinders of marijuana totaling about 1,200 pounds in weight.

On March 27, 2013, DEA Agents Christopher O'Reilly and David Brazao arrested Quiroz outside his mother's home in Phoenix, Arizona. The officers placed him in the back seat of Agent O'Reilly's car while the agents conducted a protective sweep of the home with Quiroz's consent. After the security search, Agent O'Reilly read Quiroz his *Miranda* rights, reciting them partly from his *Miranda* card and partly from his own memory. According to Agent O'Reilly's testimony, Quiroz did not seem confused in any way or ask any questions; he was nervous but "seemed to understand everything [the agents] were saying." (Bench Trial R. 204 at 39.) When asked if he understood the rights that had just been read to him, Quiroz responded, "I did nothing." (*Id.* at 38, 73.)

Agents O'Reilly and Brazao then explained their investigation and told him about the phone recordings they had acquired. Quiroz then made inculpatory statements. The agents transported Quiroz to the DEA office in Phoenix. There, Quiroz told agents he would not sign any *Miranda* waiver or other paperwork, but he continued to engage with the agents and made more inculpatory statements.

B. Admission of Quiroz's Post-Arrest Statements

At the final pretrial conference before the bench trial, Quiroz told the district court, "I never got my *Miranda* rights written. I never signed a waiver so that person can come and say, 'He made a statement.'" (Bench Trial R. 154 at 26.) The government then told the court that Quiroz had been orally advised of his *Miranda* rights, to which Quiroz responded, "[T]hey've never read me my *Miranda* rights." (*Id.* at 30.) The district court decided to hold a suppression

hearing. Agent O'Reilly was the only government witness; Quiroz did not present any evidence.

The district court found that Quiroz waived his *Miranda* rights. The court credited Agent O'Reilly's testimony that Quiroz was in fact read his *Miranda* warnings. It went on to find that Quiroz's statement—"I did nothing"—was a voluntary, knowing, and intelligent waiver of his rights. Accordingly, it admitted Quiroz's post-arrest statements at his bench trial.

Shortly before the jury trial, Quiroz again moved to suppress the statements for the same reason as before. The government and Quiroz both indicated that the evidence at the hearing would be the same as it was before. Thus, the district court again denied the motion to suppress and admitted the statements at Quiroz's jury trial.

C. Admission of Other Out-of-Court Statements

As is often the case in drug prosecutions, the government wished to introduce statements at Quiroz's trials made by its informant (Vance) and Quiroz's alleged coconspirators (Javier and Cesar in the bench trial, and Barraza in the jury trial).

In order to offer coconspirator statements, the government was preliminarily required to show by a preponderance of the evidence that (1) a conspiracy existed, (2) Quiroz and the declarant were members of that conspiracy, and (3) the proffered statements were made in furtherance of that conspiracy. *United States v. Davis*, 845 F.3d 282, 286 (7th Cir. 2016); *United States v. Santiago*, 582 F.2d 1128, 1134-35 (7th Cir. 1978). The government was permitted to present this

evidence by submitting a *Santiago* proffer before trial, and it did so.

Before the bench trial, the court reserved ruling on the admissibility of Javier and Cesar's coconspirator statements until the government finished presenting its evidence at trial.

The court indicated that it would, at the close of the government's case, strike such testimony if it found that the government had not met its evidentiary burden. At trial, the district court ruled that the government had met its burden and did not strike any testimony.

Quiroz also moved before the bench trial "to preclude the prosecution from introducing any and all hearsay not substantiated by the Court." (Bench Trial R. 204 at 107.) The district court denied the motion but preserved Quiroz's ability to object at trial to any hearsay offered. No objection was made to Vance's out-of-court statements at trial, and they were admitted.

Before the jury trial, the court indicated that it would admit the statements of both Vance and Barraza but would hear objections or motions to strike at trial if necessary. Quiroz made neither, and the out-of-court statements of both men were admitted.

* * *

After the bench trial, the district court convicted Quiroz of the methamphetamine charges. At a second trial a few months later, a jury convicted Quiroz of the marijuana charges. The court sentenced Quiroz to 180 months' imprisonment in each case, to

run concurrently, a sentence below his guidelines range. This consolidated appeal followed.

II. ANALYSIS

Quiroz has two general concerns on appeal. First, he argues that the district court erred in admitting his post-arrest statements because he did not knowingly, intelligently, and voluntarily waive his *Miranda* rights. He believes that their admission was non-harmless error in both trials, requiring reversal of both convictions.

Second, he argues that the district court abused its discretion in admitting Vance's out-of-court statements in both trials, Cesar's in the bench trial, and Barraza's in the jury trial. He believes that the admission of this evidence was also non-harmless error that mandates reversal.

We take each argument in turn and discuss additional facts as necessary.

A. Voluntary, Knowing, and Intelligent Waiver of Rights

A defendant's waiver of *Miranda* rights must always be voluntary, knowing, and intelligent. *Moran v. Burbine*, 475 U.S. 412, 421 (1986); *United States v. Carson*, 582 F.3d 827, 833 (7th Cir. 2009). Whether a person has validly waived his *Miranda* rights depends on the totality of the circumstances, *United States v. Shabaz*, 579 F.3d 815, 820 (7th Cir. 2009), and the government must prove a valid waiver by a preponderance of the evidence, *Colorado v. Connelly*, 479 U.S. 157, 168 (1986). Courts typically look at such factors as "the defendant's background and conduct, the duration and conditions of the interview and detention, the physical and mental condition of the

defendant, the attitude of the law enforcement officials, and whether law enforcement officers used coercive techniques.” *Shabaz*, 579 F.3d at 820.

We review the ultimate issue of the voluntariness of a *Miranda* waiver *de novo*. *United States v. Jackson*, 300 F.3d 740, 747- 48 (7th Cir. 2002) (citing *United States v. Smith*, 218 F.3d 777, 780 (7th Cir. 2000)). But we review the trial court’s factual findings with respect to the facts on which the voluntariness claim was based for clear error. *United States v. Walker*, 272 F.3d 407, 412 (7th Cir. 2001); *United States v. Brooks*, 125 F.3d 484, 491 (7th Cir. 1997) (citation omitted).

Here, the district court denied Quiroz’s motions to suppress his statements because he implicitly waived his rights. We review this determination *de novo*, using the district court’s findings of fact and credibility determinations because they are neither clearly erroneous nor argued to be so.

To be sure, implicit waivers can be knowing, intelligent, and voluntary. So long as the government can prove that the defendant understood his rights, voluntarily speaking without a lawyer present constitutes a valid waiver. *See Berghuis v. Thompson*, 560 U.S. 370 (2010). *Thompson* requires the government to show that (1) warnings were given, (2) the accused made an uncoerced statement, and (3) the accused understood his rights. *Id.* at 384. Showing that the warnings were given and that the accused then made an uncoerced statement is insufficient to show a valid waiver. *Id.* The government must make the additional showing of understanding. *Id.*

Quiroz argues that the district court erred when it found that he understood his rights.

After the agents asked if Quiroz understood his rights that had been read to him, he responded ambiguously: “I did nothing.” Nonetheless, the district court found that the totality of the circumstances demonstrated by a preponderance of the evidence that Quiroz understood his rights. Though the district said, “I find it’s an implied waiver when you talk after you’ve been told you don’t have to talk,” (Bench Trial R. 204 at 101), it also discussed other relevant facts that it believed demonstrated Quiroz’s understanding. Those facts are detailed below in our own analysis.

On review, we agree with the district court’s conclusion. The totality of the circumstances in the record shows that Quiroz understood his rights even though he did not explicitly acknowledge that understanding.

First, Quiroz is an intelligent individual who understands English and “use[s] words and sentences that are entirely consistent with the intelligence a person would need to understand the words read to him by the agent relating to his *Miranda* rights.” (*Id.* at 101-02.) Further, the district court found that Agent O’Reilly was credible, and he testified in part that Quiroz “seemed to understand everything [the agents] were saying.” (*Id.* at 39, 102.) *See Shabaz*, 579 F.3d at 820 (indicating that courts can consider the defendant’s background and mental condition).

Second, Quiroz was not “a timid person in asserting his rights relating to trial procedures and certainly discovery obligations,” indicating that he

had at least some knowledge of the system. (Bench Trial R. 204 at 94.) *See United States v. Brown*, 664 F.3d 1115, 1118 (7th Cir. 2011) (noting that the defendant's knowledge of the criminal justice system is a relevant factor). The record supports this statement. For example, Quiroz told the agents that he wouldn't sign anything but continued talking freely, telling them that that he could help them but he would need to be on the street to do so. (Bench Trial R. 204 at 42, 65.) Then, after the court told Quiroz that only constitutional violations were bases for suppressing his statements, he asked the court to suppress his statements because he did not sign the *Miranda* waiver form. (*Id.* at 25-26.) When this didn't work to secure him a suppression hearing, he told the court that he hadn't been informed of his *Miranda* warnings at all. (*Id.*) *See also Shabaz*, 479 F.3d at 820 (finding that defendant understood his rights when he tried to "hedge his bets" by talking and getting the benefit of cooperation while refusing to sign the waiver and thus enabling his subsequent claim of non-waiver of rights").

And third, the agents asked for and received Quiroz's consent for a protective sweep of the property; it wasn't until the search was complete that they began questioning him. (Bench Trial R. 204 at 33-34.) *See Shabaz*, 579 F.3d at 820 (indicating that courts can consider the conditions surrounding the interview and the law enforcement officials' attitudes).

We reject Quiroz's argument that we must reach a different conclusion under our prior decision in *United States v. Brown*. There, the court assumed that the defendant had ambiguously acknowledged

that he understood his rights but nonetheless found that there was sufficient evidence he understood: Brown had substantial experience with the criminal justice system, he negotiated with investigators for a deal, and he selectively chose which questions to answer during interrogation. *See Brown*, 664 F.3d at 1118. Quiroz believes that these factors are required to be present in cases where a defendant does not explicitly indicate that he understands his rights.

But this approach is antithetical to the well-settled principle that courts should consider the totality of the circumstances in determining whether there was a valid waiver. *Brown* did not displace this general rule; it applied it. *See id.* (“Looking at the totality of the circumstance[s], we feel it is clear that Brown understood and waived his rights.”). If anything, *Brown* supports our conclusion that the totality of the circumstances can support finding that a defendant understood his rights even if he does not explicitly say so.

The totality of the circumstances shows that it is more likely than not that Quiroz understood his rights. For that reason, his uncoerced statement after he was read his rights constituted a valid implicit waiver. Thus, the court did not err when it allowed the government to introduce Quiroz’s inculpatory statements in both trials.

B. Admission of Other Out-of-Court Statements

We turn next to the district court’s admission of other out-of-court statements. We review the admission of evidence for an abuse of discretion and “will reverse an evidentiary ruling only when the record contains no evidence on which the district court

rationally could have based its ruling.” *United States v. Gorman*, 613 F.3d 711, 717 (7th Cir. 2010). But when a defendant fails to object to an evidentiary error, we review for plain error. *United States v. Ambrose*, 668 F.3d 943, 963 (7th Cir. 2012). This is an exceedingly deferential standard, and one under which we will reverse in only the most exceptional of circumstances. See *Lieberman v. Washington*, 128 F.3d 1085, 1095 (7th Cir. 1997).

In both trials, the government introduced out-of-court statements by its confidential informant, Vance, and those made by alleged coconspirators. In the bench trial, those coconspirators were Javier and Cesar, the two couriers in the methamphetamine transactions. In the jury trial, that coconspirator was Barraza, the courier in the marijuana transaction. Quiroz argues that Vance’s, Cesar’s, and Barraza’s statements should not have been admitted.

1. Vance’s Statements

The district court admitted recordings of Vance speaking with Quiroz, Cesar, and Barraza at Quiroz’s trials. Before his bench trial, the district court preserved Quiroz’s ability to object to any hearsay offered. Further, at the bench trial, the district court gave Quiroz the opportunity to object to Vance’s statements at the close of the government’s evidence. He did not object to the statements. Then, before the jury trial, the court indicated it would admit Vance’s statements but preserved Quiroz’s ability to move to strike testimony. He did not. In both cases, then, the court invited Quiroz to object or move to strike at trial, and he didn’t. Thus, we review for plain error.

The government agrees that these statements could not be properly admitted under Rule 801(d)(2)(E) because Vance was not a coconspirator. *See United States v. Mahkimetas*, 991 F.2d 379, 383 (7th Cir. 1993) (holding that 801(d)(2)(E) does not apply in cases where there is a single criminally motivated person and a government informant because a conspiracy cannot exist between them).

Instead, the government contends that Vance's out-of-court statements were not introduced for the truth of the matter asserted but "to put [Quiroz's] own words in context and to help the jury make sense out of his reaction to what [Vance] said and did." *United States v. Gaytan*, 649 F.3d 573, 580 (7th Cir. 2011); *see also United States v. Foster*, 701 F.3d 1142, 1150 (7th Cir. 2012) ("The admission of recorded conversations between informants and defendants is permissible where an informant's statements provide context for the defendant's own admissions."). We agree that Vance's statements to Quiroz were admissible for this purpose, and so the court did not plainly err in admitting them.

Vance's recorded statements in conversations with Cesar and Barraza also fall within this context rule. The statements of nonconspirators may be admitted "to give *context* to the coconspirators' ends of the conversations," even when being introduced against a conspirator not included in the conversation. *United States v. Zizzo*, 120 F.3d 1338, 1348 (7th Cir. 1997). To be sure, the *Zizzo* court instructed the jury that the informant's statements could not be used for their truth. It was careful to admit only the statements that the coconspirators were in a position to deny or adopt based on information that they had

learned from sources other than the informant. But Quiroz did not object to these statements, and “the failure of the trial court to give limiting instructions on the use of hearsay statements at the time of their admission does not constitute plain error mandating reversal.” *United States v. Fleming*, 594 F.2d 598, 606 (7th Cir. 1979).

2. *Coconspirator Statements of Cesar and Barraza*

The district court admitted Cesar’s and Barraza’s statements under Rule 801(d)(2)(E). The rule provides that a statement offered against a party is not hearsay if the statement is made by a coconspirator of that party during the course, or in furtherance, of the conspiracy.

Before admitting evidence under Rule 801(d)(2)(E), the court must find by a preponderance of the evidence (1) that a conspiracy existed, (2) that the declarant was a member of the same conspiracy as the defendant, and (3) that the statement was made in furtherance of the conspiracy. *Bourjaily v. United States*, 483 U.S. 171, 175-76 (1987). A district court’s factual determination as to the existence of these elements is reviewed for clear error. *United States v. Hogan*, 886 F.2d 1497, 1504 (7th Cir. 1989).

A conspiracy exists when there is “an agreement to commit some illegal act and [when] the alleged coconspirator knew ‘something of its general scope and objective though not necessarily its details.’” *Mahkimetas*, 991 F.2d at 382 (quoting *United States v. Cerro*, 775 F.2d 908, 911 (7th Cir. 1985)). The court “may examine the hearsay statements sought to be admitted” and give the

evidence “such weight as ... judgment and experience counsel.” *Bourjaily*, 483 U.S. at 175. But we have required some evidence independent of the out-of-court statement itself to corroborate the conspiracy’s existence. *United States v. Lindemann*, 85 F.3d 1232, 1239 (7th Cir. 1996).

Quiroz believes that the district court clearly erred when it found that there was a conspiracy between Quiroz and Cesar and Quiroz and Barraza because the government offered insufficient evidence independent of the statements themselves to corroborate the conspiracy’s existence. (Appellant’s Br. at 28-30.) The record indicates otherwise.

In admitting Cesar’s statements in the bench trial, the district court considered Vance’s in-person testimony about conversations with Cesar and recorded conversations where Quiroz himself confirmed the methamphetamine delivery after it occurred as corroborating evidence. (Bench Trial R. 207 at 102.) It indicated that “the admissions of the defendant himself without even taking into account the statements of [Cesar] ... establish a conspiracy.” (*Id.*)

In admitting Barraza’s statements in the jury trial, the court found that the government’s *Santiago* proffer satisfied its burden. It believed that Quiroz’s statements, together with the hearsay statements sought to be admitted, established that a conspiracy existed between Quiroz and Barraza. (Jury Trial R. 217 at 79.) For example, the proffer indicated that Quiroz told Vance that a person would be calling on behalf of “Midget,” and then a call came later from Barraza, who said he was calling on behalf of Midget. (Jury Trial R. 121 at 18.) There were also recorded

meetings between Vance and Quiroz in which Quiroz described the quality of the marijuana that he expected to be delivered by the courier (later identified as Barraza). (*Id.* at 19.) The court went on to say that if the evidence did not comport with what was proffered, the court would consider a motion to strike. (Jury Trial R. 217 at 80.) Quiroz made no such motion.

The district court was permitted to consider the out-of-court statements themselves, so long as it had some independent evidence of the conspiracy. In both cases, it did. Its finding of a conspiracy was not clearly erroneous, and it did not abuse its discretion in admitting the statements.

3. *Harmless Error*

As a final note, even if the district court had committed any error in admitting Vance's, Cesar's, or Barraza's statements, it would have been harmless. Harmless errors are those that do not have an effect on the outcome because the case against the defendant is so overwhelming absent the erroneously admitted evidence. *See, e.g., United States v. Lee*, 413 F.3d 622 (7th Cir. 2005); *United States v. Westmoreland*, 240 F.3d 618 (7th Cir. 2001). This is the case here.

Quiroz's post-arrest statements were properly admitted. There was also testimony from two sources that it was Quiroz's voice on the recordings, and those statements were properly admitted as admissions of a party-opponent. And Vance testified in both trials. This evidence made the government's case against Quiroz overwhelming. Even without the recorded statements of Vance, Cesar, and Barraza, the outcome would have been the same.

III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's judgments of conviction in case numbers 16-3510 and 16-3518.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 968
	)	
VICENTE QUIROZ,	)	
	)	
	)	
Defendant.	)	

REPORT OF PROCEEDING of the Final
Pretrial Conference before the HONORABLE
THOMAS M. DURKIN, Judge of said Court, on the
7th of January, 2015.

* * *

Is it a signed statement or a videotaped
statement or just a DEA-6 where he's saying Mr.
Quiroz said the following?

MS. FERNANDEZ-HARVATH: DEA-6, your
Honor.

THE COURT: All right.

All right. So Agent O'Reilly is going to say you said certain things. Mr. Shobat is free to get up there and cross-examine, saying it's not true he said this; it's not true he said that. But that's not a basis to suppress.

THE DEFENDANT: Oh.

THE COURT: The only basis to suppress a statement is if it's taken in violation of your constitutional rights.

THE DEFENDANT: Well, it did. I never --

THE COURT: How so?

THE DEFENDANT: I never got my *Miranda* rights written. I never signed a waiver so that person can come and say, "He made a statement."

THE COURT: All right.

Was there a waiver form? Were rights -- was Mr. Quiroz under arrest at the time of the statement?

MS. FERNANDEZ-HARVATH: Yes.

THE COURT: All right. Was he advised of his *Miranda* rights?

MS. FERNANDEZ-HARVATH: Yes.

THE DEFENDANT: No, your Honor.

THE COURT: All right. Well, that's -- you -- there's going to be a witness who is going to say you

were. And if you want to get up and testify -- which I advise you to talk to your lawyer about extensively. But if you want to get up and say it's not true, you're free to do it, and the jury can decide who's telling the truth.

But there were -- the agent will testify he orally advised Mr. Quiroz of his rights?

MS. FERNANDEZ-HARVATH: Your Honor, yes. I don't -- I don't recall if there -- I don't think there was a signed *Miranda* waiver.

THE COURT: All right. And that's certainly a matter of cross-examination because often signed *Miranda* warnings are executed. It may be something Mr. Shobat can use to effectively cross-examine the agent, saying why not?

THE DEFENDANT: Well, I'll object to it, anyways.

THE COURT: You object to what?

THE DEFENDANT: To not having a suppression statement hearing under *Miranda* right violation.

THE COURT: Well, if you are -- and this is unusual, but I know, Mr. Quiroz, you've been participating somewhat in the -- in the case with pro se motions. We can certainly have a short suppression hearing with Agent O'Reilly.

22a

Do you intend to offer the witness's statement in -- to mention the witness's statement in your opening statement?

MS. FERNANDEZ-HARVATH: Yes.

* * *

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 968
	)	
VICENTE QUIROZ,	)	
	)	
	)	
Defendant.	)	

REPORT OF PROCEEDING of the Bench
Trial before the HONORABLE THOMAS M.
DURKIN, Judge of said Court, on the 20th of
January, 2015.

* * *

Q What are your duties and
responsibilities both as a task force agent and now as
a special agent?

A We investigate and dismantle drug
trafficking organizations operating within the United
States.

Q Did you have law enforcement experience prior to becoming first a TFO and then a special agent with the DEA?

A I did.

Q Where was that at?

A I was a criminal investigator and narcotics investigator for the Cook County State's Attorney's office.

Q How long did you do that for?

A Approximately six years.

Q What were your duties and responsibilities in that role?

A We investigated mid-level narcotics traffickers. And, again, I was assigned to DEA, which we focused on the Chicago street gangs.

Q In your role as a special agent with the DEA, were you involved in an investigation of an individual named Vicente Quiroz?

A I was.

Q Were you involved in actually arresting Vicente Quiroz?

A I was.

Q When did you arrest Vicente Quiroz?

A On March 27th, 2013.

Q Where did you arrest him?

A Phoenix, Arizona.

Q Did you have an arrest warrant at the time you arrested him?

A We did.

Q And you're a Chicago DEA agent. Is that right?

A That's correct.

Q So why were you in Phoenix, Arizona, to arrest him?

A It was my partner, Dave Brazao, and my investigation.

Q Was your partner, Dave Brazao, with you when you actually arrested the defendant?

A He was.

Q Were you planning to be the agent who actually arrested Vicente Quiroz?

A No. We had two agents -- an agent and a task force officer from our Phoenix office and some U.S. Marshals with us.

Q So was it the plan that one of those agents would actually effect the arrest?

A Yes.

Q Why?

A It's their jurisdiction. It's their office. If something went wrong, they're more capable of getting backup and emergency plan and everything set in motion.

Q So if you weren't planning on actually being the arresting agent that day, why were you out there?

A We had the most knowledge of the investigation. Again, it was our investigation. We wanted to talk to Mr. Quiroz to see if he could cooperate, help us out, help out the office -- the DEA office in Phoenix and other offices around the country.

Q And where -- I want to go a step back. I think I missed something.

Where did you go in Phoenix, Arizona, to effect the arrest of Mr. Quiroz?

A We went to the last known address we had for him. I believe it was 2432 East Clarendon in Phoenix, Arizona.

Q Now, if you weren't the agent who was intending to actually effect the arrest that day, why was it that you were the one who ended up actually arresting him?

A While we were set up on surveillance that day, we saw Mr. Quiroz's brother leave. We

followed him away to confirm that it was his brother and not exactly -- not Mr. Quiroz.

We were driving around in the area. As we came past his house, the residence he was arrested at, we saw some children exit the house, and then we saw Mr. Quiroz exit the house. So I immediately pulled -- or made a U-turn, came back, and just pulled my vehicle behind the vehicle he was trying to enter.

Q So basically you just happened to be the agent who saw him.

A Yes.

Q And how did you know that the person you saw was Vicente Quiroz, the person you were looking to arrest?

A We had photos of Mr. Quiroz and his brother Jesus, and we knew photos from the beginning of the investigation. Since the time we identified it, we had pictures of them.

Q And do you see that person in the courtroom today, the person who you actually arrested?

A I do.

Q Can you point to him, please, and describe something he's wearing.

A Gentleman wearing a white collared shirt.

MS. BIESENTHAL: And may the record reflect that the witness has identified the defendant.

THE COURT: Record will so reflect.

BY MS. BIESENTHAL:

Q Can you tell the judge, please, how you went about actually arresting Mr. Quiroz, the defendant.

A We were in a small rental car. I pulled my rental car right behind a Toyota SUV that he was entering in and the children were getting into. We came out of our car, had our badges in our hand, identified ourselves as DEA agents from Chicago, approached him, put handcuffs on him. And he was arrested without incident.

Q What was the first thing that you said to him after you put handcuffs on him?

A I asked him if there was anybody else in the house, and then we asked for permission to enter the house and consent to search the house.

Q How did he respond to that?

A He gave us verbal permission to enter and said there was nothing in the house.

Q What did you do after he gave verbal consent to enter the house?

A I walked him back to the Toyota Yaris that we were driving in, placed him in the back seat, the passenger's side. We had him sit in the back seat

with the door open. Myself and Agent Brazao then watched the U.S. Marshals and the DEA agents enter the house, search it.

They came out, confirmed there was nothing inside. No other people were inside. His mother was there at the house -- I believe it was his mother. She came out at the time. We just told her stay outside while they went in and did the search.

Q So had you relayed the fact that Mr. Quiroz had consented to the search to the other agents?

A Yes.

Q Now, once the search was complete and you saw them come out of the house, did you say anything to Mr. Quiroz as you guys were sitting back in the car?

A Yes. At that time, that's when I decided to read him his *Miranda* rights.

Q So did you read him his *Miranda* rights before he said

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beaten-up. Why is it beaten-up?

A Again, it's my original one -- I believe it's my original one. But, nonetheless, I've had this particular one for multiple years. And you probably can't tell from this photo, but it's actually in two pieces from being used multiple times.

Q And so is it the card that you use every time you attempt an interview --

A Yes.

Q -- on a subject?

Now, I may have already asked you this, but when you issued the *Miranda* warnings to the defendant, did you read verbatim off of the card?

A No. I was reading it, but I also know them by heart, again, because there's a section in the middle that's missing. So that's the part that I would just have said off the top of my head. So ...

Q Did you read all of the warnings to Mr. Quiroz?

A Yes.

Q At any time that you were reading the *Miranda* warnings to Mr. Quiroz, did he ask you any questions about them?

A No.

Q Did he seem confused in any way?

A No.

Q After you read them, did he acknowledge his *Miranda* warnings had been given?

A I don't remember if he acknowledged his *Miranda* warnings being given. So at the time he

was looking around, and he immediately said, "I did nothing." So ...

Q Okay. So you read the *Miranda* warnings to him, and then he said, "I did nothing."

A Correct.

Q And what did you say to him after he said, "I did nothing"?

A At that time we stopped him from saying anything further, myself and Agent Brazao, then started telling him why we're there. Again, we repeated that we're from Chicago, told him that we were conducting a very long investigation on him, on another subject named Juanito Mares, on another subject that was in California, on a subject named Benjamin Vance, and other people that were involved in this investigation.

We relayed everything to him about the investigation, told him that we intercepted multiple drugs that -- sorry -- we intercepted marijuana that was being sent to Chicago, methamphetamine that was being sent to Chicago, cocaine that was being sent to other parts of the country and other parts of the world that he was all involved in.

We told him that we had him recorded on a lot of telephone calls and that we basically had him dead to rights on our investigation.

Q After you explained the invest -- well, let me go back.

What was Mr. Quiroz's demeanor like both while you were reading him his *Miranda* warnings and then also while you and Agent Brazao explained the investigation to him?

A He was nervous. He was looking around a lot. But he -- other than that, he seemed to understand everything we were saying.

Q And after you and Agent Brazao were finished explaining the investigation to him, did he make any statements to you?

A Yes. His immediate statement was that he's a compulsive liar and he always has been for years. He then repeatedly, repeatedly said that he never touched or saw any of the drugs that we were talking about, or any drugs. Then he further said that he never made any money or even -- he further said that he lost money on some of these drugs transactions we were talking about.

Q Did he say anything else then after he claimed to be a compulsive liar and said repeatedly that he had never touched the drugs or made money?

A Well, at that point I asked him -- one of the agents from Arizona was walking over towards us. I asked him if there's anything he could do right now that can help him out of the situation, particularly with something that could help out the office in Phoenix.

He told us that -- he told me that everything he did was in Mexico and Los Angeles and since he

lived in Phoenix, he didn't do any business in Phoenix.

* * *

THE WITNESS: Yes, he used a name, but I'm not sure what name.

THE COURT: All right.

BY MS. BIESENTHAL:

Q And by that, do you mean you don't remember whether he called him Benjamin Vance or a nickname?

A Correct.

Q But you knew who he was referring to when he said that he had arranged the deals for that person.

A Yes, because we outlined that that person was cooperating with us.

Q Okay. And what was his demeanor like during the course of time that he was giving you these statements?

A Again, if -- when we were on the streets in front of his house, he was nervous, looking around. But he was pleasant. So it was -- I mean, he wasn't angry with us or anything, so ...

Q After -- well, about how long were you with the defendant outside of the house in your rental car?

A I would say that we were probably there for 45 minutes to an hour.

Q And after that 45 minutes to an hour, where did you go?

A We went back to the DEA office in Phoenix, Arizona.

Q Did you take the defendant with you?

A Somebody transported. It wasn't us.

Q When you got back to the DEA office in Phoenix, did you attempt to interview him again?

A We did.

Q At that point did you try to give him his *Miranda* warnings again?

A Yes. At that time we had all the necessary paperwork. We had an arrest package which contains the *Miranda* warnings in English and Spanish. He just told us that he wasn't going to sign anything.

Q Did you try to interview him again at that time?

A We did. Again, we brought up the 1500 pounds of marijuana, the 70 pounds of methamphetamine.

He just kept on saying that he never made any money off that. We brought up a cocaine transaction that he was involved in and which we know that he

received a kilogram of cocaine as payment for that. And in a jokingly manner, he said, "That was personal use." So ...

Q And what was his demeanor like during the time that he was at the DEA office with you?

A He was fine. He was actually joking around with us. He told us that he quit drinking. He told us how he just got a job sweeping floors.

You know, again, he kept on saying that he could do things for us with people that were moving cocaine between Mexico and Europe, but he said he had to be on the streets.

* * *

A No.

Q No?

A No.

Q Okay. And did you bring an agent with you who spoke Spanish?

A No. Usually it was just myself and Special Agent Brazao.

Q Okay. When you got to Phoenix, you say you used some of the local authorities to assist you in effectuating this arrest?

A That's correct.

Q How many different agents were out there that day?

A There was four. Counting myself and Brazao, there was four people from DEA. And I believe there was another three or four from U.S. Marshals.

Q So somewhere between seven and eight law enforcement officers?

A That's correct.

Q And did any of those law enforcement officers speak Spanish, to your knowledge?

A To my knowledge, I don't -- I don't know.

Q Now, you say that when you went out there, it was your intention -- you and your fellow agents' intention to interview Mr. Quiroz about the charges or -- that he had already been charged in and about some of these other transactions as well, right?

* * *

didn't identify themselves as law enforcement.

A No. They -- I believe they said they were with the cable company or something like that. I'm not sure. I just -- it was something like that. It was a ruse. So ...

Q Okay. So you observed -- did you not? -- Mr. Quiroz, Vicente Quiroz, leave that residence and go to his vehicle.

A He went to a vehicle. It wasn't his, though. None of the vehicles were registered to him.

Q But it was parked in the driveway?

A Correct.

Q And he was with his children?

A He was with children. I'm not sure whose they were.

So ...

Q Okay. And how many children?

A I don't remember.

Q All right. You observed him putting the children in the back seat of the car?

A I don't remember if he was putting them in the back seat of the car. I just remember when he was opening up the door to his car. So ...

Q Okay. Is that the time that you approached then --

A Yes.

Q -- him?

Okay. When you approached him, was he standing outside the car near the back seat?

* * *

Q Wasn't there a period of time, sir, in which he was outside in front of the house --

A Yes. He was --

Q -- while handcuffed?

A While he was sitting in the Yaris -- the Yaris -- I'm sorry -- the rental car, he was sitting there with the back door open. So he was in front of his house, yes.

Q Okay. Before you actually put him in the car that you had rented, wasn't there a time in which you had him outside in the front yard just standing there, with an agent with him?

A No.

Q Handcuffed.

A No. He was placed from his vehicle -- standing with his vehicle into the Toyota -- or into the rental car we had.

Q I think you told us that it was at that point that you then asked him for consent to search the residence.

A Correct.

Q And was it you who specifically asked for consent, or was it another agent?

A No, it was me.

Q Okay. And what was the reason why you asked to search the residence?

A For officer safety. We wanted to make sure no one else came out of that house with a weapon or somebody else come out of the house that wasn't sure what was going on.

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arrest. We don't -- you know, we're laying out the investigation to get something out of it. We're not laying out the investigation to get a confession. Our case was already made prior to the confession.

Q Okay. So when -- so it's really a simple question. When was the first time that you said to Mr. Quiroz, "We would like you to cooperate with us"?

A I don't know if I've ever said, "We would like you to cooperate with us." We've asked him repeatedly if there's anything he could do to help us out, help out the office in Phoenix, help us out -- help us out in L.A. or Mexico or Europe. But I don't remember specifically a certain time that I asked him will he cooperate.

Q Well, when did you -- when did you suggest that he could help himself out by helping you out?

A Repeatedly that morning after he was Mirandized back at the Phoenix office. We told him multiple times that, you know, him sitting in a prison cell doesn't help him out, doesn't help us out. He has a lot of knowledge about a lot of people moving drugs between Mexico and Los Angeles. In his own words, he has information on people moving drugs from Mexico to Europe.

Q When was it that -- or what was the question that you asked him that elicited his response that he wasn't selling drugs or didn't sell drugs in the Phoenix area?

A I asked him if there's anything he could do to help out the agents in Phoenix or anywhere. And -- but the Phoenix guys were the ones I was concerned with because they were out there with us. And that's when he told me everybody he dealt with were in Mexico or Los Angeles; he didn't do anything in Phoenix because he lived in Phoenix. He said he had no knowledge of anybody selling drugs down in Phoenix.

Q And you -- I think you've indicated that his demeanor was calm -- is that right? -- when he was answering your questions.

A No. When we arrested him, he was nervous. All right? He was looking around a lot. He wasn't -- he was actually in a semi-good mood. He wasn't, like, angry with us or anything.

Once we got back to the office in Phoenix, he was actually real calm. He was calm. He was joking around. He was talking freely about, like I say, he

quit drinking, how he just got a job, saying how he couldn't -- you know, he went on to say that right now he couldn't help us out because he hasn't brokered any drug deals in a while because of all the losses he took from our investigation. So -- but he was calm then.

Q So up until the time he got to the Phoenix downtown office, you're saying he was looking around and he was nervous.

A That's correct.

Q And did you use a raised tone of voice when you were telling him the evidence that you had against him?

A No.

Q So were you speaking just as you're speaking here today in

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Q He was in a holding cell?

A He was in the lockup. He wasn't in a holding cell. We were just in the back in the processing room.

Q So he was being fingerprinted and photographed?

A Correct.

Q And you attempted to interview him a second time?

A Yes.

Q Now, you just told us and told the judge that once again you orally advised him of his *Miranda* warnings a second time?

A No, I did not.

Q So you didn't give him any *Miranda* warnings a second time when you got downtown?

A No, I did not.

Q Did you provide him a consent form to talk to you further?

A We -- we had a form. I did not give it to him, but we had a form in the office, or in the processing room. In our processing rooms at all our offices, there's all the paperwork. There's consent forms. There's waiver of rights forms. There is one there. He told us that he wasn't going to sign anything, so ...

Q Before he told you he wasn't going to sign anything, my question to you, Officer, is, did you provide him with a written waiver of rights form and ask him to sign it before you talked to him again?

A I personally did not.

Q Did any agent that you saw do that?

A I don't know if they did not -- or they did or did not, but I knew that he -- he told me that he wasn't going to sign anything. So ...

Q Well, did you ask him to sign a written waiver?

A I asked him if he was going to give us -- like, we wanted consent on -- I'm sorry. We wanted permission to talk to him again, so we asked him if he was going to sign any waiver forms, and he just told us basically no. So I don't remember exact words.

Q So, Agent, even though he said no, you proceeded to talk to him anyway.

A He told me no, that he wasn't going to sign anything. He didn't say he was not going to speak.

Q Okay. So your testimony then is that he said, "I won't sign anything," and that wasn't in response to your request that he sign anything.

A I don't remember what the -- I don't remember what my exact question was, but he told me he wasn't going to sign anything. So ...

Q And you didn't understand that to mean that he didn't want to talk to you?

A No, I did not, because he was talking freely to us.

Q And you proceeded to continue to question him.

A No. It's at this point he's talking to us freely. That's

* * *

Q Tell me exactly what you said and what he -- tell me what rights you gave him. And you can use your form if you want, but tell me verbatim as best you recall what, in fact, you told him and what his response was, if any, to each of the advices you gave him.

And if you want to, you can -- rather than use the one in your wallet, use the exhibit that's in front of you because that's admitted.

A Oh, okay. I'm sorry.

Q Yeah. Go ahead.

A Basically, I told him that he had --

Q Not basically.

A Oh, I'm sorry.

Q Tell me the best you recall.

A I told him he had the right to remain silent and anything he chose -- I'm sorry. He had the right to remain silent. Anything he said can and would be used against him in a court of law. He had a right to an attorney. If he couldn't afford an attorney, one would be appointed for him.

Then I asked him if he understood his rights.

Q What did he say to that?

A He didn't say anything to me. Again, he was looking around. And that's when he -- the immediate response that I got was he didn't say, "I don't understand," anything; he said, "I didn't do anything."

Q Okay. And did you ask him, "Are you willing to answer some questions?" That's on your form.

A No, I did not ask him that.

Q Okay. The last words you said were, "Do you understand?" And then he gave the statements you testified he gave.

A Yes.

Q Okay.

THE COURT: All right. Any additional questions based on my questions? From the government?

MS. BIESENTHAL: Nothing from the government

THE COURT: From the defense?

MR. SHOBAT: No, Judge.

THE COURT: All right. Thank you, sir. You're excused.

Any additional witnesses by the government?

MS. BIESENTHAL: No, Judge.

THE COURT: And do the defense intend to call any witnesses?

MR. SHOBAT: Could I have just one second, Judge? I may -- might want to confer with my client.

THE COURT: Do you need a few more -- and take the time you need.

MR. SHOBAT: Okay.

THE COURT: If you want to take a break, we can do that too.

* * *

THE COURT: Is it required to be affirmative, though?

MR. SHOBAT: Well --

THE COURT: Do you need the words, "Yes, I understand" --

MR. SHOBAT: No.

THE COURT: -- if the person understands the language, is intelligent. Mr. Quiroz is an intelligent individual. I've observed that from his appearances in court. He is no shrinking violet. He knows his rights.

Well, I don't know -- whether he knows his rights is a question for this hearing. But he certainly is not a timid person in asserting his rights relating

to trial procedures and certainly discovery obligations.

But that's all after the fact.

But does he need to actually say the words, "Yes, I understand, and I waive my rights. Now let's talk"?

MR. SHOBAT: I don't think he has to say those words, Judge. But I think he has to engage in conduct or make a statement that would be, in essence, the functional equivalent, that -- you know, it could be an implied situation, but it has to be such that that's what he's doing, either affirmatively -- I mean, by saying those exact words or by simply talking and answering the questions.

THE COURT: When someone said -- told, "You have a right to remain silent," and then you don't remain silent,

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the Cook County State's Attorney's Office for six years.

On the date of arrest, March 27th, 2013, in Phoenix, he and Special Agent David Brazao, another DEA agent, came to Phoenix to accompany the Phoenix agents upon -- to arrest the defendant.

They set up surveillance, saw Mr. Quiroz's brother leave the house, which was the last known address they had for Mr. Quiroz, 2432 East

Clarendon in Phoenix. They then saw some children exit. Then they saw Mr. Quiroz exit.

They had a photo of him. Mr. Quiroz was identified during the suppression hearing as, in fact, the person who left the house.

When the agents saw Mr. Quiroz exit the house, they pulled their car behind the Toyota SUV Mr. Quiroz was entering. They put handcuffs on him. They obtained his verbal consent to enter the house and search it, and then they put him in the back seat of their car, keeping the door open.

Once the other agents and marshals searched the house and found nothing, the agent testified he read his *Miranda* -- the *Miranda* rights to Mr. Quiroz, using the worn form, which is DEA-13a, the well-worn form, which is titled Oral Warnings to be Given to a Subject Prior to Interrogation.

The -- this was read to him in English. The agent testified he knew it by heart but still read it. I questioned the agent on exactly what was said, and what he did testify to was, in fact, the entirety of what is on the DEA-13a form that lists out what a person's rights are if they're in custody that they have to be advised of before any statements are taken.

I find, because there is no evidence to the contrary, that, in fact, these rights were read to the defendant, and the defendant, having been told he had the right to remain silent and the right to an attorney before answering any questions and a right

to an appointed attorney if he couldn't afford one, nonetheless, voluntarily stated, "I did nothing."

The agents then continued their question -- told him that they had all kinds of evidence against him, a lot of recorded phone calls. Nonetheless, he continued talking.

And whether that talking after he agreed to talk by saying, "I did nothing," whether that was done in response to questions or entirely volunteered -- it sounds like there was a little bit of both. Once he's been given his rights, he waives them impliedly - - I find it's an implied waiver when you talk after you've been told you don't have to talk. It's just common sense.

Agent testified that Mr. Quiroz's demeanor was nervous, but certainly I find based on Mr. Quiroz's -- at least my observation of his demeanor during court proceedings, he's an intelligent individual. He can express himself well in English. He understands English. I know that because I asked him that earlier this morning when he executed a waiver of a jury trial form.

So he certainly can read English. He understands English. He has responded and made arguments to me in English. He has responded to my questions to him in English and used both -- and used words and sentences that are entirely consistent with the intelligence a person would need to understand the words read to him by the agent relating to his *Miranda* rights.

I believe that it -- defense argument that the rights weren't given would require me to conclude the agent was just lying, and I can't make that conclusion. I have no basis to believe the agent was lying. He put in the fact that he -- that there were *Miranda* rights read in his DEA-7 --

DEA-7 report, or is it a 6?

MS. FERNANDEZ-HARVATH: 6.

MS. BIESENTHAL: 6.

THE COURT: 6. 6 is the statement; 7 is the lab report. Is that correct?

MS. FERNANDEZ-HARVATH: Correct.

THE COURT: In the DEA-6 report, he put in the fact that *Miranda* rights were read. I have no basis to conclude the agent was lying. His demeanor on the stand was professional, non-evasive, and he answered my questions and the questions of Mr. Shobat in a way that indicated to me he was trying to tell the truth.

And it's a relatively low standard. It's a preponderance standard. It's not a standard beyond a reasonable doubt. The standard in a suppression hearing, according to the case *Colorado v. Connelly*, 479 U.S. 157, 168 is a preponderance standard.

I believe the cases cited by the government are correct and correctly state the law, that you don't need a written *Miranda* waiver form for a knowing waiver to have occurred, nor do you need an explicit

statement to constitute a waiver. A nod would be better; a written statement would have -- a written waiver would have been a lot better. But the fact the agents didn't get it is not by itself an impediment to the admissibility of these statements.

I also credit the fact that the agent in an oral statement provided many false exculpa -- provided -- related that the defendant made many exculpatory statements. Whether they're false or not is a matter for the trial, I suppose. But if an agent was just making it all up, he certainly wouldn't include statements that the defendant made which are exculpatory.

So I find based on a preponderance of the evidence that the *Miranda* warnings were orally given to the defendant, that the defendant, despite having been warned that he had a right not to make a statement and had a right to obtain an attorney before he made a statement and had a right to a free

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 968
	)	
VICENTE QUIROZ,	)	
	)	
	)	
Defendant.	)	

REPORT OF PROCEEDING of the Benchtrial
before the HONORABLE THOMAS M. DURKIN,
Judge of said Court, on the 23rd of January, 2015.

* * *

Q And how did the defendant respond?

A He told me that -- when we laid everything out, he told me that he was a compulsive liar and he always has been. He admitted that he spoke to --

THE COURT: "He" meaning Mr. Quiroz or Mr. Vance?

THE WITNESS: I'm sorry. Mr. Quiroz.

Mr. Quiroz admitted that he's a compulsive liar -- or stated he was a compulsive liar and he always has been.

Mr. Quiroz admitted that he spoke with these people on the telephone but stated that he never made any money off the sale of these drugs -- or I'm sorry -- he never saw or touched any of the drugs that we intercepted.

BY MS. BIESENTHAL:

Q Did he say anything about whether he had arranged any transactions?

A Yes.

Q What did he say about that?

A When I asked him about the 70 pounds of methamphetamine and the 1500 pounds of marijuana, Mr. Quiroz admitted that he arranged those transactions for our cooperating source.

Q I'm sorry. Did you say "for our cooperating source"?

A Yes.

THE COURT: How many pounds?

THE WITNESS: 1500 pounds -- 70 pounds -- approximately 70 pounds of methamphetamine and 1500 pounds of

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 968
	)	
VICENTE QUIROZ,	)	
	)	
	)	
Defendant.	)	

REPORT OF PROCEEDING of the Bench
Trial before the HONORABLE THOMAS M.
DURKIN, Judge of said Court, on the 26th of
January, 2015.

* * *

goes to his voice identification.

First, Benjamin Vance. He had a relationship
with the defendant. He knew him well, had
conversations with him, and he told you that was his
voice on those recordings.

Second, Agent Brazao. The agent who was
listening to all those recordings as they were
happening, who then confirmed in person once he

had a conversation with the defendant after he was arrested, yes, in fact, that was the defendant's voice.

And, finally, the defendant himself admitted it. You heard from Agent O'Reilly, who arrested the defendant and took his postarrest statement. In that postarrest statement, the defendant admitted that he was speaking to people who were involved in the investigation.

Now, with that in mind, without a reasonable doubt it was the defendant who was the one speaking on those recordings, I'd like to point out some of the calls that I think best illustrate the defendant's role as the broker for these two transactions.

Now, as the Court remembers, there were endless calls during which the defendant and Vance were arranging the drug deals. They were talking about the who: the female customer, the lady. They were talking about the what: methamphetamine, again referred to as the lady. And they were talking about the where: Anaheim, Los Angeles, Indio, and, finally, Chicago.

There were somewhat confusing conversations at the

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responsibility so that they can make their money and because he wants to make sure that Vance understands that they have to pay back those suppliers for the methamphetamine.

Like with the October 10th, 2012, deal, the recorded conversations directly connect the defendant to the October 22nd, 2012, deal and establish his role as the broker.

Now, those calls alone establish his role, but in addition to that, your Honor, when he was arrested, he admitted to his role. He explained what he did. He said he arranged the deals. He's guilty of joining the conspiracy.

Now, I'd like to talk just very briefly about Count II, but for that count, the evidence is largely the same, if not completely the same, so I'll be brief in summarizing what the government set forth to prove Count II.

In Count II, the government charged defendant with distributing that second round of methamphetamine, the 50-pound deal. For that count, the government must prove first that defendant knowingly distributed a controlled substance and then the defendant knew the substance was a controlled substance.

Now, first, that the defendant knowingly distributed a controlled substance. In order to prove the distribution, the government need not prove that the defendant himself distributed the controlled substance, but instead that he caused a person to deliver or transfer possession of the controlled substance to another person.

* * *

all these suppliers -- who he mentions in the calls that he's going to meet with and he's going to confirm what the amount is -- to deliver methamphetamine to Chicago, which is the conspiracy.

But you also know it -- and this is what I said at the beginning -- because the defendant admitted that he was on the calls and that he arranged these transactions.

Now, Mr. Shobat has testified [sic] that you can't believe what the agents said in this instance because it wasn't written down on paper and because his summary of what he said was insufficient to show what the defendant's actual words is -- words were.

And I would submit that Agent O'Reilly's testimony on this point was very credible and the circumstances of the defendant's statement are very important to that point. They went to Phoenix. They weren't expecting him to -- they weren't expecting for -- to be the ones to arrest him. It turned out that way.

And what Agent O'Reilly told you was is they wanted to talk to him to see if he wanted to cooperate. And so the testimony of Agent O'Reilly is - - is that they read him his *Miranda* rights, and the first thing he says, "I didn't do -- I didn't do anything," or "I didn't do nothing." And he put that in quotes because he specifically remembered that.

Now, the next thing that Agent O'Reilly says is then -- when he gave that response, he said, "Hang

on one second,” and then went through all of the different transactions that the defendant had participated in that they had recordings of.

And he went through all of the evidence, including all the people involved: Eri Barron, Benjamin Vance. And while counsel speculates that there’s no way that he would have known who Benjamin Vance is, perhaps the defendant knew what he was talking about when he says, “The 1400 pounds of methamphetamine” -- or “marijuana that you sent to Chicago or the 1-kilo cocaine transaction or the 70 pounds of meth that you sent.”

So whether -- Chris O’Reilly said that -- he testified that it was Benjamin Vance. Whether or not the defendant knew what he was talking about, I think he could -- even assuming he doesn’t know Benjamin Vance’s name, he could probably tell what was happening when they were describing things that he had done and that had led him to him.

And so his summary in the report is that he agreed that he made phone calls to individuals in this investigation after that -- after they told him everything that they had -- and defense counsel agrees that he admitted that he was on the calls -- and then he said -- and that he admitted arranging the transactions for the CS.

And Agent O’Reilly didn’t say that that -- those were his exact words. He’s just summarizing an entire conversation where they’re presenting all of the evidence and all of the things that they have in an effort to get the defendant to cooperate.

And he admitted that he arranged those transactions, but he also admitted, "I didn't make any money. I never touched the drugs."

And that's what happened here, Judge. He was acting as a broker. He did, as he said, arrange the transactions for the CS. He arranged the transactions to deliver methamphetamine on two occasions, to California, the 23 pounds, and the 50 pounds of methamphetamine to the Rivers Casino in the Chicagoland area, Des Plaines, Illinois.

And he used two couriers to get the job done because he's a broker. He puts the suppliers in connection with the customer, which is Vance, and he doesn't have to touch the drugs.

And, no, he didn't make any money. He didn't make any money because, unfortunately for him, he didn't realize he was dealing with a cooperator who was never going to send any money. That's true too.

But in the end, all the evidence shows that he conspired with those suppliers, with the couriers, to deliver methamphetamine to Chicago just as the indictment charges.

And regarding the delivery of the 50-pound meth, we

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 21-2
	)	
VICENTE QUIROZ,	)	
	)	
	)	
Defendant.	)	

REPORT OF PROCEEDING of the Trial
before the HONORABLE THOMAS M. DURKIN,
Judge of said Court, on the 22nd of July, 2015.

* * *

Agent O'Reilly do?

A At that time Agent O'Reilly and I both
were talking to Mr. Quiroz kind of back and forth
and outlining the case we had against him and why
he was being arrested.

Q And when you say you were outlining
the case against him, what specific things were you
pointing out to the defendant?

A We told him that we had recorded calls with him regarding the marijuana distribution case. We told him about Benjamin Vance, and he was talking to him. We told him we seized the marijuana in Chicago.

Q And what, if anything, did the defendant say in response to your outlining of the evidence in this case?

A At that time he -- he admitted to us that he talked on the phone with the cooperating source. He did not know him as Benjamin Vance, his name. He had a nickname for him, which I do not recall what he said it was.

But he admitted to setting up the transactions, but he never touched the drugs, and he never made any money from the transaction.

MS. FERNANDEZ-HARVATH: Can I have a moment, your Honor?

THE COURT: You may.

MS. FERNANDEZ-HARVATH: I have nothing further, your Honor.

THE COURT: All right. Any cross?

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
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Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 21-2
	)	
VICENTE QUIROZ,	)	
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REPORT OF PROCEEDING of the Trial
before the HONORABLE THOMAS M. DURKIN,
Judge of said Court, on the 23rd of July, 2015.

* * *

it's illegal. So you need that person to insulate the other people of the organization because if one person falls, they don't want the rest of the organization to fall too. So keep their cutouts, as Agent Smith told you. And that's who he was, as evidenced by his own words.

And before I get into those words, I want to talk to you about how you know it was him talking on the recordings, that it was the defendant's voice.

There were three different people that told you it was the defendant talking on those recordings. The first, Benjamin Vance, the cooperating source. He took the stand. He told all of you, "I know Vicente Quiroz. We had hundreds of conversations. I'm familiar with his voice. I'm the one who is talking to him, and that was him."

You had Agent Brazao, who had the opportunity to speak to Vicente Quiroz after he was arrested. Two hours he talked to him. Became familiar with his voice, reviewed the recordings, and said, "That's him."

And then you have the defendant himself. Remember, he was arrested. He gave a statement to the agent. And he admitted he was the one who was talking to Benjamin Vance on the phone. He arranged the marijuana deals -- deal. That was him on those recordings.

Now, with that in mind, let's look at what the recordings actually said, what the defendant was talking about

* * *

said about drug dealers, "But we just got these telephones." He just got a phone, just for this transaction.

"I hope you are not working for them." In other words, "I hope you're not a cooperator." He's getting the information, he's asking the questions to protect the conspiracy that he joined, that he was a member of, that he was the broker for.

Now, as you heard from Agent Brazao, not only did the defendant say all these things on these recordings when he didn't think anyone was listening, but when Agent Brazao stopped him, talked to him, asked him about the marijuana deal, defendant admitted to his role. He said, "I'm the one who talked to Benjamin Vance." He didn't say "Benjamin Vance," but it was clear he was talking about the source, and he admitted that he arranged the marijuana deal.

The defendant is guilty beyond a reasonable doubt as to Count I.

Count II. For this count, the government must prove three elements to you: first, that the defendant possessed a controlled substance; second, that he intended to distribute the substance; and, third, that he knew it was a controlled substance. And for this count, the evidence is exactly the same. Okay?

So start first with the first element, that the defendant possessed a controlled substance.

* * *

told them to deliver.

He was working as a broker, connecting the suppliers with his customer. And they sent Hector Barraza to deliver that marijuana to his customers.

So why -- how is the defendant guilty of that offense? Because he aided that possession with intent to distribute.

What do I mean? But for the defendant's call to those suppliers, this deal wouldn't have happened. The marijuana wouldn't have been there.

But he aided that possession with intent to distribute the marijuana that Barraza had by making the calls to the supplier so they would give it to his customer.

And, lastly, in addition to the testimony of Vance, which was corroborated by the defendant's own words in those calls, ladies and gentlemen, you have his post-arrest statement.

Now, defense counsel, in addition to asking you to give alternative interpretations of the calls by parsing out certain portions of it instead of reading the whole call, he is now asking you to agree or believe that he didn't make this post-arrest statement.

He said maybe he was agitated, and that's why he said that. Maybe he was cool as a cucumber when he said that. Or maybe, ladies and gentlemen, he said that because he knew he was cooked. He was caught. He was confronted with the calls and the seizure, and that's why he admitted that he did it.

So in all of this evidence that you've heard, Vance's testimony, the recorded calls, the defendant's words, the defendant's words alone on the recordings and in his post-arrest statement where he admitted, "I'm the guy on the phone, and I arranged the transaction." And you know from those calls he wasn't arranging them just with Vance; he was arranging them with other people. That is the plain

meaning of those calls. All of that evidence proves that the defendant is guilty beyond a reasonable doubt of all those charges.

THE COURT: All right, ladies and gentlemen. I would ask you to take out your packet of instructions again. If you happen to have --

A JUROR: I left them in the room.

THE COURT: Okay. That's okay. I think you'll be able to share. But I have a couple -- if you have a pen -- and all of you don't have to change this, but at least some representatives.

If you go to Instruction No. 2 -- I just want to make a few corrections -- and you go to the fourth paragraph down, it reads: "Count II charges the defendant with possession with intent to distribute a controlled substance, namely, 100 kilograms," and then it says "grams or more of marijuana." The word "grams" should be crossed off. I think these are all obvious, but I would rather make sure these are accurate.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES	)	
OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Docket No. 13 CR 21-2
	)	Docket No. 13 CR 968
VICENTE QUIROZ,	)	
	)	
	)	
Defendant.	)	

REPORT OF PROCEEDING of the Sentencing
before the HONORABLE THOMAS M. DURKIN,
Judge of said Court, on the 16th of September, 2015.

* * *

THE COURT: Both counts run concurrent,
and both cases run concurrent. It's a 15-year
sentence on each count of each case, all sentences to
run concurrently. I believe the guideline calculations
allow for that.

And I will state, frankly, that the -- this
sentence, were I to sentence Mr. Quiroz and he had
no criminal history, this is still a lower sentence. So I
believe this sentence more than adequately takes
into account an over -- any type of argument that the

criminal history overstates the prior conduct of the defendant because this sentence is two years lower than what he would have gotten with no record.

Anything else from probation that I need to state today?

MS. KWONG: No, your Honor.

THE COURT: And from the government?

MS. FERNANDEZ-HARVATH: No, your Honor.

THE COURT: Is there any recommendation, Mr. Shobat, as to place of incarceration or anything about -- anything else I need to address?

MR. SHOBAT: Judge, I would recommend that he participate in the in-custody drug treatment program. If you could make that recommendation to the Bureau of Prisons, that may assist him in getting into the program.

THE COURT: All right. I'll make that recommendation. He has a history of addiction. I -- certainly while he's been

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