No.:_____

IN THE

SUPREME COURT OF THE UNITED STATES

FR'NEIL HICKSON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals for the Third Circuit err in affirming the District Court for the District of New Jersey's denial of the Petitioner's Motion to Dismiss the Indictment on Double Jeopardy Grounds where the Petitioner was indicted and prosecuted first in the U.S. District Court for the Northern District of Georgia located in Atlanta and later in the U.S. District Court for the District of New Jersey located in Camden for facts arising out of a single conspiracy and single investigation dubbed "Operation Buckeye," involving the same co-conspirators and the same investigating Alcohol, Tobacco, Firearms and Explosives ("ATF") Special Agents ("S/A") and where this single conspiracy was divided into two prosecutions in violation of the Double Jeopardy Clause of the U.S. Constitution?

LIST OF ALL PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties (Petitioner FR'NEIL HICKSON and the Respondent UNITED STATES).

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

FR'NEIL HICKSON, the Petitioner, respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit affirming the U.S. District Court for the District of New Jersey's denial of his Motion to Dismiss the Indictment on Double Jeopardy Grounds. Mr. Hickson has already been indicted and prosecuted in Georgia for acts related to the New Jersey indictment and prosecution scheduled for trial on May 29, 2018 in Camden[1]. Both indictments stem from charges in connection with the same conspirators and arose from the same investigation dubbed "Operation Buckeye," conducted by the same AFT Special Agents. In other words, this one conspiracy has been illegally divided into two prosecutions and therefore violates the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution.

OPINIONS BELOW

The District Court heard oral argument and testimony on February 15, 2017. On February 23, 2017, the New Jersey District Court in Camden filed an Order denying the Petitioner's Motion to Dismiss the Indictment on Double Jeopardy Grounds. Appendix ("App.") 1. On February 17, 2017, the Petitioner filed a Notice of Interlocutory Appeal.

[1] On February 28, 2018, the Petitioner through Counsel filed a Motion to Continue Trial in the District of New Jersey pending the outcome of this Petition for Writ of Certiorari. This motion was denied. The Petitioner respectfully requests that this Court stay the jury trial scheduled for May 29, 2018 until this Petition has been resolved.

On May 10, 2017, the Petitioner filed a Brief for Appellant with Appendices in the Third Circuit Court of Appeals. On May 19, 2017, the Government/Appellee filed a Motion to Summarily Dismiss Interlocutory Appeal. After a Response was filed for the Petitioner, on July 10, 2017, the Third Circuit entered on Order (per McKee, Jordan and Restrepo (Authoring), Circuit Judges) denying the Government/Appellee Motion to Summarily Dismiss the Appeal.

After the filing of a Brief for Government/Appellee, on January 8, 2018, the Court of Appeals for the Third Circuit (per Nygaard, Greenaway, Jr., and Fisher, Circuit Judges) issued a non-precedential opinion affirming the Order of the District Court denying Petitioner's Motion to Dismiss the Indictment on Double Jeopardy Grounds. App. 3.

On January 22, 2018, the Petitioner filed a Petition for Panel Rehearing or Rehearing *En Banc*. On February 20, 2018, the Third Circuit (per Smith, Chief Judge, McKee, Ambro, Chagares, Jordan, Hardiman, Greenaway, Jr., Vanaskie, Restrepo, Bibas, Nygaard and Fisher, Circuit Judges) denied the Petition *En Ba*nc and Panel Rehearing. App. 8.

On February 28, 2018, a non-precedential Opinion and Judgment was filed by the Court of Appeals for the Third Circuit (per Nygaard, Greenaway, Jr. and Fisher, Circuit Judges) affirming the judgment of the New Jersey District Court dated February 23, 2017. App. 10. This Petition for Writ of Certiorari follows.

JURISDICTION

The Petitioner files this Petition for Writ of Certiorari from the February 28, 2018 judgment of the United States Court of Appeals for the Third Circuit affirming the New Jersey District Court's denial of the Petitioner's Motion to Dismiss on Double Jeopardy Grounds. Jurisdiction is invoked under 28 U.S.C.§ 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution of the United States guarantees, in pertinent part, that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb."

STATEMENT OF THE CASE

This case presents important questions regarding the government's authority to unreasonably split one conspiracy into multiple prosecutions, thereby putting the accused in a state of double jeopardy. The Petitioner was indicted and pleaded guilty in Georgia but was later indicted again in New Jersey based on the same investigation dubbed "Operation Buckeye," a single ATF investigation involving the same ATF Special Agents and same co-conspirators.

A. Statement of the Facts

According to the New Jersey investigation, New Jersey ATF, Camden Field Office began an investigation dubbed "Operation Buckeye" in response to a high number of crime guns recorded in New Jersey between January 1, 2009 and July 2011. The firearms recovered in New Jersey were purchased from Federal Firearms Licensees in Ohio. New Jersey ATF S/A Joseph S. Daly, Josepha Ruta

and others were assigned to the investigation. ATF confidential informants ("CIs") provided information to the ATF that individuals named Joshua Jackson and Terrance Laboo were selling numerous firearms throughout the Camden, New Jersey area. Joshua Jackson and his wife Sylvia Jackson were alleged to be the source of firearms from Ohio utilizing straw purchasers. Mr. Hickson and others were alleged to have purchased these firearms from the Jacksons for resale in New Jersey.

During the course of "Operation Buckeye," Joshua Jackson was arrested and incarcerated. While he was incarcerated, Mr. Jackson, Mrs. Jackson and Mr. Hickson were involved in a three-way telephone call where Mr. Hickson discussed the possibility of acquiring firearms. App. 59. Thereafter, Mrs. Jackson began cooperating with the New Jersey U.S. Attorney's Office and the Camden ATF. App. 87. The lead ATF agent was Joseph S. Daly. As a part of "Operation Buckeye," and at the direction of S/A Daly, Sylvia Jackson contacted Mr. Hickson on Facebook. App. 24, 87-88. Mrs. Jackson told Mr. Hickson that she needed money and that she was in danger of losing her home and children. App. 24, 102. Mr. Hickson had since moved to the Atlanta, Georgia area from New Jersey. On April 16, 2014, Mrs. Jackson and Mr. Hickson discussed the possible sale of about fifteen (15) firearms that Mrs. Jackson possessed. Mrs. Jackson told Mr. Hickson that the guns she had for sale came from her husband, Joshua Jackson who had left them in their basement prior to his incarceration. App. 89. Initially, Mrs. Jackson attempted to coax Mr. Hickson into acquiring the guns in New Jersey but he refused. Instead, as

a part of "Operation Buckeye" the Government and NJ ATF agents arranged for Mrs. Jackson to travel from New Jersey to Atlanta to deliver guns to Mr. Hickson that were alleged to have belonged to her Mr. Jackson and acquired during the New Jersey conspiracy. Thus, the ATF purposefully lead Mr. Hickson to believe that this transaction with Sylvia Jackson was a continuation of the New Jersey trafficking conspiracy.

During the last week of April 2014, S/A Daly contacted Georgia ATF S/A Gabriel Brooks and informed him of the New Jersey investigation into Mr. Hickson. On April 28, 2014, S/As Daly and Ruta flew from New Jersey to Georgia and arranged to have Mrs. Jackson fly from Ohio to Georgia in order to facilitate a "buy-bust" reversal of Mr. Hickson. As instructed by S/A Daly and other ATF agents, Mrs. Jackson told Mr. Hickson that she would be driving from Ohio on the evening of April 28 and would arrive either that night or early the next morning on April 29. The reversal buy-bust was arranged at the Comfort Suites Hotel in Sandy Springs, Georgia for April 29, 2014. On that date, Mr. Hickson and Mrs. Jackson met at the hotel where Mr. Hickson was arrested by New Jersey and Atlanta ATF agents as he wheeled a suitcase containing the twelve (12) firearms out of the hotel room. This arrest led to the first indictment in Georgia and later to the indictment in New Jersey.

B. The course of the proceedings and the Lower Court Jurisdiction

On May 29, 2014, a grand jury sitting in the Northern District of Georgia returned a one count indictment charging Mr. Hickson with Felon in Possession

Firearms in violation of 18 U.S.C. § 922(g). He was arraigned on this indictment on June 6, 2014. On November 23, 2015, Mr. Hickson's case was dismissed for violation of the Speedy Trial Act. On that same day, the Government re-indicted Mr. Hickson, alleging the same charge. App. 148. The second indictment charged Mr. Hickson with a single count of possessing twelve (12) handguns on April 29, 2014 in violation of 18 U.S.C. § 922(g)(1). On January 7, 2016, Mr. Hickson appeared before District Court Judge Steve C. Jones and entered a plea of guilty.

On March 24, 2016, Mr. Hickson was sentenced to 46 months incarceration with three (3) years of supervised release. Mr. Hickson would have been eligible for release from prison around August of 2017. However, more than two years after his Georgia arrest and less than three months after his sentencing, the New Jersey U.S. Attorney's Office filed a three-count indictment against Mr. Hickson in Camden on June 15, 2016. App. 151.

Count One charges Mr. Hickson with Unlicensed Dealing in Firearms between December 2009 and April 2013 in violation of 18 U.S.C. §§ 922(a)(1)(A). Count Two charges Conspiracy (18 U.S.C. § 371) to Deal in Firearms Without a License in violation of 18 U.S.C. §§ 922(a)(l)(A), 922(a)(3), 922(a)(5), and 924(a)(l) between December 2009 and April 2013. Count Three alleges that, between December 2009 and April 2013, Mr. Hickson, in Camden and elsewhere, was a Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1).

On October 19, 2016, counsel for Mr. Hickson filed a Motion to Dismiss the Indictment on Double Jeopardy Grounds. The United States filed a Response in

Opposition on December 29, 2016. A hearing was held and testimony was taken on February 15, 2017. App. 15. The District Court orally denied Mr. Hickson's Motion immediately upon the conclusion of the hearing and formally denied it by Order filed on February 23, 2017. App. 1. An interlocutory appeal to the United States Court of Appeals for the Third Circuit was filed pursuant to 28 U.S.C. §1291 on February 17, 2017. On January 8, 2018, the Third Circuit issued a non-precedential opinion affirming the Order of the District Court. App. 3. The Petitioner filed a Petition for a Panel Rehearing or a Rehearing *En Banc* which was denied by the Third Circuit on February 20, 2018. App. 8. On February 28, 2018, the Third Circuit filed a Judgment affirming the judgment of the District Court entered on February 23, 2017. App. 10. This Petition for Writ of Certiorari follows and jurisdictional is proper under 28 U.S.C. § 1254(1).

REASONS FOR GRANTING THE WRIT: LEGAL ARGUMENT

THE DISTRICT COURT ERRED BY FAILING TO DISMISS THE INDICTMENT ON GROUNDS OF DOUBLE JEOPARDY

The Third Circuit exercises plenary review over claims of double jeopardy. *U.S. v. Agular*, 849 F.2d 92, 95 (3rd Cir. 1988). The Fifth Amendment guarantees that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V; *United States v. Felton*, 753 F.2d 276 (3rd Cir. 1985). The Double Jeopardy Clause is an affirmative defense that attaches when it is "shown that the two offenses charged are in law and in fact the same offense." *United States v. Felton*, 753 F.2d 276, 278 (3d Cir. 1985)). "Double Jeopardy protects against three distinct abuses: (1) a second prosecution for the same offense

after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense." *United States v. $184,505.01 in U.S. Currency*, 72 F.3d 1160, 1165 (3d Cir. 1995); *United States v. Halper*, 490 U.S. 435, 440 (1989)).

Defendants have the initial burden of raising a claim for double jeopardy. As the Third Circuit has explained:

> [A] defendant moving to dismiss an indictment on double jeopardy grounds has the burden of going forward with the evidence by putting his double jeopardy claim in issue. If the defendant makes a non-frivolous showing of double jeopardy, he is entitled to a pretrial evidentiary hearing to determine the merits of his claim. Once the defendant has made out his prima facie case, the burden of persuasion shifts to the government to prove by a preponderance of the evidence that [the indictments or punishments are not for the same offense].

United States v. Garcia, 919 F.2d 881, 886-87 (3rd Cir. 1990); *United States v. Liotard,* 817 F.2d 1074, 1077 (3rd Cir. 1987)). Furthermore, "[t]he Double Jeopardy Clause prevents the government from splitting one conspiracy into multiple prosecutions." *Id*. (citing *United States v. Becker*, 892 F.2d 265, 268 (3rd Cir. 1989)); see also *United States v. Rigas*, 605 F.3d 194, 212 (3rd Cir. 2010) ("[A] single conspiracy should not be divided into multiple prosecutions, each alleging different overt acts.").

With respect to conspiracies, the Third Circuit employs a "totality of the circumstances" test when determining "whether two groups of conspirators alleged by the government to have entered separate agreements are actually all committed to the same set of objectives in a single conspiracy." *United States v. Liotard*, 817 F.2d 1074, 1078 (3d Cir.1987)); *United States v. Smith*, 82 F.3d 1261, 1267, 1273 (3d Cir.1996); *United States v. Travillion*, 759 F.3d 281, 295 (3rd Cir. 2014).

The threshold under *Liotard's* "totality of the circumstances" test is not high; it requires the consideration of four factors. A conspiracy defendant can demonstrate double jeopardy where it can be determined that: (1) the locus criminis of the two alleged conspiracies is the same; (2) there is a significant degree of temporal overlap between the two conspiracies charged; (3) there is an overlap of personnel between the two conspiracies (including unindicted as well as indicted coconspirators); and (4) the overt acts charged and the role played by the defendant according to the two indictments are similar." *Id.* (citing *Liotard*, 817 F.2d at 1078; see also *United States v. Felton*, 753 F.2d 276, 279–81 (3rd Cir.1985); *United States v. Inmon*, 568 F.2d 326, 328 (3rd Cir.1977)). The Court has concluded that these factors need not be applied in a "rigid manner," as "different conspiracies may warrant emphasizing different factors.'" *Id.*

Applying the foregoing standard, it is clear that double jeopardy attaches in the underlying case and that the New Jersey District Court erred in denying the Petitioner's Motion to Dismiss the Indictment. It is also clear that, despite the fact that Petitioner made out his prima facie case, the District Court erred by failing to

shift the burden of persuasion to the Government to prove by a preponderance of the evidence that the New Jersey indictment was not barred by Double Jeopardy.

The facts here demonstrate beyond cavil that the Georgia charges were essentially one in the same as the New Jersey charges. This was highlighted during plea negotiations with the Government after the Georgia Indictment had been filed. By letter dated May 11, 2015, the New Jersey U.S. Attorney's Office offered to have the Petitioner plead guilty in New Jersey to the single Georgia Count as well as counts in what would eventually become the New Jersey Indictment. Specifically, the New Jersey plea offered the following:

> Conditioned on the understandings specified below, this Office will accept a guilty plea from Fr'Neil Hickson to a four-count Information that charges: in Count I, that between December 2009 and September 13 , 201, he engaged in the business of dealing in firearms without a federal firearm license ("FFL"), in violation of Title 18, United States Code, Section 922(a)(1)(A); in Count 2, that between December 2009 and September 13, 2011, he engaged in a conspiracy to deal in firearms without a Federal Firearms License ("FFL"), in violation of Title 18, United States Code, Section 371; in Count 3, that between December 2009 and September 13, 2011, he knowingly possessed firearms in interstate commerce after having previously been convicted of a felony, in violation of Title 18, United States Code, Section 922(g)(1) and Count 4, that on or about April 29, 2014, he knowingly possessed firearms in interstate commerce after having previously

been convicted of a felony, in violation of Title 18, United States Code, Section 922(g)(1).

If Fr'Neil Hickson enters a guilty plea and is sentenced on these charges, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Fr'Neil Hickson for possessing and dealing in firearms without a federal firearms license between December 2009 and April 29, 2014.

Furthermore, the Government in Georgia and New Jersey both indicated a desire to use cooperator testimony, evidence, and statements obtain from each jurisdiction under *Criminal Rule of Evidence* 404(b). Specifically, alleged photographs taken from Mr. Hickson's cell phone depicting him holding a firearm and admissions made by Mr. Hickson during the Georgia arrest concerning the New Jersey conspiracy. App. 18, 36-37, 40-41, 46. The New Jersey AUSA even admitted during the double jeopardy hearing that he was the prosecutor from the beginning of this investigation along with S/As Daly and Ruta. And that they all were involved in setting up the sting operation in Georgia with the unindicted coconspirator, Sylvia Jackson. App. 38. Moreover, the discovery in both cases/jurisdictions are identical. This is proof that the indictment in Georgia and New Jersey all arose from a single conspiracy. In other words, but for the New Jersey Operation Buckeye investigation, there would have been no meeting in Georgia between the Petitioner and Sylvia Jackson and consequently no Georgia arrest and Indictment.

The charges against Mr. Hickson in Georgia and New Jersey both arose out of a single conspiracy involving multiple defendants to traffic firearms. Thus, double jeopardy protections apply. Despite this obvious overlap of individuals and objectives, the Government unlawfully split this single conspiracy based on the "Operation Buckeye" investigation into multiple prosecutions and potential punishments. The facts here demonstrate that the Georgia charges were essentially one in the same as the New Jersey charges.

In a similar case, *U.S. v Jones,* 858 F.3d 221 (4th Cir. 2017), the Fourth Circuit Court of Appeals reversed the decision of the District Court denying the Appellant's Motion to Dismiss based on Double Jeopardy where he was indicted twice for two conspiracies. The Appellant moved to dismiss the second indictment on double jeopardy grounds. The Fourth Circuit Court reversed the District Court's decision denying the double jeopardy motion. The Fourth Circuit opined that "[i]n the context of multiple conspiracies, the double jeopardy clause prohibits one overarching conspiracy into two separate counts." *Id.* at 223. The Court considered: (1) time periods in which the alleged activities of the conspiracy occurred; (2) the statutory offenses charged in the indictments; (3) the places where the alleged activities occurred; (4) the persons acting as co-conspirators; and (5) the overt acts or any other descriptions of the offenses changed which indicate the nature and the scope of the activities to be prosecuted. *Id.* at 225 (citing *U.S. v. MacDougall*, 790 F.2d 1135, 1143-44 (4th Cir. 1986)).

The Court in *Jones* found that the government "simply split one large conspiracy into a smaller and larger piece rather than identify two separate conspiracies." *Id.* at 8. The Court made it clear that the government cannot avoid the double jeopardy clause "through artful pleading or 'the simple expedient of dividing a single crime into a series of temporal or spacial units.'" *Id.* at 226 (quoting *Brown v. Ohio*, 432 U.S. 161, 169 (1977)). The Court held that it would not allow the "government to subject an accused to repeated prosecutions for what is in reality the same criminal conspiracy, simply by selecting a different set of overt acts." *Id*. at 227 (quoting *United States v. Ragins*, 840 F.2d 1184, 1188 (4th Cir. 1988)).

Further in *Jones*, the Court found that the two conspiracies shared the same substantive offense and had a serious and substantial overlap of conspirators. The Court concluded that the Government was violating the Appellant's constitutional rights. *Id* at 230. Like the *Jones* case, in the case at bar, the Government has simply split up one conspiracy into two different prosecutions through artful pleading and investigation tactics violating the Petitioner's right not to be placed in jeopardy twice for the same conspiracy. Mr. Hickson would not have engaged in the Georgia firearm transaction but for his New Jersey conspiratorial relationship with Joshua and Sylvia Jackson. Thus, the charges in Georgia arose out of the same conspiracy, facts and circumstances as the New Jersey conspiracy. The firearms transaction in Georgia and the conspiracy in New Jersey were but a single, continuing conspiracy, arbitrarily broken up for the purpose of prosecution and

hence violated Mr. Hickson's Fifth Amendment protections. Despite these facts, Mr. Hickson was incarcerated in Georgia and now facts prosecution in New Jersey both under Operation Buckeye.

In *U.S. v. Young*, 503 F.2d 1072 (3rd Cir. 1974), the defendant Robert Green was indicted on October 5, 1972 for conspiracy to distribute heroin along with Oscar Peters, George Glover and others. *Id*. at 1073. The defendant was accused of distributing 11 bundles of heroin in Philadelphia on September 20, 1972. Mr. Green pleaded guilty on November 29, 1972. *Id*. Thereafter on April 3, 1973, Mr. Green was indicted again for conspiracy to distribute heroin. This indictment included different co-conspirators from the initial indictment and alleged unlawful acts between October 30, 1970 and April 3, 1973. *Id*. at 1074. In *Young*, the defendant argued that the subsequent indictment placed him in double jeopardy in violation of the Fifth Amendment. The defendant moved to dismiss the second prosecution based on double jeopardy. The District Court denied the motion.

The Third Circuit reversed the District Court and remanded the case. The Circuit held that to support a claim of double jeopardy, "it must be shown that the two offenses charged are in law and in fact the same offense." *Id*. at 1075. "Offenses are not the same merely because they arise out of the same general course of criminal conduct, 'they are the same only when the evidence required to support a conviction upon one of (the indictments) would have been sufficient to warrant a conviction upon the other.'" *Id*. (quoting *U.S. v. Pacelli*, 470 F.2d 67, 72 (2nd Cir. 1972)). "These propositions must be tempered, however, with the consideration that

a single conspiracy may not be subdivided arbitrarily for the purposes of prosecution." *Id*. The Third Circuit noted that the District Court denied the defendant's claim of double jeopardy finding the existence of multiple conspiracies rather than an improperly divided single conspiracy. *Id*. The District Court took into consideration the conspirators involved in the offenses, the dates of the offenses in each indictment as well as the particular criminal act. The District Court noted that the defendant pleaded guilty to heroin distribution related to a telephone call in the 1972 indictment which was not mentioned in the 1973 indictment. And the 1973 indictment did not include co-defendants Peters and Glover. However, the Third Circuit highlighted that both Peters and Glover were mentioned during the trial on the second indictment as unindicted coconspirators. *Id*. 1075-1076.

Ultimately, the Third Circuit remanded the case to the District Court because of these trial revelations in order to determine whether this was a single continuing conspiracy arbitrarily broken up or multiple conspiracies. *Id*. at 1076. The Third Circuit was concerned that the District Court may have placed undue reliance on the different overt acts alleged in the two indictments noting that "[i]t is the agreement which constitutes the crime, not the overt acts." *Id*. (citing *U.S. v. Salreno*, 485 F.2d 260 (3rd Cir. 1973)). The Court opined that "[p]roper weight must be given to the consideration of whether the overt acts alleged in the first conspiracy charge were carried out in furtherance of the broad agreement alleged in the second indictment or whether these acts were carried out in furtherance of a different agreement." *Id*.

Like *Young*, the New Jersey U.S. Attorney's Office has unlawfully split a single conspiracy into two indictments. Even U.S. District Court Judge Kugler acknowledged the fundamental unfairness of the Government's actions at the hearing in this matter, even though he ultimately sided with the Government. App. 27. However, Judge Kugler's ruling failed to take into consideration that Mr. Hickson was charged as the result of a single conspiracy for gun trafficking divided into two jurisdictions. Because of the fractured and duplicative nature of the charges, Mr. Hickson has been placed in jeopardy.

The notion that the Government could manufacture a charge in a separate state (Georgia), prosecute Mr. Hickson and then return and charge him again in the original jurisdiction (New Jersey) where the investigation began is simply unconscionable. The overlap between the two cases cannot be overlooked. As previously indicated, the case originated in New Jersey and was being handled by New Jersey ATF agents. Without the New Jersey investigation, there would have been no reason to contact Mr. Hickson in Atlanta. Indeed, there were no allegations that Mr. Hickson was involved in the alleged trafficking of firearms or that he was engaging in any such actions after he moved to Georgia from New Jersey. Mr. Hickson was only "set up" by the New Jersey ATF in Georgia because of the New Jersey investigation.

The "buy-bust reversal" set up by the Government in Georgia was not a separate case, but rather another overt act in furtherance of the New Jersey gun trafficking conspiracy. Mr. Hickson did not contact Mrs. Jackson or anyone else in

New Jersey from Georgia about the firearms at issue. App. 88-89. Moreover, Mr. Hickson was told by Mrs. Jackson that the firearms were from Ohio, where she and her husband, Joshua Jackson had been buying and selling firearms. App. 88-89. The firearms in Georgia were "prop guns" provided by the Georgia ATF to the New Jersey agents solely for the purpose of arresting Mr. Hickson. App. 88. Otherwise, Georgia had no other involvement in Operation Buckeye. When Mr. Hickson agreed to meet Mrs. Jackson, it was his belief – based upon Mrs. Jackson's representations (who was acting on behalf the New Jersey Prosecutor and New Jersey ATF) - that the guns he would be purchasing were the same ones that are the subject of the conspiracy charges currently pending in New Jersey.

In summary, this case clearly involves one conspiracy with the same parties and sources of firearms. This single conspiracy, however, has been unlawfully divided into two prosecutions. As a result, double jeopardy attaches and second indictment is therefore barred.

CONCLUSION

For the Foregoing reasons, Petitioner FR'NEAL HICKSON prays that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX VOLUME I of I
(Pages 1 - 160)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	Hon. Robert B. Kugler
Plaintiff(s),	:	Criminal No. 16-279(RBK)
v.	:	
FR'NEIL HICKSON also known as "PHILLY"	:	
Defendant(s).	:	

O R D E R

THIS MATTER HAVING, come before the court upon the Motions of defendant FR'Neil Hickson, by Michael N. Huff, Esq., and by the government, by Patrick C. Askin, Esq., AUSA, and the court having reviewed the papers filed and having heard oral argument on February 15, 2017, and for the reasons expressed on the record on that date;

IT IS ON THIS 23rd day of February, 2017, **ORDERED**:

1. Defendant's Motion to Dismiss the Indictment on Grounds of Double Jeopardy and Statute of Limitations (docket #11) is **DENIED**;

2. Defendant's Motion to Strike the Government's Response (docket #18) is **DENIED**;

3. Defendant's Motion to Suppress Statements and Cell Phone Search (docket #19), is **DENIED** as to the Statements, and **DISMISSED** as to the Cell Phone Search based upon the government's representation it will not seek to introduce any evidence from the cell phone search in its case on direct;

4. The government's Motion in Limine and Motion to Admit other crimes evidence under Fed. R. Evid. 404(b) (docket #20), is **DENIED** except as to testimony from

witnesses who will describe guns they claim were in the possession of defendant and for which defendant is charged in Count III of the Indictment;

5. Defendant's Motion to Bifurcate (Count III) (docket #21) is **GRANTED** and Count III shall be tried after verdicts are returned by the jury as to Counts I and II;

6. Defendant's Motion to Dismiss the Indictment for Vindictive Prosecution Nunc Pro Tunc (document #27) is **DENIED**.

AND IT IS FURTHER ORDERED that the jury trial, expected to last 2-3 weeks, shall commence on July 17, 2017.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1388

UNITED STATES OF AMERICA

v.

FR'NEIL HICKSON
a/k/a Philly

Fr'neil Hickson
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 1-16-cr-00279-001)
District Judge: Honorable Robert B. Kugler

Submitted Under Third Circuit L.A.R. 34.1(a)
October 24, 2017

BEFORE: GREENAWAY, JR, NYGAARD,
and FISHER, *Circuit Judges*

(Filed: January 8, 2018)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

NYGAARD, *Circuit Judge.*

Fr'Neil Hickson brings this interlocutory appeal because he is convinced that the District Court in New Jersey is violating the double-jeopardy clause by denying his motion to dismiss charges of unlicensed dealing of firearms, conspiracy to deal said firearms, and unlawful possession of a firearm by a convicted felon. The basis for his claim is that he already has been prosecuted in the Northern District of Georgia of being a felon in possession of firearms, which he links to this case. We will affirm.

Hickson relies on the principle, generally attributed to *Braverman v. United States*, 317 U.S. 49 (1942), that "the double jeopardy clause prohibits [the government] from splitting one conspiracy into several prosecutions." *United States v. Becker*, 892 F.2d 265, 268 (3d Cir. 1989). He contends that the government has already prosecuted him in Georgia for a piece of the conspiracy that it now alleges in the indictment against him in the New Jersey District Court. Therefore, he asserts, the Georgia prosecution precludes the government's prosecution for any of the crimes alleged in New Jersey.

To ascertain double jeopardy, we apply the well-established standard of determining "whether each provision requires proof of a fact which the other does not." *United States v. Xavier*, 2 F.3d 1281, 1290 (3d Cir. 1993) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)).[1] On January 7, 2016, Hickson pleaded guilty

[1] Hickson contends that whether double jeopardy was violated in a conspiracy case depends on a totality of the circumstances test to determine if charges of conspiracy raised in different indictments significantly overlap. *United States v. Liotard*, 817 F.2d 1074 (3d Cir. 1987). However, the Georgia indictment charged Hickson with a

(in the Northern District of Georgia) to being a felon in possession of firearms in violation of 18 U.S.C. § 922(g)(1). He was sentenced on March 24, 2016. To convict Hickson of this crime, the government had to prove: "(1) that [Hickson] had previously been convicted of a crime punishable by imprisonment for a term exceeding one year; (2) that [Hickson] knowingly possessed a firearm; and (3) that the firearm had passed in interstate commerce." *United States v. Dodd*, 225 F.3d 340, 344 (3d Cir. 2000).

A federal grand jury in the District of New Jersey returned an indictment on June 15, 2016, that charged Hickson with three crimes. Count One of the indictment, unlicensed dealing in firearms, requires the government to prove that Hickson was: (1) an unlicensed firearm dealer, manufacturer or importer; (2) who, in the course of the unlicensed business, was dealing, shipping, transporting or receiving firearms, and; (3) the firearms had passed in interstate commerce. 18 U.S.C. § 922(a)(1)(A). His prosecution in Georgia is distinct from Count One of the indictment because that charge did not require proof of any licensure. 18 U.S.C. § 922(g)(1). Moreover, Count One of the indictment in New Jersey does not require evidence that Hickson is a felon, which was necessary for his Georgia prosecution.

Count Two of the indictment charges Hickson with conspiracy to deal in firearms without a license, requiring evidence of Hickson: (1) conspiring with one or more other persons to commit any offense or defraud the United States; (2) and one or more persons doing "any act to effect the object of the conspiracy." 18 U.S.C. § 371. Count Two

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standalone violation of 18 U.S.C. § 922(g)(1), not a conspiracy, making *Liotard* inapplicable.

requires evidence of an agreement with another person to carry out the crime; something that was not necessary for his Georgia prosecution. Applying *Blockburger*, we can safely conclude that Count One and Count Two charge crimes that are distinct from the crime to which Hickson pleaded guilty in Georgia, and they do not run afoul of double jeopardy.

Since Count Three arises from the same criminal statute for which he was prosecuted in Georgia (felon in possession charge, pursuant to Section 922(g)(1)), Hickson highlights factual connections between the Georgia prosecution and the conspiracy charged in New Jersey as evidence of double jeopardy. He notes that the woman who sold the firearms to him in Georgia, Sylvia Jackson, was a confidential informant working with the same Bureau of Alcohol, Tobacco, and Firearms (ATF) officers who were running the investigation of the alleged firearm conspiracy in New Jersey. These officers were behind the firearm transaction that resulted in Hickson's Georgia prosecution. Hickson also highlights that Sylvia Jackson is married to Joshua Jackson. This is important, Hickson says, because Joshua Jackson is charged as Hickson's co-conspirator, and is alleged to have been the source for all of the guns involved in the gun-trafficking conspiracy. All of this, from Hickson's view, is evidence that the transaction between himself and Sylvia Jackson was merely part of the larger alleged conspiracy that the government is now attempting to prosecute in New Jersey. The problem, however, is that Hickson's purchase of the twelve firearms in Sandy Springs, Georgia on April 29, 2014, was a separate "incident of possession" that can—for purposes of Section 922(g)(1)—stand apart from the act of illegal possession alleged in the indictment. *United States v. Tann,* 577 F.3d 533, 537 (3d Cir. 2009). The record

plainly shows that these were distinct acts of possession on different dates, involving different guns, in different jurisdictions.[2] These differences fatally undermine Hickson's assertion of double jeopardy as to Count Three of the indictment.[3]

For all of these reasons, we will affirm the order of the District Court.

[2] The conspiracy indictment alleges Hickson possessed and distributed firearms in New Jersey through April 2013. No one disputes that Hickson was arrested in Georgia on April 29, 2014 for possessing guns distinct from those referenced in the indictment.

[3] Hickson also complains that the government used its discretion to prosecute the offense in Georgia to leverage a plea by Hickson to the conspiracy charge. However, such a negotiation tactic is well within the government's discretion and does not legitimize his assertion of double jeopardy.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1388

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v.

FR'NEIL HICKSON
a/k/a Philly

Fr'neil Hickson
Appellant

(D.C. Criminal No. 1-16-cr-00279-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, RESTREPO, BIBAS, NYGAARD, and FISHER* Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

* Pursuant to Third Circuit I.O.P. 9.5.3, Judge Richard L. Nygaard's and Judge D. Michael Fisher's votes are limited to panel rehearing.

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Richard L. Nygaard
Circuit Judge

Dated: February 20, 2018
sb/cc: Mark Coyne, Esq.
Norman Gross, Esq.
Michael N. Huff, Esq.

NOT PRECEDENTIAL

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

-vs- **CRIMINAL NUMBER:**

FR'NEIL HICKSON,

16-279

Defendant.

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
February 15, 2017

B E F O R E: HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

PAUL J. FISHMAN, UNITED STATES ATTORNEY
BY: PATRICK ASKIN
ASSISTANT UNITED STATES ATTORNEY

MICHAEL HUFF, ESQUIRE
ATTORNEY FOR THE DEFENDANT

Certified as true and correct as required by Title 28, U.S.C., Section 753

/S/ Carl J. Nami

JOSEPH DALY	1	51	23
DIRECT EXAMINATION OF SPECIAL AGENT DALY BY MR. ASKIN:	1	52	6
CROSS-EXAMINATION OF SPECIAL AGENT DALY BY MR. HUFF:	1	72	21
REDIRECT EXAMINATION OF SPECIAL AGENT DALY BY MR. ASKIN:	1	93	12
GOVERNMENT EXHIBIT G-1 WAS MARKED FOR IDENTIFICATION	1	61	2
GOVERNMENT EXHIBIT G-2 WAS MARKED FOR IDENTIFICATION	1	67	2
GOVERNMENT EXHIBIT G-3 WAS MARKED FOR IDENTIFICATION	1	81	9

(defendant present.)

(Open court.)

THE DEPUTY COURT CLERK: All rise.

THE COURT: Good morning. Have a seat.

00:00 MR. ASKIN: Good morning, your Honor.

MR. HUFF: Good morning, your Honor.

THE COURT: All right. This is the matter of United States versus Fr'Neil Hickson. Let's have appearances. Start with the Government, please.

00:00 MR. ASKIN: Good morning, your Honor. Patrick Askin, Assistant U.S. Attorney, for the United States.

THE COURT: All right. Mr. Huff.

MR. HUFF: Good morning, your Honor. Mike Huff on behalf of Fr'Neil Hickson who is present in the courtroom and

01:08 seated to my left.

THE COURT: We have a number of motions pending. There's a motion to dismiss by the defendant on double jeopardy grounds. There is, defendant has motions to suppress statements and the search of a phone. And the defendant has a

01:08 motion to bifurcate Count Three. The Government has motions *in limine*. And defendant last week filed a motion to dismiss for vindictive prosecution, the humor of which was not lost on me. This is, he is asking me to consider that *nunc pro tunc* after having submitted a motion to essentially bar the

01:09 Government for filing a brief three days later over the

Christmas holidays by an attorney who we all know had serious medical problems. But we'll get to that.

All right. Is there any agreements on any of these motions? Because I know the government has said in response to the defendant's motion that it's not going to seek to introduce the evidence from the cell phone in its case in chief, and yet in its 404(b) motions included the pictures from the cell phone. So I'm not sure what you're doing with the cell phone.

01:09 MR. ASKIN: I'm sorry, your Honor, I didn't hear the last part of that. In its 404(b) motion, what did we do?

THE COURT: You attached the pictures from the cell phone as if you want me to rule on whether they were admissible.

01:10 MR. ASKIN: No. I'm sorry if I caused some confusion with that, your Honor. Our position is that we're not seeking to admit the cell phone pictures that I attached in our case in chief at all.

THE COURT: Okay.

01:10 MR. ASKIN: And, therefore, we really didn't need to attach them. But my only point was that if the defendant opens the door, that that might be the subject of rebuttal, and we, counsel and I discussed all these motions yesterday and I think there's an agreement that the Court can defer on

01:10 that because we're not asking to bring it in in our case in

chief. And it's likely that we'll never ask to admit the cell phone pictures.

THE COURT: Okay. Also last night Mr. Askin delivered a motion which I had already --

01:10 MR. ASKIN: That's correct, your Honor.

THE COURT: Except for the transcript, I finally have a transcript of the statement after the arrest.

MR. ASKIN: Yes. I apologize that we didn't realize we hadn't provided that earlier, number one. Number two, your

01:10 Honor, I went through the transcript, Special Agent Daly went through the transcript. I've noted the page number, and there's only a few of them where the government is saying that this is an incriminating or false exculpatory statement that is relevant. So, I can point the Court -- I know it's a 65

01:11 page document, but we're only really going to refer to certain pages for that purpose.

Now, on the motion to suppress, the Court has a copy of the audiotape, and we may have to refer to other pages or other portions of the tape in terms of voluntariness, or the

01:11 Court may decide that the Court will just hear it yourself. We do have Special Agent Daly prepared to testify if they're challenging both -- if the defense maintains that they're challenging voluntariness and Miranda, it's the Government's obligation to prove those by a preponderance of the evidence.

01:11 We're prepared to call Special Agent Daly briefly, if

necessary, to establish that and to put in those evidentiary documents and the tape. But counsel and I both agree the tape then sort of speaks for itself after that. And the Court, obviously the tape's in evidence, can listen to the tape with the aid of the transcript, and that will go as well to the voluntariness.

The Miranda waiver, one point that I want to clarify in our brief, and I don't think I made this completely clear. I believe the Miranda waiver does not occur on the audiotape.

THE COURT: That was the testimony in Georgia.

MR. ASKIN: Correct. And I believe that's accurate, that the Miranda waiver occurs before the audiotape. And the reason for that is according to I believe what Special Agent Daly will testify is, back then -- now there's a Department of Justice and ATF policy that --

THE COURT: Right.

MR. ASKIN: -- that it will be recorded, that they would record all interviews of suspects. But back then the policy wasn't in place. I think Agent Daly from New Jersey working with Agent Brooks from Atlanta, I don't believe Agent Daly intentionally intended to record the interview initially, and then at some point Special Agent Brooks I believe decided he wanted to have it recorded and brought a recorder in. But that was after the Miranda waiver. So I wanted to make that clear.

THE COURT: In the Georgia testimony by the agent, at the end of that proceeding there was an indication that the U.S. Attorney down there had discovered that since there was a video and audio running in the room during the deal, the
01:13 alleged deal, that although the video was cut when the arrest was made, he thought that there may be audio continued from that room, and he was going to look in to see whether or not there was anything on that audio about the Miranda or the phone. And I don't know what happened after that.

01:13 MR. ASKIN: Your Honor, Special Agent Daly brought that issue up with me this morning, which I somehow wasn't -- and I don't know if I wasn't aware of or just wasn't conscious of, and it's my understanding that -- I'd need a few minutes to speak with him and probably to speak with defense counsel
01:13 about that. And I don't know if that's even been provided, because it wasn't in my mind, I was looking at a videotape, it wasn't in my mind that they had a separate audio recording.

THE COURT: Okay.

MR. ASKIN: Okay. So if we could have a couple
01:14 minutes, we could straighten that out I think.

THE COURT: Why don't you find out. It may be relevant. I don't know if it is or not, but why don't we find out.

MR. ASKIN: Exactly, your Honor.

01:14 (The Assistant U.S. Attorney conferred with the

Agent.)

(The Assistant U.S. Attorney conferred with defense counsel.)

MR. ASKIN: Your Honor, a few things here. I just
01:16 spoke with defense counsel and the agent about this. Can't say for sure, what happens is they were running a backup system, so they had an audio/video recording, but they also had a separate audio recording. The agent has provided me with a copy of it, I do have a copy of it and we can make
01:16 copies for defense counsel if he doesn't have it. We're not sure if he has it.

They make the arrest, the agents are -- the ops plan calls for the agents to be in a separate room, so when Mr. Hickson starts wheeling guns out of the room, the agents
01:16 come in with guns and arrest him at gunpoint. Then what the agent believes happens is they cut off the audio/video and then later, it may be a minute or two later they cut off the audio, but he believes it was before the Miranda because they took the tape recording out of the room. But we, you know, I
01:16 think -- I don't want to say for sure until we actually listen to it, and counsel and I think if the Court's okay with it, that we can proceed and keep that issue open, and then take a look at it.

THE COURT: Whatever you want to do.

01:17 MR. HUFF: That's fine with me, your Honor.

THE COURT: Okay. Let's talk then about -- I'm just going to go through these in the order in which they were filed.

The motion to dismiss on double jeopardy grounds, and then you have the statute of limitations argument.

MR. ASKIN: Uh-huh.

MR. HUFF: Yes, your Honor.

THE COURT: What's similar about the two crimes, factually?

MR. HUFF: Your Honor, everything.

THE COURT: Everything?

MR. HUFF: Yes.

THE COURT: Well, you have 12 guns, specific guns that he pled guilty to possessing, a felon in possession in Georgia. The Government says not one of those 12 guns is the subject of any of the charges here in New Jersey.

MR. HUFF: Yes, your Honor. Judge, what we have here is a situation, if I can back up just a bit, obviously there's an investigation going on in New Jersey. As the Court can see from the Government's indictment, that investigation spans December 2009 through -- although the Count One talks about April 2013, the overt acts -- strike that. Overt acts go through March 9th of 2013, Count Three also references April of 2013. So, again, you have a situation where the New Jersey indictment spans from 2009 to 2013. And then what -- so that

case involved this woman by the name of Sylvia Jackson who is involved in the situation in Georgia. She was, I would argue to the Court as I would say the paperwork indicates, and I believe even the Government concedes, is essentially an
01:18 unindicted coconspirator in the New Jersey situation.

So, Mr. Hickson allegedly moves from New Jersey to Atlanta. The Government, for reasons I can only assume go to Ms. Hickson -- excuse me, Ms. Jackson, ask her to go to Georgia and do this deal with Mr. Hickson. So, you have a
01:19 situation, Judge -- and she's coming from Ohio, Ohio is supposed to be the source of these firearms. So, you have Sylvia Jackson, a person that's an unindicted coconspirator in the New Jersey case, contacts my client through Facebook, essentially gives a tale of woe about how she needs money in
01:19 order to support herself or she'll end up homeless. And my belief is that the Government initially wanted Mr. Hickson to come to New Jersey and have the situation with the reverse buy/bust done here. That didn't happen, so they sent her to Georgia.

01:19 So, Judge, the case is identical, essentially, you know, my client didn't meet this person, Ms. Jackson for the first time and, you know, was somebody that was brand new to her and these guns were not supposed to be coming from any other place other than Ohio. All the exact same factual
01:20 allegations that are alleged in the New Jersey indictment

essentially were used in order to have this bust done down in Georgia.

So, my argument to the Court is that this is really one conspiracy involving the same players, involving the same sources of firearms, and that there's one conspiracy has been essentially divided into two prosecutions, one in Georgia and one in New Jersey. And as a result of that, it's double jeopardy and is barred. So, essentially, the Government is putting my client at risk of prosecution and punishment for one conspiracy.

THE COURT: I mean I'm looking at the charging documents. The only similarities I see is guns.

MR. HUFF: Well, again, Judge --

THE COURT: Guns.

MR. HUFF: The argument is --

THE COURT: Not the same guns, the guns.

MR. HUFF: And that is the duplicate charge in New Jersey, a felon in possession of a firearm.

THE COURT: Well, I don't know. He cannot be convicted in New Jersey for possessing any of those 12 which he pled guilty to in Atlanta, Georgia. And the Government I presume is not going to introduce evidence about any of those 12 guns that he pled guilty to possessing in Atlanta, Georgia.

MR. HUFF: Right.

THE COURT: They're different guns. The Government's

theory is that Mr. Hickson was involved in the conspiracy, the scheme that the Government says ended up with importing 300 guns into South Jersey, the Camden area, not these 12 guns.

MR. HUFF: Right. Again, your Honor, the information that was provided from Sylvia to my client that these guns were from her husband, Joshua Jackson, who's incarcerated, so it's my client's belief and my client's point of view that these were guns essentially that are a part of what is now being alleged in New Jersey.

01:21 THE COURT: It can't be. You would be right if that was true, but the Government says these are not the same guns. Completely separate deal going on in Atlanta, Georgia. And you're right, they cannot convict him in New Jersey for anything having to do with -- well, I shouldn't say anything, 01:22 for possessing any of those 12 guns.

MR. HUFF: Right. Well, again, your Honor, this was, you know, when Ms. Jackson was sent from New Jersey to Georgia, this was all at the behest of the Government. My assumption is it was for Ms. Sylvia Jackson either to help 01:22 herself out of being prosecuted, or to help her husband out, Joshua Jackson. So, this was essentially the New Jersey -- ATF New Jersey, I guess the prosecutor's office was involved in it as well, decided, you know, on their own based on the investigation that was being done in New Jersey to send 01:22 Ms. Jackson with these guns to Atlanta, Georgia. This was not

my client reaching out to her asking for these firearms, it was her, Ms. Jackson reaching out to my client for these firearms.

THE COURT: That may be true, I really don't know the facts that well, as well as you do, because I don't have access to the discovery in the case and I wasn't part of the Georgia case.

What you're arguing essentially is the Government could have folded those 12 weapons into this conspiracy here in New Jersey. I don't know whether they could or not. I don't know what their decisions were about that. But that's not the issue on the double jeopardy, the issue on the double jeopardy is what was actually happening, what is he charged with and what jeopardy is he in. And is it permissible to charge him separately in Georgia for 12 weapons that as far as I can tell, and based on the representations from the Government, have nothing to do with the New Jersey case. So you don't have the same guns, you don't have the same jurisdiction. Ergo, there's no double jeopardy bar. It may seem unfair to your client, but that's not prohibited by the double jeopardy clause.

MR. HUFF: Well, again, your Honor, our argument is this is essentially one conspiracy that was divided in between the two jurisdictions, one in New Jersey, one in Georgia. And obviously the prosecution in Georgia would have never taken

place but for the Government sending Ms. Jackson to Georgia. So essentially they're prosecuting my client twice for what is essentially gun trafficking.

THE COURT: I understand your argument. It's on the record. I just don't agree that that's what they're doing in this case. I don't think there's any violation of any double jeopardy clause, these are separate, factually, crimes that he's alleged to have committed -- well, he did commit the one in Georgia, he pled guilty to it. So, your motion is going to be denied on double jeopardy grounds.

Your motion to bar the Government's brief from being considered is also denied. The Government's response was due December 23rd, it was filed December 29th. The Court was closed on the 26th, so it's essentially three days late. We all knew of Mr. Askin's medical issues, and that apparently was the reason they were late. So that motion is denied.

Expert summaries. Did you supply the expert summaries to counsel?

MR. ASKIN: We did, your Honor. I told the defense counsel through emails and other communication that we were calling two experts, one was on the interstate nexus issue and one was on the gun trafficking issue. And I provided those prior to the deadline. We also provided the reports of the interstate nexus expert prior to the deadline. However, I did provide the actual report. I interviewed this expert over the

phone in the presence of Special Agent Daly, we had a telephone conference somewhere before the deadline, but didn't get -- I had to write up a summary letter of his -- and that was provided on January 9th, which was after the deadline. And in my proposed order on this *nunc pro tunc* extension I included that.

Now, the defense didn't exactly object to that, I don't know if they're objecting to it now, but in an abundance of caution after they objected to my filing being essentially three days late over the Christmas holidays, I thought I would include that on the proposed order.

THE COURT: When you said expert, an expert on gun trafficking, what exactly does that mean?

MR. ASKIN: Well, with respect to the manner in which guns are purchased illegally and trafficked, I don't think the average juror -- and we can talk about the parameters of that when we get closer to the trial, but I don't think that's within the purview of the average juror as, you know, in terms of the firearms law, in terms of how it's done. And some of the discussions that are going to occur, I mean you can call these -- we're all going to call these cooperating witnesses, and I think that to put that in context, that is not something that's within the purview of the average juror, how firearms are purchased illegally, how they're distributed illegally, the market for them. It's similar sort of to a drug

trafficking expert in markets for drugs and how the black market operates and how they get around the laws to do these things.

THE COURT: All right. You've got to be careful of those kinds of opinions.

Are you going to challenge those opinions?

MR. HUFF: Judge, at this point in time I'm still reviewing them. I did get them timely and I would probably want to consult with my own expert to see if that's something that we can do.

THE COURT: All right. Well, let me know and we'll set up a hearing.

MR. HUFF: Thank you. I will.

THE COURT: Your motion also extends the statute of limitations of the indictment in New Jersey explicitly, talks about 2013?

MR. HUFF: That's correct, your Honor.

THE COURT: So, what am I supposed to do?

MR. HUFF: Your Honor, our argument is that those allegations that occur I believe specifically March 2013 and March 9, 2013, essentially our argument is, you know, that these alleged transactions, first of all, we deny that these overt acts are credible and true.

The second thing that we would argue, your Honor, is that they don't necessarily have anything to do with the

conspiracy that is alleged in the indictment, which is essentially an argument that my client was receiving firearms from an individual by the name of Joshua Jackson and that my client would broker those firearms that were coming from Ohio with other individuals.

And part of the argument is that those specific overt acts within the indictment are not part of the conspiracy that is alleged by the Government and that, you know, those overt acts are essentially included in the indictment in order to not violate the statutes of limitations. So that's going to be something that we're going to argue to the Court now, and as well to the jury.

THE COURT: What about Counts One and Three, the non-conspiracy counts?

MR. HUFF: Right. Well, again, Judge, my belief is that it's based on those overt acts that the Government is, that's --

THE COURT: I don't know.

MR. HUFF: They obviously have to present some information to the jury with regard to the April, the April date, the overt acts that they're putting forth extend to March of 2013. So, from reading the indictment, your Honor, I would -- my assumption is that those overt acts were the reason why the conspiracy is alleged to have happened through April of 2013.

THE COURT: Well, that's the reason the conspiracy is alleged to have happened through 2013, but Count One is not a conspiracy.

MR. HUFF: The dealing in firearms. Again --

01:29 THE COURT: The felon in possession, he says. Now, I don't know what evidence they're going to have that indicates that he possessed the gun within the statute of limitations, or that he dealt in firearms with the statute of limitations. What you're essentially asking me to do is have a hearing, 01:29 make them call witnesses and prove the case now. But there's no such thing as Summary Judgment in a criminal case. They either stand or fall regarding this issue on the testimony and evidence they present in court during the trial.

MR. HUFF: I understand.

01:30 THE COURT: It's either there or it isn't. If it's not there, then you'll stand up at the end of the case and say they haven't proven it, it's the statute of limitations, and we'll go from there. But I can't have a hearing at this time. The allegations are there, the Government has the 01:30 responsibility to prove them, we'll see if they can prove them. So that motion is denied.

MR. HUFF: Yes, your Honor.

THE COURT: Bifurcation of Count Three. Of course we're going to bifurcate Count Three. Traditionally what we 01:30 do is we just try the first two counts, and then the jury

returns a verdict on the first two counts, we say there's one more to do and we tell them what it is, I give them a charge on that. If you have additional evidence, you put that on, you and the Government will stipulate that he's got a
01:30 qualifying conviction, that's it. And no details about the conviction. And then we'll ask the jury to deliberate on Count Three. I didn't understand what you're asking about an interrogatory, though, on Counts One and Two. Exactly what is it you want me to ask the jury?

01:31 MR. HUFF: Judge, if the procedure is as the Court just outlined, it's fine with me, I withdraw my request for an interrogatory, that's fine. I think that's actually the preferable way of doing it.

THE COURT: Okay. So that motion is granted.

01:31 MR. HUFF: Thank you, Judge.

THE COURT: About this, because this is just essentially a legal issue, this last. Let's deal with that before we take the testimony. And that's the vindictive prosecution?

01:31 MR. HUFF: Yes, your Honor.

THE COURT: So, what right do you claim that your client exercised that he's being illegally punished for exercising?

MR. HUFF: His right to reject negotiations, plea
01:31 negotiations with the Government, your Honor.

THE COURT: Well, let me make sure I understand this. So if the Government -- if a defendant, represented defendant asked the Government, give me a plea offer, and the Government responds with a plea offer and the defendant says I don't want
01:31 that, are you telling me the Government then cannot further prosecute the defendant?

MR. HUFF: Well, your Honor, Judge, I don't know if my client was necessarily asking me, but on my client's behalf -- I was appointed in the case approximately August of
01:32 2014, my client had already been indicted in Georgia in around April of 2014. So, when I found out the facts of the case, you know, it seemed like a logical thing for me do, to try to maybe see if there was something I can work out with the Government --

01:32 THE COURT: Sure.

MR. HUFF: -- since he was in a different jurisdiction, and attempt to negotiate a global plea on his behalf. Ultimately, your Honor, those plea negotiations fell through. So, this argument sort of dovetails into the double
01:32 jeopardy argument, in that what the Government I would allege could have done was brought the New Jersey charges into Atlanta, Georgia and --

THE COURT: They couldn't. The Constitution and Rule 18 and the statute prohibit that unless he consents,
01:32 correct?

MR. HUFF: Again, my argument, Judge, was that the situation that took place in Atlanta, Georgia was part of the New Jersey conspiracy.

THE COURT: But he has a Constitutional right under the Sixth Amendment and under Rule 18, I forget what the statutory reference is, to have the crime tried in the District in which it's committed.

MR. HUFF: Or --

THE COURT: The crime of possession by a felon of firearm was committed in Georgia, not in New Jersey, for those 12 firearms. That's where they were. So, unless he waived that Constitutional right, the Government couldn't charge it here in New Jersey for possessing those 12 firearms in Georgia.

MR. HUFF: Well, no, the argument, Judge, is that this New Jersey conspiracy, the New Jersey indictment could have been incorporated into the Georgia indictment.

THE COURT: Not if the object of the conspiracy was to bring firearms into the District of New Jersey. He has a Constitutional right, again, to have that case tried here in the District of New Jersey, unless he waives that right. So they couldn't bring that in Georgia without his okay.

MR. HUFF: Well, I guess we agree to disagree, your Honor. My argument is that what took place in Atlanta, Georgia was essentially another overt act in furtherance of

this gun dealing conspiracy, and that any jurisdiction, essentially, that has any contact with the crime would necessarily have jurisdiction. So again, instead of placing my client in jeopardy twice, once in Atlanta and now once in
01:34 Camden, that this entire case could have been indicted in Atlanta, Georgia, subjecting my client to trial or plea negotiations one time. But instead, because he decided to reject plea negotiations with the Government, the Government decided to wait, and after the charges were disposed of in
01:34 Atlanta, Georgia to bring the charges here.

And it was also represented to my client through his attorney in Atlanta, Georgia that there was talk in Atlanta that if he didn't plead guilty in Atlanta, Georgia that the incident that took place in New Jersey could have been
01:35 introduced, or there would have been -- the Government would have sought in Atlanta to introduce the charges that took place in New Jersey as 404(b) evidence in Atlanta.

THE COURT: Well, that may be true, I don't know what to say about that. I assume that your client and you knew
01:35 that if you couldn't come to an agreement on this global plea for the Georgia charges, and I guess New Jersey hadn't been formally filed yet, that he would face prosecution in New Jersey, right?

MR. HUFF: That was the representation made by the
01:35 Government.

THE COURT: Okay. So there's really no prejudice to your client here, and I don't understand what the right is that he seeks to assert here. But that motion will be denied.

MR. HUFF: Judge, my client wants me to bring to the 01:35 Court's attention there was an e-mail from his Public Defender in Georgia that indicated that the Government in Georgia intended to submit 404(b) evidence, you know, or arguing that it was intrinsic through 404(b) and bring some of the investigation that was done in New Jersey as 404(b) evidence 01:36 in the Atlanta, Georgia case. And when he had heard that, he decided that he didn't want to plead guilty -- excuse me, not go to trial.

THE COURT: Nobody promised him that if he pled guilty in Georgia, he wouldn't be prosecuted in New Jersey. 01:36 Correct?

MR. HUFF: That's not in the plea agreement.

THE COURT: Because nobody made that promise, did they? I mean you cannot represent that anybody promised him that if he pled guilty in Georgia, he wouldn't be prosecuted 01:36 in New Jersey.

MR. HUFF: No one has either told me that, and it's not in the plea agreement.

THE COURT: Okay.

MR. ASKIN: Your Honor, if I could just add to the 01:36 record, and this was attached because it does dovetail with

our double jeopardy argument. I was actually the prosecutor from the beginning in this case in investigating this case with Special Agent Daly and Special Agent Ruta before him, and we, we did -- we were involved in setting up the sting
01:36 operation in Georgia with the unindicted coconspirator. However, when the defendant, Mr. Hickson, was charged in the Northern District of Georgia, I asked the Magistrate Court here to appoint an attorney to represent him on the New Jersey investigation. And Mr. Huff was appointed in 2014?

01:37 MR. HUFF: August, yes.

MR. ASKIN: August of 2014. And then I sent discovery, including redacted *Jencks* material on the case, precharging, to Ms. Jackson, his lawyer in Georgia, and to Mr. Huff, extensive discovery. I also sent them a plea
01:37 agreement. Now, he has every right to reject our plea agreement in New Jersey. I asked the attorney, and this is attached, these e-mails were attached to our double jeopardy filing, Document Number 17-6. I attached the e-mails where this was discussed that they wanted a global plea. Now,
01:37 apparently at some point Mr. Hickson decided that he didn't want a global plea.

The Court's absolutely correct, we couldn't charge the Georgia case up in New Jersey, and the New Jersey case couldn't be charged down there. There was no overt acts in
01:37 our conspiracy that I'm aware of that occurred in Georgia, so

it couldn't be charged down there. So, we had needed his assent to the venue to waive the venue, and we couldn't do that.

And, your Honor, when I found out, I was in the middle
01:38 of the Dirty Block case before Judge Irenas and Judge Hillman over the course of this time in 2015. When I found out, immediately when I found out that the Georgia plea was not going to include any of our conduct, not our charge and not our relevant conduct, I wrote Mr. Huff an e-mail, which I have
01:38 and which I've attached, Document 17-6, to Mike Huff, Wednesday, December 16th 2015 at 11:34 a.m., and I cc'd the AUSA in Georgia and I cc'd Special Agent Daly. And essentially I told him, hey Mike, if he doesn't want to plead to our guns in Georgia and combine this, even his relevant
01:38 conduct, if our guns are not included in that disposition, he is going to face additional charges in the District of New Jersey. That's his decision.

But it's incredibly ironic that now he wants to complain that we're vindictively prosecuting him. We told
01:39 him -- this e-mail was sent before he pled, that like, look, if you don't plead to the charges, if you don't include our conduct down there, which we were fine with, we're going to charge you separately. And we just did what we told him we were going to do, which is permitted by law.

01:39 So, I just don't understand what they're complaining

about, I know the Court's made its ruling, but I want the record to be completely clear that we -- not only is there no evidence that we didn't promise him, we specifically told Mr. Huff, and I assume Mr. Huff did his job and told his
01:39 client or told the other attorney and told his client, look, you're going to be prosecuted separately in the District of New Jersey. I don't know what there is to complain about.

THE COURT: Okay. Well, did you want to say anything on this issue?

01:39 MR. HUFF: Again, I'm not saying that the Government sandbagged us and just, you know, said ha, ha, this is what we're going to do.

THE COURT: Of course not.

MR. HUFF: In fact, I think they're proving the point
01:40 of really the vindictive argument, which is if he doesn't plead in Georgia, he will be prosecuted in New Jersey.

THE COURT: Happens every day with prosecutors and defendants.

MR. ASKIN: They're separate crimes.

01:40 THE COURT: There's nothing illegal about it or unconstitutional about it. So, your motion is denied.

Let's go to the *in limine* motions. Mr. Askin, exactly what 404(b) evidence are you seeking to introduce? It's not really clear from your brief what it is you think you can
01:40 assert as evidence in this case.

MR. ASKIN: Yes, your Honor, I'm sorry. Give me one moment.

THE COURT: Take your time and get your papers together.

01:40 MR. ASKIN: Yes. In the 404(b) motion, your Honor, we include evidence that we believe is 404(b), but I also distinguish evidence that is, and highlight evidence that is intrinsic, which of course is not 404(b) under the case law. And essentially, I would put it in these different categories.

01:41 The one thing that we seek to introduce that the case law permits is evidence of other crimes committed by Mr. Hickson that our cooperators participated in. Not that they just know about, because I wouldn't seek to admit that, but they participated in with him under the case law that says that

01:41 that goes to the relationship between the parties in the conspiracy.

THE COURT: And all that case law that you cite is before the *Green* case. But I understand that.

MR. ASKIN: Okay.

01:41 THE COURT: If you want -- and I agree with you, I've had this many times, if you want to establish that how would this coconspirator or this informant know these things about which he or she speaks, well, it's because they did all these deals together before which were illegal. So, they had this

01:41 long-term relationship doing illegal deals. Okay.

MR. ASKIN: Yeah.

THE COURT: So, we have these cooperators now who are going to come in and state that they did -- apparently there's a bank fraud, I mean can I have some more details about what --

MR. ASKIN: Yes, your Honor, and I think prior to trial I would be able to provide very specific details. But for example, there were frauds going on, Mr. Hickson, to the Government's knowledge, and we haven't charged this, was a serial fraudster as well as the gun traffic dealing. And one of the things he was involved in is, according to one of our cooperators, he would engage in identity theft, identity fraud, and get false credit cards, check fraud, and he would obtain items, in other words, the cooperator could say, yeah, Mr. Hickson, I want X, in fact he did, a big flat screen TV that he knew was going to be illegally obtained by Mr. Hickson and sold to him as hot or stolen merchandise. Because Mr. Hickson was engaging in identity fraud and theft to obtain these items.

In addition, that same cooperator is going to say that on a particular date, while he was dealing with Mr. Hickson on the guns, Mr. Hickson asked him to help him out, and the cooperator had some kind of SUV or truck, to get this big box that Mr. Hickson had apparently purchased for a thousand dollars or something like that, and that he was going to use

to sort of fake out bank customers that this was a deposit -- you know how on the side of banks you have like a deposit drawer, you know, and you stick the deposit bag in there, small businesses use it and stuff. Mr. Hickson wanted to
01:43 place, and did place with the cooperator's assistance, this box outside, and I think it said deposits or something like that on it, outside the bank with the hope that people would deposit checks, cash, whatever they were going to deposit into that. The cooperator didn't realize exactly what they were
01:43 doing, but assisted him with that, and then was like, man, you're crazy, and they took off. But those are the kind of things.

In addition, I believe there's another cooperating witness who has known Mr. Hickson from his time growing up in
01:44 Burlington County, known him a number of years, who also said that he participated I believe in -- and I'll have to go over and interview the cooperator about this again, in robberies years ago with Mr. Hickson. And essentially I believe what that cooperator would testify to is prior knowledge of, or
01:44 involvement with Mr. Hickson in illegal activity. Okay?

Additionally, your Honor, there are other things that we're saying are intrinsic. For example, that same cooperator tells the Government that he was present in a residence in Burlington, and Mr. Hickson was arguing with his girlfriend,
01:44 and racked the slide -- and the cooperator's going to fully

admit that he's familiar with and has possessed guns on numerous occasions, racked the slide of a handgun while threatening her. That he saw Mr. Hickson in possession of guns there.

01:45 And that also Mr. Hickson told him that he was extorting this drug dealer and that on one occasion they, he and another individual pistol whipped -- Mr. Hickson admitted to him that he pistol whipped this drug dealer. Now, to the extent that that pistol whipping occurred during, and we 01:45 believe it did, during the period of the indictment, that can't be separated from his possession. He pistol whipped the guy, he's in possession of a firearm which is against the law, and part of the indictment. So, we're pointing out --

THE COURT: Is that one of the guns you're alleging 01:45 in the indictment he was illegally in possession of, from that incident?

MR. ASKIN: Well, yes. But the thing -- we don't have the gun recovered.

THE COURT: I understand.

01:45 MR. ASKIN: Right. But yes, we're alleging he possessed that gun when he's racking the slide of one gun in Burlington, when he's pistol whipping a drug dealer. Those are guns we're alleging he possessed.

THE COURT: Those two things would be intrinsic 01:45 evidence, not crimes evidence.

MR. ASKIN: Right. I'm just going through -- if I could just go through my briefs some more, your Honor, just to make sure I'm not...

(Brief pause.)

01:46 MR. ASKIN: Additionally, your Honor, I point out, and we're saying this is intrinsic, but I point out in my brief that there are several admissions that he makes; in other words, like the Court said, and we totally agree, that the Georgia offense, the 12 guns is a totally separate 01:46 offense. Those guns were actually in ATF's custody, and they were using them as prop guns for this reversal. We're asking to introduce that as evidence that he possessed those guns. What we are saying, though, is in his post-arrest interview in Atlanta, okay, which the Court has a copy of the recording and 01:46 a copy of the transcript, as does defense counsel.

In the videotape of the buy-bust in the Atlanta motel room with the confidential informant, and in a telephone call which we've recently provided to the Court and defense counsel, he makes certain admissions to, and references to the 01:46 coconspirators in New Jersey and to the prior conduct, which is the conduct that is charged in the indictment. Admissions that the Court well knows are intrinsic and are not -- it doesn't matter when they occurred, you could admit to a murder ten years later, it doesn't take it outside the indictment, 01:47 it's intrinsic. So, we want to admit as intrinsic evidence

those admissions and any sort of necessary context to those statements.

You know, and it's a little unclear what the context is going to have to be. That's why I said in our motions I'd be happy to discuss this with Mr. Huff yesterday, assuming the Court agrees and the defense concedes that these are admissions, then I'm going to ask for an opportunity to sit down with Mr. Huff and iron out exactly the context that the Government is asking for, and what they'll agree to. If we can't iron that out, and I think Mr. Huff agrees with this procedure, if we can't iron it out, then, of course, pretrial we would come back to the Court and say this is what we believe is admissible as context for these admissions, this is what the defense agrees -- or this is what the defense objects to, and ask the Court to iron that out. But we're highlighting the issue for the Court that there are these admissions that come from the activity in Atlanta.

THE COURT: That may be, and admissions, you don't get into a 404(b) analysis under admissions.

MR. ASKIN: Right.

THE COURT: The context, though, that's important, what's going to go with it? I mean the bold statement, the bald statement that he gives and is apparently recorded, that's one thing. But the problem you're going to have under 403 actually is what's this context you're talking about?

MR. ASKIN: I couldn't agree more that that's the crux of the issue, Judge. But I would like an opportunity to sort of iron that out with defense counsel, I mean I'm going to -- I can state on the record now what we're attempting to
01:48 get in, and then we can talk about how best to deal with that 403 issue, which I agree is the imperative issue.

THE COURT: Well, we're going to get into the motion to suppress because you're going to identify in your motion to suppress exactly what statements from Atlanta you want to use
01:49 in the case, right?

MR. ASKIN: I am going to identify that.

THE COURT: We'll get into that, exactly what the statements are. Let's just focus on what the non-admission 404(b) evidence is. And you talk about these frauds, and
01:49 the --

MR. ASKIN: Armed robberies with the --

THE COURT: Well, you didn't say that before. Oh, yeah, the robberies with the guy he grew up with, the deposit box --

01:49 MR. ASKIN: Correct.

THE COURT: -- and identity theft and identity frauds. Okay. Anything else you're seeking to admit under 404(b)?

MR. ASKIN: Not that I'm aware of that's 404(b)
01:49 evidence, your Honor.

I mention in our brief, and this might have caused the Court some confusion, I mention in our brief that one of the cooperators who grew up with Mr. Hickson was aware of the fact that he was involved in a firearms trafficking deal with other
01:49 individuals, certainly other crimes evidence, that the firearms were coming from Kentucky and being transported back into New Jersey. There is generally some case law that says a past conspiracy to do the same thing may be admissible as 404(b) in some circumstances. But at this point the
01:50 Government is not moving, I just wanted to put them on notice of that, we're not moving on that. I think it's unlikely that we will unless something develops, because obviously it's very fact centric, and we have to show why we need that evidence, you know what I mean, for a non-propensity purpose. So I'm
01:50 not moving at this point to put that in. And it's probably unlikely that we would move to put it in unless something, again, opens the door to it.

THE COURT: What's intrinsic about doing armed robberies years ago with somebody who you grew up with? How
01:50 does that prove that he possessed the weapons alleged in this indictment?

MR. ASKIN: It doesn't, your Honor. But to the extent that the cooperator's saying that Mr. Hickson showed him firearms at a particular location, talked to him about his
01:50 criminal activity, it would -- it goes to that body of case

law that says, hey, look, the fact that these guys were involved in criminal activity in the past, and I think the reasonable inference is the fact that this cooperator never told law enforcement, didn't get Mr. Hickson in trouble, leads Mr. Hickson to trust this cooperator and, therefore, tell him, hey, I got these guns. So, that cooperator observed seven Ruger handguns, the same model nine millimeter in the basement of this home in Burlington County.

He also observed the racking of -- heard the racking of the slide during the argument where Mr. Hickson threatened his then girlfriend. Mr. Hickson also told him about pistol whipping this drug dealer. And they're going to, I'm sure, very aggressively attack this cooperator, he's lying and why would Mr. Hickson tell you these things, and --

THE COURT: Well, that may be. If they open that door, then we have a different ball game here.

MR. ASKIN: Okay.

THE COURT: But the question is whether you can introduce that evidence under 404(b). It's not intrinsic evidence, it doesn't prove any of the elements of the crime, it's not even contemporaneous with the crime.

MR. ASKIN: I'm not saying -- just to be clear, your Honor, I'm not saying that that evidence is intrinsic, I'm saying there's a body of case law in 404(b), the Court said it was before *Green*, and I'll have to look at that, but I believe

it's still good law, and the Court said that you've dealt with this before, and I think it fits into the category of what the Court was talking about, where you have a cooperator whose credibility is going to be at issue, and he says hey, I know this stuff, I grew up with this guy, I committed crimes with this guy. And we'll be bringing out on direct that the guy himself, the cooperator, committed armed robberies, possessed guns and all these things.

THE COURT: But there's nothing that prevents you from getting the cooperator to explain how many times he was with Mr. Hickson over the years, how many years they've had a relationship, without getting into the actual crimes. Now, tactically that's probably a good thing because you put Mr. Huff in an impossible situation. Because if he starts to cross-examine the wrong way, then the witness is going to say yeah, I knew because we did these crimes together.

MR. ASKIN: That's fine, your Honor, if you want us not to bring up the armed robbery portion of that cooperator who grew up with Mr. Hickson, if you want us to not bring that up until Mr. Huff brings it up, then that's fine, that's what we'll do, with respect, but I'm assuming that the Court accepts that these other, the individuals who are actual coconspirators in this case, in the charged case, who are familiar with fraud committed by Mr. Hickson because they actually participated in those crimes, we're saying that's

404(b), that --

THE COURT: I don't agree it's 404(b). I think you're going to run afoul of *Green*, and this is, the link in this is propensity. That's all it's being introduced for, it has nothing to do with any of the 404(b) subjects without being evidence of propensity. *Green* changed everything in the Circuit.

MR. ASKIN: Well, your Honor, I guess we'll have to do further research on that, because I thought that when a cooperator, when a cooperator's credibility as a coconspirator is in play, and the cooperator's saying I know -- I did these things with this guy, and by the way, I did all these other crimes with him in the past, and that's, you know, that's why he would trust me to do these crimes that are charged in the indictment, that we could admit that evidence to show the background. And I didn't think that that was affected by *Green*. I could be wrong.

THE COURT: I'm not saying there's no circumstance under which that evidence gets admitted. I'm just saying under 404(b) it doesn't get admitted by you eliciting for the first time from this coconspirator or informant or whoever it is, that I did armed robberies with this guy or I did frauds with this guy ten years ago. I mean, I don't know how Mr. Huff prevents it ultimately from coming out, but I don't think you're permitted to do it on your case in chief.

MR. ASKIN: Very well, your Honor, then we'll follow the Court's instruction and we'll wait for cross-examination. And if it comes up in cross-examination, we'll go to the Court and ask that it be permitted. We'll handle that it way.

01:55 THE COURT: So, I'm going to deny the motion, except as to the instances where these witnesses observed Mr. Hickson in possession of a firearm within the time period listed in the indictment for which he was specifically charged in Count, I guess, I don't know, One, Three, Two? I don't know.

01:55 MR. ASKIN: I believe it's Count Three.

Your Honor, I'm assuming that would also go to like the pistol whipping, where it's within the indicted -- the cooperator didn't see that but Mr. Hickson told him about it.

THE COURT: If Mr. Hickson admitted to possession of

01:55 a firearm within the period of the indictment, then yes.

MR. ASKIN: Absolutely. Yes, your Honor. I understand the Court's ruling.

THE COURT: All right.

MR. HUFF: Judge, may I just comment on that last --

01:55 THE COURT: Yes.

MR. HUFF: -- ruling? Judge, I would still object to the pistol whipping portion of that testimony. You know, I think it's unnecessary, I don't think it -- if the testimony is that my client had made an admission that he was in

01:56 possession of a firearm, what does it matter what he -- that

he then used that firearm in order to pistol whip someone.

THE COURT: Well, it depends on what the witness says your client said. This is supposed to be a statement allegedly made by your client.

01:56 MR. HUFF: Right.

THE COURT: If your client said I pistol whipped this guy with a gun, then that's what the testimony is. I can't tell him not to say that if that's what he believes to be true. But under -- the next analysis we do under 404(b) and

01:56 *Caldwell* is 403 and then the curative charge. I'm more than happy to tell the jury that this stuff about pistol whipping he's not charged with, and there's no crime being alleged about pistol whipping here, and it's only for the purpose of whether or not he was in possession of a firearm on a certain

01:56 date.

I mean, you can tell me before we get there, because I'm sure Mr. Askin is going to alert us when this is coming, what you want me to tell the jury at that time, if anything. And the balance under 403 is really an easy balance, it is of

01:57 course prejudicial but it goes to the heart of the charge of possession of a firearm by a convicted felon. So, it doesn't significantly outweigh the relevance to that issue.

MR. HUFF: Well, again, Judge, just so that the record is crystal clear, I'm objecting only to the statement

01:57 my -- if the jury believes it, the statement that my client

allegedly made regarding pistol whipping. I would argue to the Court that the Court could instruct the witness to leave out the portion of the admission that had to do with pistol whipping.

01:57 THE COURT: But if that's the only admission, if that's your client's only alleged statement regarding a gun, what do we leave out? What's left? If all this witness, and I don't know what this witness is going to say, but I guess Mr. Askin will tell us before it happens. If all this witness 01:57 is going to say is that Mr. Hickson came in and said he just pistol whipped this guy, well, what do I stop him from saying?

MR. HUFF: Again, I would respectfully request that the Court instruct the witness to leave out the pistol whipping part, and just say, for example, Mr. Hickson walked 01:58 into the room and indicated that, you know, he was previously in possession of a firearm. Again, the pistol whipping part does not prohibit the witness from saying that my client made an admission that he was in possession of the firearm. And instead, by getting rid of the pistol whipping part, which 01:58 again I would argue has really no probative value, the probative value is that my client was in possession of the firearm, not necessarily what he did with it, and then, you know, so you run that risk of unfair prejudice about my client allegedly pistol whipping, committing another crime, really, 01:58 with that firearm. And so you run the risk of -- the

probative value with regard to the pistol whipping itself is being outweighed by its prejudicial impact on the jury.

THE COURT: As I foresee this trial unfolding, and the evidence unfolding, that comment, assuming that the witness says that the defendant told me he pistol whipped this guy, is so minor a detail that it's going to be subsumed by all the other evidence you've got. So, when do you the balance under 403, I don't think it outweighs the relevance of it. And secondly, it's very difficult to know because we don't know what he's going to say, or she's going to say. You're asking me, in essence, to tell the witness to say something that didn't happen.

MR. ASKIN: Correct.

THE COURT: I can't do that. And I won't do that. So, let's find out before this witness testifies, Mr. Askin, we want to know exactly what this witness is going to say about this pistol whipping.

MR. ASKIN: Yes, your Honor. And I believe he testified about it in the Grand Jury. So I will turn that over prior, and we will look at exactly what he said in the interviews in the Grand Jury. And I'll interview him again with Special Agent Daly, it will be flushed out, and I will provide that to the Court and defense counsel before, of course before he testifies.

THE COURT: Okay. So we'll revisit this.

MR. HUFF: Thank you.

THE COURT: Depending on what the actual testimony is going to be.

MR. HUFF: Thank you, your Honor.

02:00 THE COURT: All right. So that's the *in limine* motion. That leaves us with to suppress the statements -- the search of the phone we're going to deny without prejudice because of the representation of the Government that they're not seeking to introduce any evidence from the phone at this 02:00 time. So, now we're down to the statements allegedly made by the defendant in Atlanta, Georgia right after he was arrested.

Now, Mr. Askin.

MR. ASKIN: Yes, your Honor.

THE COURT: If you have a copy of that transcript, if 02:00 you want to highlight for us exactly which of this many 65 page transcript contains a statement that you think is relevant and that you seek to use in this trial here in New Jersey, I would really appreciate it.

MR. ASKIN: Yes, your Honor. If you have the copy of 02:01 the transcript in front of you --

THE COURT: I do.

MR. ASKIN: -- I can do that.

Your Honor, on page -- I just want to make sure the Court and I are on the same page with what the Court's asking 02:01 me to do. I'm just going to give you -- I was just going to

give you the statements that I believe we want to use here on this indictment that were made in Atlanta, for purposes of either -- they're either, in our argument, incriminating admissions or false -- incriminating and they're false exculpatories. Okay. Those are the ones I want to give you, not anything that has to do with the voluntariness in the Miranda waiver. That will come later.

THE COURT: We're going to deal with that next.

MR. ASKIN: Right, exactly.

All right, so that being clarified, your Honor, on Page 21 -- it's a 65 page transcript.

THE COURT: Right.

MR. ASKIN: On page 21 the defendant says -- Special Agent Daly says to him: Look, I understand this sucks, all right. This is in the middle of the page. This isn't the first rodeo here, all right, so it is what it is at this point, okay?

And Mr. Hickson says: But, you know, I don't, I don't have no connects -- I don't have no connects and I don't get the guns, you know that. And he's referring to not having connections for guns, which we think is a false exculpatory.

MR. HUFF: I'm sorry, was that Page 21? I don't mean to interrupt.

THE COURT: 21, right in the middle. Starting right in the middle of 21. It says Daly, and the second line down

in the middle, look, I understand this sucks, all right. That conversation there.

MR. HUFF: If I can just have a second with the prosecutor, Judge.

02:02 THE COURT: You're going to tell me that you have a different page.

MR. HUFF: Well, that's 22.

MR. ASKIN: Oh, no, 21. It starts on 21 and it goes down here.

02:02 (Brief pause.)

MR. HUFF: Thank you. I found it. Just making sure, Judge.

MR. ASKIN: Then it continues where Mr. Hickson says, on Page 21 at the bottom, Judge, And where's Joshua Jackson. 02:03 Now, of course, Joshua Jackson, who pled guilty before this Court to this same conspiracy, is one of the indicted -- was an indicted coconspirator that the Government is alleging provided dozens and dozens, if not hundreds of guns to Mr. Hickson.

02:03 So, here's Mr. Hickson saying to the agent: And where's Joshua Jackson. She said, which is Sylvia Jackson, she said she hasn't heard from him in months, but I know he's locked.

Okay. And then he says, on the top of Page 22, he 02:03 says: That dude, she tells me she hasn't heard from him in

months. I haven't made no noise since Joshua locked up. You probably didn't hear nothing or know nothing about me. I haven't doing, I haven't did shit.

That section, there's another portion that relates to this, Judge, and I would point out that the Government has an audiotape from a prison recording. Mr. Jackson, and this is part of the crux of the case too, and the statute of limitations issue, Mr. Jackson, Joshua Jackson is charged in a State case in Burlington County with the possession of a firearm in a car. I forget exactly when that charge occurs, probably in '08 or '09? 2008, according to the agent. In 2010, Mr. Joshua Jackson surrenders to serve a sentence to the New Jersey -- either to the court or the New Jersey Department of Corrections, and starts serving that sentence in July of 2010.

There's a statement we're going to get to later where Mr. Hickson falsely claims he hasn't talked to Josh Jackson since that point. And in fact, in December of 2010 we have a recording obtained from the New Jersey Department of Corrections facility where Mr. Jackson was housed, where Mr. Hickson is involved in a three-way phone call with Sylvia Jackson, Mr. Jackson's wife, Joshua Jackson and Mr. Hickson, where Mr. Hickson is asking Mr. Jackson essentially to give him -- to put him in touch with Mr. Jackson's firearms connect or firearms supplier because he's got a deal to do and wants

to work out a deal. So, that's going to create more relevance there.

So, additionally, your Honor, on Page 23 of 65 -- I'm sorry, this starts at the bottom of Page 22 and goes onto page 23. The -- another indicted coconspirator that pled guilty to this conspiracy before this Court, your Honor, was Terrance Laboo. Terrance Laboo, by religion, is Muslim, and they refer to him as Mus sometimes, M-u-s, and also as Mujaddid. He says, Mr. Hickson says in the middle of Page 22 of 65: No, I heard that, man, that is crazy. I heard that Mujaddid, that's his name, that's his name, right, the Muslim guy. And then they talk about the fellow from Camden, and Hickson says yeah, the dope guy. And the reason he says the dope guy, of course "dope" is a reference to heroin. And Mr. Laboo was a long-term heroin dealer in the City of Camden. And his name Mujaddid, this is at the top of Page 23, Mr. Hickson, his Muslim name. And then Hickson says: Oh, I heard he was telling on everybody. Okay. Which of course is the consciousness of guilt thing that he's concerned about, and trying to find out from the agent whether one of his coconspirators, as he's heard, is telling on everyone, is cooperating.

He goes on to say on Page 23 that: That's what I heard in the Camden County jail, he was telling on everybody, so he probably mentioned my name and you probably think that I gave

him the gun. I never gave him shit. Which is of course in the Government's view a false exculpatory. That's him and Joshua, referring to Joshua Jackson, they had each other's numbers and they dealt with each other. I never made no money, none of that shit. I just the guy, matter of fact, I met another guy said, yo, Mujaddid was looking for guns and also, yo, I call him up and said yo, I got somebody you might want to meet, and they linked up. Dude, I was not even there. Which of course in many situations was false, but maybe when they met up he wasn't there. I wasn't there when they linked up, and they did business together, they did business together. Which is, in our view, Mr. Hickson admitted that he puts these two guys together, Joshua Jackson and Terrance Laboo, who do do drugs -- gun deals together both with Mr. Hickson and without Mr. Hickson during the time frame of the indictment.

And then Special Agent Daly asks how Mr. Hickson knows Mujaddid or Mus, again referring to Mr. Laboo at the bottom of Page 23. And Mr. Hickson describes how he knows him at the top of page 24. And in the middle of Page 24 we also want to introduce where Mr. Hickson says, after they're talking about Joshua Jackson and Terrance Laboo and this activity, Hickson says: Dude, I'm about to do fucking 20 years for being a fucking middle man, for being a fucking dick head. Okay. And that sentence, we also want to introduce that to show

consciousness of guilt, that he's aware of the New Jersey situation, he's aware of Terrance Laboo, he's aware of Terrance Laboo's cooperation, apparently, or he believes he's cooperating from what he's heard. And he's aware of Josh Jackson and he knows that Agent Daly's from New Jersey, and he says what he says.

We then go to Page 35 of 65, this is what I referred to earlier, Judge, on the bottom of Page 35 of 65, Mr. Hickson says the following. He says to Agent Daly: Dude, I haven't done this shit in, I haven't talked to Sylvia, I haven't talked to Josh since the day before he went to jail. Now, that is demonstrably false, another false exculpatory in the sense that we have a recording where he talks to him about the gun connection in December of 2010.

MR. HUFF: Can I get that page again? I'm sorry, I didn't hear you.

THE COURT: 35.

MR. HUFF: Thank you.

THE COURT: The bottom.

MR. ASKIN: He goes on to say: I don't sell no drugs, I don't sell no guns, I been chilling, working.

Then -- that's about it, Judge, from everything I've seen of the statement, with one caveat, which is on page 54 and 55. Mr. Hickson is asked about the guns that he's pictured with in the photos in Atlanta. The Government does

not, again, seek to put these statements in in its case in chief. He provides an explanation, he says that he possessed them, I think he sort of said he's like just kidding around, but they belonged to other people, and he provides an explanation of his possession of those firearms.

Now, just like the Government said that we're not seeking to admit those photos of him possessing firearms unless it's opened the door in sort of a rebuttal fashion, the same would be said of these statements. So we're not asking for those to be put in in our case in chief. But I'm assuming if those photos become sort of -- if there's an avenue to admit those photos later because of the door being opened in rebuttal, then we may also want to get Mr. Hickson's statements in about that. But I would say Pages 21 to 35, that section of the transcript, the ones I pointed out to you on those pages, is what the Government seeks to admit from the post-arrest interview in Atlanta on April 29, 2014.

THE COURT: Okay.

MR. ASKIN: Thank you, your Honor.

THE COURT: Mr. Huff, have you got all those references now?

MR. HUFF: Yes, Judge. And if I just could state for the record, Judge, I know that the Court has decided the double jeopardy issue, but what I want to point out was a couple of things. First, with regard to the 404(b) motion

that the Court denied, as far as my client dealing with the same people in this conspiracy that we're here on in prior instances, such as in fraud and other dealings...

THE COURT: I didn't say you couldn't elicit from them that they've known him for years and they've been with him for many years, I just said that they can't talk about specific criminal acts.

MR. HUFF: Correct.

THE COURT: Okay?

MR. HUFF: Yes. So, I want to point out, Judge, that with regard to the government's own 404(b) motion, and even the statement that we've been going over where my client is referencing, you know, these individuals from New Jersey including Terrance Laboo, Joshua Jackson and others, that obviously he would not be having that conversation with these agents in Georgia if these two situations were not connected. We connect the case in New Jersey and the case in Atlanta, obviously again we would argue this was really all one case and not two separate incidences, one taking place in New Jersey, one taking place in Atlanta, Georgia. And if it was not but for the New Jersey ATF involvement with Sylvia Jackson and having her contact my client, obviously my client would have never been arrested in Atlanta, Georgia.

So again, it's kind of interesting that, you know, the Government's own evidence that they want to seek to introduce

in the New Jersey case which came from Atlanta, essentially wanted to do the same thing by introducing 404(b) evidence of what took place in New Jersey into the Atlanta case. So again, my client wants to just reiterate his double jeopardy
02:13 motion and also indicate to the Court that he would like to seek an appeal of that decision.

THE COURT: What decision?

MR. HUFF: The denial of the double jeopardy.

THE COURT: Oh. He has a right to do whatever he
02:13 wants to do. But I will note in response to your comments that apparently it's your client who made the decision to proceed in two different jurisdictions. Efforts were made to combine all these acts into one charge in Atlanta, or I guess New Jersey, but he declined, which is his right.

02:13 Anyway, so, let's talk about then voluntariness in Miranda as to these statements, all right? Are you prepared to proceed?

MR. ASKIN: Yes, your Honor.

THE COURT: Are you going to call a witness?

02:14 MR. ASKIN: Yes, your Honor. The Government would call Special Agent Joseph Daly.

THE COURT: Mr. Daly, raise your right hand.

(**JOSEPH DALY**, HAVING BEEN DULY SWORN AS A WITNESS, TESTIFIED AS FOLLOWS:)

02:14 THE COURT: State your full name.

THE WITNESS: Joseph Daly.
THE COURT: D-a-l-y, correct?
THE WITNESS: Yes, sir.
THE COURT: Have a seat, Mr. Daly, and pull that microphone towards you a little bit so we can hear you.
(DIRECT EXAMINATION OF SPECIAL AGENT DALY BY MR. ASKIN:)
Q. Special Agent Daly, good afternoon.
A. Good afternoon.
Q. Special Agent Daly, by whom are you employed?
A. The Bureau of Alcohol, Tobacco, Firearms and Explosives, also known as ATF.
Q. Okay. And how long have you been a Special Agent with ATF?
A. Approximately eight years.
Q. Okay. And what office are you currently assigned to?
A. Camden Field Office.
Q. How long have you been assigned to the Camden Field Office?
A. Eight years I've been with ATF.
Q. Okay. Are you involved in an investigation of Fr'Neil Hickson and others including Terrance Laboo and Joshua Jackson with respect to the trafficking of firearms into New Jersey?
A. Yes.
Q. Okay. And were you the agent first assigned to this investigation?

A. No. I was not, I was assisting the former case agent, Joseph Ruta.
Q. Okay. Do you remember approximately when you became involved in the investigation?
02:15 A. Sort of from the beginning, in limited involvement assisting with Agent Ruta. And then right around 2012 I became the case agent.
Q. All right. With respect to, did you become involved with a, what I'll call a gun trafficking buy-bust reversal that
02:15 occurred in Atlanta, Georgia with respect to this defendant, Fr'Neil Hickson?
A. Yes, I did.
Q. And do you see Mr. Hickson present in the courtroom?
A. Yes, I do.
02:16 Q. And could identify where he is?
A. He's sitting at the defense table.
MR. ASKIN: Indicating for the record the witness identified the defendant Fr'Neil Hickson seated at the bar of the Court with his attorney.
02:16 THE COURT: We're in no hurry here.
MR. ASKIN: I apologize, sir.
THE COURT: How are you feeling, all right?
MR. ASKIN: I'm feeling fine, your Honor. I appreciate the Court's concern.
02:16 THE COURT: You can sit if you want. I understand

you have some hip issues.

MR. ASKIN: Yes. Thank you, your Honor.

BY MR. ASKIN:

Q. Now, Agent, was there in fact, was Mr. Hickson actually arrested in Atlanta, Georgia with respect to that buy-bust operation?

A. Yes, he was.

Q. Okay. And could you tell us what date that was, if you recall?

A. It was April 29, 2014.

Q. And could you tell us specifically where the -- is it fair to say he was meeting with a confidential informant prior to his arrest?

A. Yes, he was.

Q. Okay. And where was that meeting, and where was the arrest conducted?

A. So the meeting was at a Comfort Suites in Georgia. And they were in a hotel room conducting a firearms transaction between the confidential informant and Mr. Hickson.

Q. Okay. Now, were you involved in the planning of the operation that led to Mr. Hickson's arrest in the Northern District of Georgia on April 29th of 2014?

A. Yes.

Q. Okay. And was there sort of an operation plan created, a plan created for the security of the agents and so that the

takedown or arrest would occur in a proper and safe manner?
A. Yes. There's always an operational plan when we do something on the street.
Q. Okay. And could you describe where you were and who you were with prior to the defendant's arrest while this meeting between the confidential informant and Mr. Hickson was going on?
A. So we ended up, ATF ended up renting two hotel rooms that day with an adjoining door. So we had our confidential source or confidential informant selling firearms to Mr. Hickson. And for public safety purposes, we ended up taking the adjoining room through the door, and we had our arrest team or agents in there monitoring the audio/video recording along with the arrest team.
Q. Okay. I just want to clarify something for the record. So there was -- was there a videotape recording going on during the meeting of this cooperating witness or confidential informant and Mr. Hickson that day?
A. Yes, there was.
Q. Okay. And that videotape equipment was, you're not describing exactly, but that was inside the hotel room where Mr. Hickson was meeting with the confidential informant?
A. Yes, we had it in a secreted item.
Q. Okay.
A. We also had a separate audio for backup.

Q. Okay. And there was a backup audio also in the room?
A. Yes, sir.
Q. Were you able to hear or monitor those recordings or one of those recordings from the adjacent hotel room or motel room where you were?
A. Yes, we were able to monitor it live during the transaction.
Q. Okay. Gotcha. And at some point did you come to -- into the room where Mr. Hickson was present as part of an arrest team?
A. Yes, at the conclusion of the transaction, Mr. Hickson decided to take possession of firearms inside a rolling suitcase. Before he left the hotel room they were making some noise, hitting each other, making a loud banging noise, so they decided to stuff a pillow inside there to muffle the sounds of the firearms. As he proceeded to exit the room, the agents conducted our arrest.
Q. Okay. And were you part of the arrest team that came into the room?
A. Yeah, I wasn't the first one or second one in, I was maybe three or four.
Q. Okay. And in fact, is this -- is this arrest, at least the initial part of the arrest where the agents entered the room, is that captured on the videotape of the meeting between Mr. Hickson and at the end of the videotape --

A. Yes, it is.
Q. -- of the meeting between Mr. Hickson and the confidential informant?
A. Yes, it is.
02:20 Q. Okay. And the agents, it's fair to say, were armed with firearms?
A. Yes, we were.
Q. And did they point the firearm at Mr. Hickson and order him to get on the floor?
02:20 A. Yes, they did.
Q. And is that on the videotape?
A. Yes, it is.
Q. Okay. After Mr. Hickson was arrested -- well, let me back up, I'm sorry. Strike that.
02:20 Do you recall, or from your notes, approximately what time was the arrest of Mr. Hickson that day, do you recall?
A. Yes. After reviewing my notes, the arrest was effected around 2:05 in the p.m.
Q. Okay. So 2:05 p.m. in the afternoon, correct?
02:21 A. Yeah, approximately.
Q. Okay. And after Mr. Hickson was arrested -- well, let me ask this first.
Were there several agents other than yourself involved in the arrest team?
02:21 A. Yes, absolutely.

Q. Okay. After Mr. Hickson was arrested, where did those -- did other agents remain in the hotel room with Mr. Hickson, or did some of them leave?
A. So after the arrest was effected, Mr. Hickson was put in
02:21 custody, he had handcuffs on, and then most of the agents exited the room. We always left an agent in there because he was in the custody of the ATF, arrest was effected. So, for the most part it was either one or two agents in the room, but we didn't have a whole gang of agents in there.
02:21 Q. Okay. And were -- you had a handgun at the time of this arrest, correct?
A. Yes, I did.
Q. Okay. Did you start speaking to Mr. Hickson at some point after his arrest?
02:22 A. Yes, I did.
Q. Okay. Was Mr. Hickson checked for weapons at that time?
A. Yes, there was a search incident to arrest.
Q. To assure that he didn't have weapons on his person that could harm the agents, correct?
02:22 A. Correct.
Q. Okay. And after that, at some point after that did you holster your weapon?
A. Yes.
Q. Okay. Did the other agents that were present holster
02:22 their weapons or remove their weapons?

A. Yes.
Q. Okay. Were there long guns, rifles or semiautomatic machine guns or those type of weapons present initially when he was arrested, as part of the arrest team?
02:22 A. Yes. There was an agent that had an M4 rifle.
Q. Okay. And that's a semiautomatic/full automatic rifle, correct?
A. Yeah, agents don't, we're not -- agents in the field do not have fully auto, but it's a semiautomatic rifle.
02:22 Q. Okay. Was that weapon removed from the room with that agent prior to Mr. Hickson's interview?
A. Yes.
Q. Okay. Who were the agents that were present, essentially throughout, for the better part of the interview, throughout
02:23 the interview?
A. Myself and Special Agent Gabriel Brooks.
Q. And that's Gabriel, G-a-b-r-i-e-l?
A. Yes.
Q. Okay. And Brooks, common spelling?
02:23 A. Yes. B-r-o-o-k-s.
Q. And Special Agent Brooks is assigned to, at the time of this incident he was assigned to what office?
A. He was assigned to the Atlanta office, Atlanta Field Division.
02:23 Q. Okay. And I'm gong to ask you a question, then we'll

back up to the details.

Was Mr. Hickson interviewed post or after his arrest that day in the hotel room?

A. Yes, he was.

02:23 Q. By yourself, primarily by yourself and Special Agent Brooks?

A. Yes, we were the primary interviewers.

Q. Okay. Was a recording made of at least most of the interview?

02:23 A. Yes. The interview, at that time it was not DOJ policy or ATF policy to audio/video or audio record our custodial interviews. So we began the interview first with Miranda, and then we had Mr. Hickson, he signed Miranda. Then shortly after that, maybe about 12 or 15 minutes, in around there,

02:24 Agent Brooks brought in an audio recorder.

Q. Okay.

MR. ASKIN: Your Honor, if I might approach the witness, I have an exhibit to show the witness.

THE COURT: Sure. Why don't you show it to Mr. Huff

02:24 first.

MR. ASKIN: I will. Yes, your Honor. It's a Miranda waiver, your Honor, and Mr. Huff has a prior copy of it, but I just showed it to him.

I'm going to mark this Government's Exhibit G-1 on the

02:24 motion, your Honor, with today's date.

THE COURT: Okay.

(GOVERNMENT EXHIBIT G-1 WAS MARKED FOR IDENTIFICATION)

BY MR. ASKIN:

Q. Special Agent Daly, take a look at that document the
02:24 Government's marked as Government's Exhibit G-1 with today's date, 2/15/2017. Do you recognize that document?

A. Yes, I do.

Q. Okay. And at the bottom of the document does it bear your signature?

02:25 A. Yes, it does.

Q. Is there a date and time on the document at the bottom?

A. Yes, it's dated April 29th, 2014. Time is approximately 2:12 in the p.m.

MR. ASKIN: Your Honor, I have an extra copy of the
02:25 document if the Court wants me to...

THE COURT: Please.

MR. ASKIN: Yes, your Honor.

THE COURT: Thank you.

BY MR. ASKIN:

02:25 Q. Okay. And could you tell us what this document is?

A. This is a Bureau of Alcohol, Tobacco, Firearms and Explosives advice of rights and waiver form. Also known as a Miranda form.

Q. Okay. And on the document, you can see that the Miranda
02:25 rights are set forth therein, typed onto the document,

statement of rights, correct?
A. Yes, sir.
Q. And also there's a paragraph that's indicated as waiver below that, correct?
02:25 A. Yes.
Q. Now, does it bear someone's signature above your signature, the document?
A. Yes.
Q. And were you present when this document was signed?
02:25 A. Yes, I was.
Q. And who signed the document?
A. Fr'Neil Hickson.
Q. The defendant who's here in court today?
A. Yes, sir.
02:26 Q. Okay. And is that his signature on the top line there, signature?
A. Yes.
Q. Okay. And is his printed name also on the document, Fr'Neil Hickson, below his signature; is that right?
02:26 A. Yes, it is.
Q. Okay. And the time you have on the document is 2:12 p.m., correct?
A. Yes, it is.
Q. Now, you previously testified that the arrest of
02:26 Mr. Hickson occurred in that same hotel room approximately

2:05, approximately; is that right?
A. Yes.
Q. So is it fair to say that -- you're not going to give me exact seconds or anything, but approximately seven minutes after he was arrested in the same hotel room, he signs the Miranda waiver; is that right?
A. Yes. Agent Brooks, I have him, when I was researching my notes, Agent Brooks read him Miranda approximately 2:08 p.m., and then I had Mr. Hickson read the Miranda form to understand it, asked him if he could, you know, read and write the English language, and then he reviewed it, and then if he wanted to sign it he was able to. So, you know, 2:08 he was read Miranda, and then he reviewed it, and it was signed right around 2:12 p.m.
Q. Okay. Did you, when you asked him if he understood English, did he indicate anything with respect to that?
A. He said he read it, he was reading it, so I naturally assumed that he could.
Q. Right. And did he read it in your presence?
A. Yes, he did.
Q. Did he have any questions for you or Special Agent Brooks about the Miranda warnings?
A. No.
Q. Did he ever indicate to you that he didn't understand?
A. No.

Q. Did he -- with respect to Mr. Hickson's demeanor, did he appear coherent to you, like he understood what was going on?
A. Yes, he knew what was going on.
Q. Okay. Were you able, when conversing with him, were you
02:27 able to understand his answers to your questions?
A. Yes.
Q. Did they appear to -- I'm not asking you whether you believed them to be truthful or untruthful, but did they appear to be coherent responses to your questions in some
02:28 respect?
A. Yes.
Q. Was Mr. Hickson threatened in any way to get him to waive his Miranda right to have counsel present during questioning?
A. Absolutely not.
02:28 Q. Okay. Was he promised anything in particular with respect to waiving his Miranda rights?
A. No.
Q. Okay. Did Mr. Hickson ask you or make any statements alluding to cooperation with ATF that day?
02:28 A. He said he would do anything he could.
Q. And what was he looking for?
A. He was looking for not to be arrested that day by ATF.
Q. Okay. Did his statements appear to show a concern for his legal situation?
02:28 A. Yes, absolutely.

Q. Okay. Was he promised any specific results; for example, that he wouldn't be arrested that day or that he would get a specific sentence, any specific result if he signed the Miranda warning, waived his right to counsel and made a
02:29 statement?
A. No. I explained to him how the federal system works, and that we cannot give him any promises or guarantees, but we would let, you know, the AUSA know that Mr. Hickson is cooperating and this is what he has done thus far. And then
02:29 that would then be information passed on to the judge.
Q. To the best of your recollection, was some of that discussion that you just talked about captured on the audio recording?
A. Yes, it was.
02:29 Q. Now, with respect to the length of the interview, the -- let's talk about this recording for a minute. If the arrest occurred at 2:05 you've approximated, the reading of the Miranda warnings began around 2:08, if I understand your testimony, and then Mr. Hickson signed the document indicating
02:30 he was willing to waive his Miranda rights at 2:12, and that wasn't captured, that was before the audiotape, approximately -- can you give the Court an idea of approximately when the audiotape began and how long the audiotape was?
02:30 A. I believe the audiotape is approximately 50 minutes long.

And I believe the interview might have started maybe about ten or 15 minutes before that. So in total, the interview of Mr. Hickson, it was a little over an hour.

Q. Okay. And was there -- did in fact yourself or another agent bring an audio recorder into the room at some point as we mentioned?

A. Yes.

Q. And was an audio recording, an audible audio recording of the statement from that point forward successfully captured on this audiotape?

A. Yes, it was.

Q. Did you put the original recording into ATF evidence and preserve it for purposes of the court proceedings?

A. I did not, but another agent did.

Q. I'm sorry, another agent did that, to the best of your knowledge?

A. Yes.

Q. Did you get a copy of that and make copies for the purposes of providing them to myself as the U.S. Attorney and to the defense in discovery?

A. Yes, I did.

Q. Okay.

MR. ASKIN: I'm going to show the witness, your Honor, if I may, Government's Exhibit which I'll mark G-2, which is actually the recording.

THE COURT: Sure.

(GOVERNMENT EXHIBIT G-2 WAS MARKED FOR IDENTIFICATION)

BY MR. ASKIN:

Q. Special Agent Daly, I'm showing you what's marked for identification purposes as Government's G-2 with today's date, February 15, 2017. This is one CD or DVD, correct?

A. Yes, sir.

Q. And it's marked on the front "Hickson arrest interview audio;" is that correct?

A. Yes.

Q. Okay. And did you provide this to myself or to the members of the U.S. Attorney's Office for purposes of this court case?

A. Yes, I did.

Q. And is this in fact, to the best of your knowledge, a duplicate copy of the audio recording that was placed in evidence by other ATF agents?

A. Yes, it is.

Q. And that's the interview of Mr. Hickson on April 29, 2014 that took place approximately sometime a little after 2:00 p.m.; is that right?

A. Yes, sir.

Q. Okay. Did you also create -- I'm sorry. The Court, in the earlier arguments today there was referenced and we were all referring to a transcript that was 65 pages long of the

audio recording; is that right?
A. Yes.
Q. And could you tell us how that transcript was prepared, and who prepared it?
02:32 A. We had a transcription service that ATF hires, that I sent the audio recording out to them. They produced the transcripts, they sent them back to me, I reviewed them, I then sent some corrections back to them. And that's how the transcript was produced.
02:33 Q. Okay. And did you in fact, if I understand your testimony, did you in fact participate in creating or editing, final edits to that transcription to make the final transcript?
A. Yes, I did.
02:33 Q. Do you believe the transcript to accurately reflect what's on the tape in terms of your questions, Special Agent Brooks' questions, and the answers of Mr. Hickson?
A. Yes.
Q. During the interview, with respect to voluntariness, was
02:33 Mr. Hickson, again, was he threatened during the interview with any kind of physical or other abuse?
A. No.
Q. Okay. Was he promised any specific result on the case if he continued to make a statement?
02:34 A. No. We cannot do that.

Q. Okay. Did Mr. Hickson appear to be coherent and responsive to your questions throughout the interview?
A. Yes.
Q. Okay. Now, during the interview, do you recall that there were multiple instances where Mr. Hickson asked you or other agents, Special Agent Brooks, if he could smoke, or for a light for a cigarette; do you recall that?
A. Yes. He asked several times.
Q. And you've reviewed the interview in preparation for today's hearing; is that correct?
A. Yes, I have.
Q. And you recall that several times throughout the interview captured on the audiotape; is that right?
A. Yes, it's approximately about 15 minutes into the audiotape he's asking for a cigarette.
Q. At some point -- well, did you or Special Agent Brooks provide Mr. Hickson, who was in custody, with a light initially when he asked for one so he could smoke a cigarette in that room?
A. Not right away, because the rooms are considered non-smoking rooms, and if an individual smokes in a room, you have to pay a fee, a cleaning fee for an individual if they smoke in the room.
Q. Okay. And was that the reason for this reluctance to, or one of the reasons for the reluctance to provide Mr. Hickson

with a light so he could smoke in the non-smoking room initially?
A. Yes.
Q. Okay. At some point after that, when you initially told him that, Mr. Hickson that you weren't going to give him a light because it was a non-smoking room, did he continue to persist in asking for a light and asking to smoke a cigarette?
A. Yes, he did.
Q. Okay. At some point was he provided with a light to smoke a cigarette?
A. Yes, we had agents go and try and find him a light, a match, something to have a cigarette with.
Q. By the way, Special Agent Daly, are you a smoker?
A. No, I'm not.
Q. Did you have cigarettes on you at the time?
A. No, I did not.
Q. Did you have a light on you at the time?
A. No.
Q. To the best of your knowledge, was Special Agent Brooks a smoker?
A. Not to my knowledge.
Q. Okay. Did he appear to have a light on him at the time that Mr. Hickson was asking for one?
A. He did not.
Q. Okay. So, you sent other agents at some point to get a

light?
A. Yes, there was also another instance an agent entered the room, was asking how we were doing, and Mr. Hickson asked him for a light. And he says I don't smoke, can't smoke in here.
02:36 He not only asked us, he asked another agent that was not involved in the interview.
Q. Okay. Can you approximate how long into the interview, just roughly, I'm not asking you for an exact number, but roughly how many minutes into the interview you would
02:36 approximate Mr. Hickson was provided with a light?
A. It could have been approximately -- he received a light maybe halfway through in, 30 minutes.
Q. Okay. And when he received the light, was he permitted to smoke right away?
02:37 A. Yes.
Q. And did he light up a cigarette and smoke in the room?
A. Absolutely.
Q. And in fact did that cause you and the other agents to have to pay a separate fee for violating the non-smoking
02:37 policy?
A. Yes, we did.
Q. Do you recall Mr. Hickson asking for any other items; food, water, assistance in any way other than to smoke?
A. No, he was -- if he asked for water, we would have gotten
02:37 him water, if he asked to go to the bathroom, we would have

brought him to the bathroom.
Q. Okay. And other than possibly an agent coming in or out during the interview, was -- the majority of the interview was just Special Agent Brooks and yourself questioning
02:37 Mr. Hickson?
A. Yes.
Q. By the way, just so the record is clear, was the confidential informant or any other civilians in the room during this interview?
02:38 A. No. She was removed.
Q. Okay. So essentially, other than an agent maybe coming in and out, it was just yourself, Special Agent Brooks and Mr. Hickson in this motel room by yourselves; is that right?
A. Yes.
02:38 MR. ASKIN: Your Honor, at this point on the motion to suppress the statements in terms of voluntariness and Miranda waiver, I don't have any other questions on direct examination.
THE COURT: Mr. Huff?
02:38 MR. HUFF: Thank you.
(CROSS-EXAMINATION OF SPECIAL AGENT DALY BY MR. HUFF:)
Q. Good afternoon, Special Agent.
A. Good afternoon.
Q. So, Special Agent, you went down to Atlanta, Georgia
02:38 prior to this transaction, obviously, on 4/29/14; is that

correct?
A. Yes, that's correct.
Q. And it was the ATF who actually rented the two hotel rooms where this transaction was going to take place; is that
02:38 correct?
A. That is correct.
Q. And you had been in touch with Ms. Sylvia Jackson, obviously, prior to April 29, 2014; is that correct?
A. Yes, that's correct.
02:39 Q. Approximately how much time prior to April 29, 2014 had you been in contact with Ms. Sylvia Jackson? Was it a year, six months, two years?
A. Contact before the operation took place?
Q. Yes.
02:39 A. Before or -- multiple times, which --
Q. Prior to April 29, 2014.
A. I spoke to her several times, not specifically for this operation, this didn't really, this information didn't transpire -- approximately two to three weeks before, I would
02:39 say about two weeks before the reversal operation.
Q. Okay. And that two to three weeks prior to April 29, 2014, that's when Ms. Jackson contacted Mr. Hickson through Facebook; is that correct?
A. Yes.
02:39 Q. All right. And that's really, that's what started the

buy-bust reversal in Georgia was that initial Facebook contact; is that correct?
A. Yes. She was previously instructed by myself to attempt to contact Mr. Hickson.
02:40 Q. And for what purpose?
A. Just to see if he was still trafficking firearms.
Q. Okay. And was it through the ATF that instruction was given to Ms. Jackson to offer firearms for sale to Mr. Hickson?
02:40 A. Yes.
Q. Okay. And those firearms were supplied by ATF; is that correct?
A. Yes, they're known as prop firearms.
Q. Approximately 12 firearms, correct?
02:40 A. Yes, sir.
Q. And the story that was related to Ms. Jackson to relate to Mr. Hickson was that those firearms were obtained in Ohio; is that correct?
A. Yes.
02:40 Q. And those would have been through the same sources, allegedly, that guns were being trafficked in New Jersey, the same Ohio sources, correct?
A. I'm not sure it would be the same sources, but that she had some firearms.
02:40 Q. And that was also, her husband, Joshua Jackson, was

dealing in firearms; is that correct?
A. Yes, he was.
Q. And he was obtaining them in Ohio; is that correct?
A. Yes, he was.
02:41 Q. And she was obtaining them in Ohio as well, correct?
A. I'm not sure if she was obtaining firearms, but she knew what was going on.
Q. With Joshua Jackson obtaining firearms in Ohio, correct?
A. Yes.
02:41 Q. Okay. And did she make a representation to Mr. Hickson that those guns were from her husband, Joshua Jackson, who had left them in her basement prior to him going to jail?
A. Yes, that was part of her story.
Q. Okay. So the story is concocted, and eventually you go
02:41 down there and a camera is inserted into the hotel room; is that correct?
A. Yes, an audio/video recording.
Q. And you were able to watch the audio/video from the adjacent room; is that correct?
02:41 A. Yes, that's correct.
Q. Okay. And so you would agree that at some point in time the video shows that Mr. Hickson is putting firearms into a suitcase; is that correct?
A. Yes.
02:42 Q. And that at some point in time he begins to move the

suitcase; is that accurate?
A. Yes, he takes possession of it.
Q. And then a pillow was placed inside this suitcase as well; is that correct?
02:42 A. Yes.
Q. All right. And prior to Mr. Hickson exiting the room, agents come in from the adjacent room; is that correct?
A. Yes.
Q. And approximately how many agents entered the room?
02:42 A. Four or five.
Q. Okay. And obviously they were wearing their ATF insignia, correct?
A. Yes, sir.
Q. And they were carrying firearms; is that correct?
02:42 A. Yes, sir.
Q. And their firearms were being brandished at that time; is that correct?
A. Yes.
Q. Okay. Now, after ATF comes in the room, that's when the
02:42 video ends; is that correct?
A. Shortly after we effected arrest, yes.
Q. All right. And certainly the video ended prior to the Miranda warnings being recorded; is that correct?
A. Yes.
02:43 Q. All right. But as we sit here today, there's a

possibility that there was a backup audio recording made of the entire incident; is that correct?

A. Yes. There's a backup audio.

Q. All right. And you have not had a chance to review that; is that accurate?

A. I reviewed it two years ago, but I can't recall exactly what is on there the last few minutes.

Q. Okay. You can't recall whether or not the reading of the Miranda warnings appears on that DVD that was brought to the Court's attention today; is that correct?

A. Not without reviewing it.

Q. Okay. So, after you entered the room, you said there was a period of time that went by before entering the room and reading the Miranda warning; is that correct?

A. Yes, there's a few minutes.

Q. Okay. And by a few, how many do you mean?

A. According to my notes, arrest was effected at 2:05 p.m. and then the Miranda was read to him approximately 2:08 p.m., and then he signed the Miranda at approximately 2:12 p.m.

Q. Okay. All right, so we're talking about a three-minute gap between entering the room and the Miranda warnings being read to Mr. Hickson; is that accurate?

A. Yes.

Q. All right. Now, during the -- after the Miranda -- were you the one that presented Mr. Hickson with the Miranda

waiver, or was that another agent?
A. I believe I had the Miranda form.
Q. Were you also the one that read the Miranda to the defendant?
02:44 A. No, Agent Brooks read the Miranda, and then I provided the sheet to Mr. Hickson.
Q. Okay. And you were the one that actually signed it; is that correct?
A. Yes, I was the witness.
02:44 Q. All right. So, you would agree that during -- obviously Mr. Hickson was not expecting ATF to come through the door; is that correct?
A. I don't believe he was, no.
Q. So you would agree he was scared, excited; is that
02:45 accurate?
MR. ASKIN: Objection to the -- Mr. Hickson's state of mind, asking this witness to say whether he was scared or not. I don't know if he can testify to that.
THE COURT: Well, he might be able to from his
02:45 observations.
MR. ASKIN: That's fine, your Honor.
THE COURT: He can or he can't, we'll hear what he has to say.
MR. ASKIN: That's fine.
02:45 THE COURT: Describe how he was acting and behaving.

THE WITNESS: He was surprised that we were there.
BY MR. HUFF:
Q. Okay. And he was, he was -- he repeatedly during your questioning asked you about how much time he was looking at as
02:45 a result of this buy-bust transaction, correct?
A. He asked a few times, yes.
Q. He mentioned 10 years, 20 years, 30 years; is that correct?
A. Yes.
02:45 Q. And at some point in time, in response to agents laughing, he said, you know, this isn't funny, my life is over; is that correct?
A. That was laughter due to the fact that he was asking for a cigarette, he asked an individual that entered the room and
02:46 the individual responded to him sort of in a sarcastic manner and some laughter developed.
Q. And again, Mr. Hickson's response to that was, you know, this isn't funny, essentially my life is over here, this is a serious matter that he's facing at this point, correct?
02:46 A. Yes, but he never indicated to end the interview at that moment.
Q. Okay. And again, during the conversation that you had with him, Mr. Hickson in addition to asking about how much time he was facing, he was also asking you and the other agent
02:46 about possibly cooperating; is that correct?

A. Yes. And we were trying to figure out what he could do at that moment.
Q. And he was talking about cooperating against Chinese individuals in Atlanta, Georgia who owned two liquor stores
02:46 that sold marijuana and that also may be interested in buying firearms; is that correct?
A. Yes, he said they were interested in purchasing firearms.
Q. Okay. And he also talked to you about owners of a strip club that was again in the Atlanta, Georgia area that also may
02:46 have some interest in buying firearms; is that correct?
A. He said he knew a lot of crime that took place at the strip club in Georgia.
Q. Okay. And Officer Daly, or Agent Daly, you have, I believe it's G-1, the transcript, in front of you; is that
02:47 correct?
A. Yes, I do.
Q. All right. So, you had mentioned that Mr. Hickson repeatedly asked -- he had a cigarette, he was asking for a light of that cigarette; is that correct?
02:47 A. Yes.
Q. All right. If you could just look and Page 2 of G-1.
A. Okay.
Q. All right. About --
MR. ASKIN: Your Honor, if I might speak with counsel
02:47 one second?

(The Assistant U.S. Attorney conferred with defense counsel.)

MR. HUFF: Judge, I may have misspoke. I believe the audio was, excuse me, G-1 was the Miranda, G-2 was the audio, and the transcript of the audio I would just, by agreement, have marked as G-3.

THE COURT: Okay.

MR. HUFF: Thank you.

(GOVERNMENT EXHIBIT G-3 WAS MARKED FOR IDENTIFICATION)

BY MR. HUFF:

Q. So, I want to refer your attention to G-3. So obviously that's a transcript of the statement that Mr. Hickson made to you after his arrest; is that accurate?

A. Yes.

Q. All right. So again, just going down on Page 2 about a third of the way down, there's an indication from Mr. Hickson, may I please get a light, man. You see that there?

A. Yes, I do.

Q. And Agent Brooks indicated, I ain't got no light; is that correct?

A. Yes.

Q. And then a little bit further down Agent Brooks indicates, you can't smoke in here, correct?

A. Yes.

Q. So this is essentially shortly after the recording of the

statement takes place, Mr. Hickson is asking for a light of a cigarette; is that correct?
A. Yes.
Q. Okay. Turn to Page 7, about a little bit less than halfway down, Mr. Hickson in response to something Officer Brooks said, Officer Brooks says it's a general question, Hickson indicates, no, he's trying to fuck with me, man. Do you see that?
A. Yes, I do.
Q. And again if you come down just one more it says Mr. Hickson says, you all, you all already got me, can you please not fuck with me; is that correct?
A. Yes, he was being deceptive to our questions.
Q. So Mr. Hickson indicated that he was a carpenter, and Agent Brooks asks -- tests that by asking him what a miter saw was, correct?
A. Yes.
Q. And then they went back and forth as to, you know, his knowledge of what a miter saw was, correct?
A. Yes, he's trying to see if he's going to speak some truthful answers.
Q. Right. And in response to that, in response to being challenged about whether or not he was a carpenter or not, Mr. Hickson requested that you and the other agents not, quote/unquote, fuck with him; is that correct?

A. Yes.
Q. Okay. Page 11, five rows down. Again Mr. Hickson indicates, I'm, I'm help, I'll help but is this going to help me any bit, can I please smoke this cigarette, dude. Correct?
02:50 A. Yes, he asked that.
Q. And again, Mr. Brooks: It all depends with, it all depends on --
Hickson: Can I please smoke this cigarette?
Brooks: This is a non-smoking room.
02:50 They said, they said I do this all the time, bro.
Oh, you buy guns all the time?
No, I get rooms and I smoke if they say not smoking.
So, again, here you have a situation where Mr. Hickson is pleading to smoke a cigarette, correct?
02:51 A. He's asking to smoking a cigarette.
Q. And Agent Brooks says it all depends with, it all depends on, you see where he says that as well, correct?
A. Yes, then he was cut off again.
Q. So, you know from being there the context of the
02:51 conversation, Agent Brooks was basically saying, you can smoke a cigarette, but it depends on whether or not you're going to be -- whether you're going to cooperate with us or not, right?
MR. ASKIN: Objection. The line that Hickson says is, I'll help, but is this going to help me any bit, which is
02:51 his first question to the agent. Then he says, can I please

smoke this cigarette, dude. And then the transcript says the voices all overlap, and Brooks says, it all depends with, it all depends on, which the Government believes is a reference to is this going to help me.

02:51 In other words, Mr. Hickson's saying if I cooperate, is this going to help me, and Brooks says it all depends with, it all depends on, and what counsel is suggesting is to, for this Agent to answer what was in Special Agent Brooks' head at the time, which -- and what he was referencing, when in fact it's 02:52 very unclear. In fact, the more logical conclusion is Mr. Hickson is asking is there -- is this cooperation going to help me, and Brooks says it all depends.

THE COURT: Thank you. This witness is perfectly capable of answering that question, particularly now that 02:52 you've educated him.

You want to continue, please.

BY MR. HUFF:

Q. So again, during the context -- you were there for the entire interview, correct?

02:52 A. I was, I was being interrupted by some questions, so I did leave for a brief moment here and there and then came back into the interview.

Q. All right. Well, again, so the particular place that I'm talking about, Mr. Hickson is offering to help or cooperate, 02:52 correct?

A. He's saying, you know, I'll help any way possible.
Q. All right. And then after he says that he would help, then he asked to smoke the cigarette, correct?
A. He asked again for a cigarette, yes.
02:53 Q. And Brooks responds, it all depends with, it all depends on, and Mr. Hickson again asks him, can I please smoke a cigarette, correct?
A. Well, it was a back and forth discussion, so I'm not sure if Agent Brooks is answering him about the cooperation or the
02:53 cigarette at that time, so...
Q. Okay. Again, Page 12, the next page and about 60 percent of the way down the page, again Hickson indicates, can I get a light.
Voices overlap.
02:53 An unidentified person says hi.
Brooks indicates, he don't smoke, look at that. Voices overlap.
Unidentified male: You can't smoke in here.
Hickson: Well, you all might as well just take me, put
02:54 me on a plane, lock me up. I'm getting locked up.
And then to the next page: No, no, no, there is no plane. Correct?
A. Yes.
Q. And again a little bit down, Hickson indicates: All
02:54 right. Well, then send me to jail, send me to jail because he

thinks this, it's not funny, I'm, dude, it's not funny, this shit is serious.

And you indicate: Yes, it is.

And Hickson says: My life is over. Correct?

02:54 A. Then I said it's not over.

Q. Right. A little bit further down that page, the second to the last row, Mr. Hickson indicates: Dude, you want me to talk, all I want to do is smoke a cigarette, I will tell you anything you want to know, anything, anything, man. Correct?

02:54 A. Yes.

Q. So again, Mr. Hickson is basically telling the agents throughout this interview that he's willing to help, he's willing to cooperate but what he wants first is a cigarette, correct?

02:54 A. He was talking back and forth with us, whether he had a cigarette or not.

Q. Okay. And for the next page, Page 14. Again three rows down Mr. Hickson indicates: I'm telling you I will give you anything you want to know, man. Correct?

02:55 A. Where was that again? Sorry.

Q. Page 14, three rows down, beginning, I'm telling you.

A. Okay.

Q. Again, Mr. Hickson is indicating that he's willing to tell you anything you want to know, correct?

02:55 A. Yes. But then we ask him -- he said he didn't come to

buy guns, so he's still being deceptive to us at the same time, while trying to say that he wants to help himself.
Q. Well, did Mr. Hickson have any money on him when he was arrested?
02:55 A. He had a hundred dollars, but he was also during the conversation with the informant, he said that he would take the guns and he would sell them and then, you know, come back and give her the money. And he was also talking during the meeting with the informant, I'll take these and you can wait
02:56 here. I'll come back with a bottle, he says at one point.
Q. So Mr. Hickson wasn't actually going to purchase the guns from Ms. Jackson, he was simply going to find her purchasers for her guns?
A. No, he was going to take possession of the firearms and
02:56 sell them.
Q. For, on her behalf.
A. Well, I think they were both going to profit from that.
Q. Okay. Well, so on that same page that we're talking about, on Page 14, he actually says, you know, I didn't come
02:56 to buy no guns, I even have no money on me, correct?
A. He had a hundred dollars that he gave the informant.
Q. And a hundred dollars would not have paid for 12 weapons, right?
A. He would have given a small deposit, I guess. It was on
02:56 an agreement that he would go, he had buyers. He told her, I

have buyers lined up. He even said during some of the conversation back and forth with the informant that you would go to Ohio and take the guns, and he became agitated with her on why she could not come there and sell him the firearms.

02:57 Q. And again, he was doing this on her behalf so that she could keep -- she had made up a story about her electricity being turned off, that she was about to be homeless, that she had a son, and she had to, you know, sell these guns?

A. Yeah, she made a story up.

02:57 Q. Okay. Now, again on that same page, Mr. Brooks -- Agent Brooks indicates, all right, if you're going to do that, if you're going to start talking shit, I'm not going to find you a light, you know what I'm saying? You see that right in the middle of Page 14?

02:57 A. Yes.

Q. Okay. So, again, Agent Brooks at this point is telling Mr. Hickson that if he doesn't start cooperating truthfully, that he's not going to even find a light for his cigarette; is that correct?

02:57 MR. ASKIN: Objection to the question. It's argumentative, your Honor.

THE COURT: He can answer it. Look, there's no jury here.

MR. ASKIN: Okay.

02:58 THE COURT: Go ahead. Can you answer that?

THE WITNESS: It was a back and forth between Mr. Hickson and Agent Brooks. I believe around that time we were looking for a light for him but we could not find one for him.

02:58 BY MR. HUFF:

Q. All right. And again, Agent Brooks couches the finding of a cigarette light in terms of him cooperating and being truthful, correct?

A. He's just telling him if you're going to start being

02:58 truthful with us, we'll all be on the same ground and we'll speak together, that's all.

Q. And get you a light?

A. We were already in the process of getting him a light regardless of that.

02:58 Q. Right, but didn't Agent Brooks make it contingent of him getting him a light until he stopped talking shit, correct?

A. I think we would have still spoke to him regardless if he had a light or not. He still wanted to help himself.

Q. Okay. And for the next page, third row down on Page 15,

02:59 you indicate, I know, relax, all right, we're getting you a light already. Don't be getting all fucking rowdy and all that bullshit, correct?

A. Yes, he was becoming agitated.

Q. But he was agitated that he wasn't able to smoke,

02:59 correct?

A. I think he was just agitated he was being arrested.
Q. Okay. And about halfway down, Brooks: All right, can't find a fucking lighter yet. Correct?
A. Yes. But he also says, but I'll get you one.
02:59 Q. Right. And there was an inquiry how, you know, if he smokes, how come he didn't have a light. He indicated that he had gotten a light from someone outside, correct?
A. Yes, he had a cigarette during the reversal operation.
Q. Page 16, again a little bit more than halfway down where
02:59 it says Hickson, Mr. Hickson indicates, oh, I thought it was a light, dude, can you please me get a lighter, sir, I will tell you anything you want to know, I will even set the shit up, if you guys can cut me a deal, I will set it up. Correct?
A. He's asking there again.
03:00 Q. Right. Page 18 at the bottom, third row from the bottom.
Hickson: Dude, can you please give me a light?
Brooks: I'm trying.
Daly: Dude, we're trying to get you one, we are, we're not being assholes. Correct?
03:00 A. Correct.
Q. Okay.
A. We're trying to build rapport with Mr. Hickson.
Q. Page 20 at the top. Again Mr. Hickson: I need a light, man, I will fucking do whatever you tell me to do, or tell you
03:00 the truth, I just need a light, man. Correct?

A. Yes.
Q. Okay, page 24, the top. Hickson, so he's giving some information about someone in Trenton, in Camden, talking about somebody he was locked up with. And then again the last
03:01 sentence in that particular row: You know, sir, but sir, can you please give me a light, bro. Correct?
A. So he was speaking there before we had a light.
Q. Right. Page 27. Again a little bit more, about halfway, unidentified male: They don't have matches down there.
03:02 Brooks: What they say about smoking, can't do it, right?
Hickson: Dude, I can do it, please, man.
Brooks: Huh?
Hickson: Please.
03:02 Brooks: Let him smoke.
Hickson: Please, man. Dude, I smoke in this room.
Brooks: That's on you, bro.
Laughter.
Hickson: Oh, man. Correct?
03:02 A. Correct.
MR. ASKIN: Mr. Huff, what page was that?
MR. HUFF: I'm sorry, that was page 27.
MR. ASKIN: Thank you.
BY MR. HUFF:
03:02 Q. And then two boxes down on page 28. That's when Mr. Daly

talks about -- excuse me, you, Special Agent Daly: I just want to do the consent to search here on the cell phone. Correct?

A. Yes.

03:02 Q. Okay. I believe that that was the last reference to wanting to smoke a cigarette. Does that -- do you remember that it was slightly around the time that you were asking to -- for consent to search the cell phone that he had been provided with a light?

03:03 A. I believe it was just ironic that it was around the same time.

Q. Okay. And again, as far as smoking in the room, that appears on page 27 of 65; is that accurate?

A. Yes. We contemplated allowing him to go outside in our

03:04 custody for him to smoke, but we realized that there would be a safety issue with custody due to the fact that we were in a hotel room, we weren't in a police station or a federal facility. So, that's the reason why it took so long for him to get a light, and to find a light. No one there was

03:04 smoking.

Q. And after he was provided with that light for the cigarette, did it appear that he was able to calm down, was less agitated after that?

A. No, he was still being deceptive with us.

03:04 Q. Well, I didn't ask you about that, I'm asking if he was

able to calm down and was less agitated?
A. No, he still seemed agitated to me.
Q. Okay. Certainly stopped complaining about needing a cigarette, correct?
03:04 A. Because he got what he wanted.
Q. All right.
(Brief pause.)
MR. HUFF: I have no further questions. Thank you.
THE COURT: Any redirect?
03:05 MR. ASKIN: Just a couple questions, your Honor, if I may.
(REDIRECT EXAMINATION OF SPECIAL AGENT DALY BY MR. ASKIN:)
Q. Special Agent Daly, counsel referenced Page 27 as the last reference that he found as to smoking. Do you believe it
03:05 was -- it's a 65 page transcript. Without having the time frame, do you believe that it was around that point --
THE COURT: Page 35.
MR. ASKIN: I'm sorry?
THE COURT: On Page 35 he says he's had a cigarette,
03:05 he feels calmer now.
MR. ASKIN: Thank you, your Honor. I'm sorry.
BY MR. ASKIN:
Q. Do you see that, Agent Daly? At the top, as the Court points out, Mr. Hickson says: I got my cigarette, my nerves
03:05 is a little better and I'm being completely honest with you

guys. It's at the top of Page 35; is that correct?
A. Yes.
Q. Of 65 pages. So at least at that point he's had the cigarette, right?
03:06 A. Yes.
Q. Because one of the agents got him a light?
A. Yes.
Q. Okay. Now, he says earlier, if you look at Page 15 of 65, he says, Mr. Hickson says, towards the middle, middle
03:06 bottom of Page 15 of 65: Nah, I just went, I had went downstairs and smoked a cigarette. Do you see that?
A. Yes.
Q. Okay. You guys had surveillance set up and you were monitoring it during this deal, correct?
03:06 A. Yes, we had surveillance units outside the hotel.
Q. What he's saying there, that Mr. Hickson had just gone downstairs and smoked a cigarette before his arrest, was that borne out by your surveillance or by the audio or videotape?
A. It was relayed through the, through our radios, that
03:06 surveillance units observed him smoking a cigarette outside the hotel.
Q. Okay. So how long, if you can approximate, I know you're not going to have the exact time, how long before Mr. Hickson was arrested at 2:05 do you believe he had a cigarette
03:07 outside?

A. Approximately 40, 45 minutes.
Q. Forty to 45 minutes before his arrest?
A. Oh, no -- before his arrest?
Q. Yeah, how long before his arrest at 2:05 do you think
03:07 that that cigarette outside occurs for Mr. Hickson?
A. About 15 minutes, approximately.
Q. Approximately 15 minutes before his arrest?
A. Yes.
Q. Okay. And prior to Page 35 of 65, where as the Court
03:07 points out, he says he's had a cigarette and his nerves are a little better, were there instances in the transcript, as you reviewed it, where you or Special Agent Brooks indicated that you were trying to get him a light so he could have a cigarette?
03:08 A. Yes.
Q. Okay.
MR. ASKIN: I have no further questions, your Honor.
THE COURT: Any recross?
MR. HUFF: No, your Honor.
03:08 THE COURT: All right. Thank you.
Agent, you may step down.
(The witness was excused.)
THE COURT: Any further evidence in this on this issue?
03:08 MR. HUFF: No, your Honor.

MR. ASKIN: No, your Honor, with the admission of the Government's Exhibits G-1 which is the Miranda waiver form signed by Mr. Hickson, G-2 which is the audio recording, and G-3 which is the transcript, and the testimony of Special
03:08 Agent Daly, the Government would rest on the motion to suppress statements.

THE COURT: Did you want to put any evidence in at all, Mr. Huff, or are you relying on what --

MR. HUFF: We're relying on what's already been
03:08 submitted to the Court, as well as the testimony.

THE COURT: Thank you.

Do you want to argue this at this time? Do you want to take a break? What do you want to do?

MR. HUFF: I'll argue it.

03:08 MR. ASKIN: Fine.

THE COURT: Mr. Askin, you're up.

MR. ASKIN: Your Honor, the Government has to prove under *Miranda versus* -- the *Miranda* decision and also *Colorado versus Connelly* basically two things to admit the statement by
03:09 a preponderance of the evidence. One is the voluntariness of the statement, that it was not the product of coercive law enforcement action against the defendant that overbore his will, and two, that it complied with the dictates of the *Miranda* decision.

03:09 On the *Miranda* decision, I think the evidence is pretty

clear, the testimony has been that at approximately 2:05 p.m. that day, April 29th, he was arrested. At approximately 2:08, three minutes later, he was presented with the Miranda warning form which we have as Government Exhibit G-1. It's signed by the defendant, Fr'Neil Hickson, and he's printed his name on the document. It sets forth in a standardized form by ATF all the Miranda warnings.

I believe the testimony was that it was read by, the Miranda warnings were read by Special Agent Brooks to the best of Special Agent Daly's recollection, and also that Special Agent Daly presented him with the form, had Mr. Hickson read the form and that he didn't have any questions and then he signed the form, and it's witnessed by Special Agent Daly, who testified, April 29, 2014 at 2:12 p.m. which is a few minutes later. And that's Government Exhibit G-1.

There is an audio recording of the statement, although the Miranda warnings portion is not on that audio recording, that's Government Exhibit G-2. But at no point during that statement, the audio recorded portion of the statement, is there any indication that anything contrary to the Miranda warnings that was signed, that he was coerced or threatened into signing it, or that he didn't want to waive or that he was asking for a lawyer. It's all -- what's on the tape is all consistent with the Miranda warnings, and the testimony of Special Agent Daly corroborates his testimony in many

respects.

And the Government submits that all the evidence that's uncontroverted at this point appears -- is credible and uncontroverted, establishes a knowing, intelligent and
03:11 voluntary waiver of the defendant's rights to have counsel present during the interview and to remain silent, and that he voluntarily waived those rights and wished to give a statement, and gave the statement that is the subject of the audiotape and the transcript.

03:11 And it's clear, it's pretty clear why he did it, too, he was concerned about the amount of time he was facing, and he was hoping to curry favor with the agents in terms of trying to provide some information to them or in some way get in their good graces. And I believe that's the reasonable
03:11 inference as to why he gave an incriminatory statement.

In addition to Miranda, the Government has to address the voluntariness of the statement, that it wasn't coerced under *Colorado versus Connelly* which is a Supreme Court case that's the landmark case on this. There's not -- the defense
03:12 would have to establish that, that there was coercion by the police; in other words, they were preying on Mr. Hickson's situation.

Now, I understand here that they're going to claim, or they are claiming, I guess, in their motion that the denial of
03:12 a light to Mr. Hickson in a non-smoking hotel room for

approximately, let's say half or roughly half of a 50 minute interview was so great given his nicotine addiction that it overbore his will and that he couldn't -- it was coercive and he couldn't -- that, and them laughing a few times while he
03:12 tried to mislead them, couldn't -- was such a coercive environment that it overbore his will and that's why he gave a statement.

The Government submits that that's against the weight of the evidence in this matter, the audiotape, the transcript
03:12 that goes with it. And that in fact Mr. Hickson, while agitated because he hasn't had a cigarette, but probably more agitated because he's just gotten caught red handed with 12 firearms and he's a convicted felon, he's gotten caught in possession of 12 firearms, he's a convicted felon, he has
03:13 felonies, he's worried about going to prison, for how long he's going to prison, which he repeatedly mentions throughout this statement, I believe both before and after the cigarette were provided, that that was really what was more agitating him. And while he may have been agitated by the fact that he
03:13 couldn't smoke in this non-smoking room for a period of time, I think the Court should keep in mind that he had a cigarette, I think Special Agent Daly said about 15 minutes or so before he was arrested? And then he was given a cigarette during the interview, even though it was non-smoking room, ATF even paid
03:13 for him to have a cigarette and paid the violation of

non-smoking policy.

So, his demeanor and his -- and he may have calmed down a little bit as he says, and the Government's not denying that, that may have helped his nerves in some respect but it's not like, you know, this was an extensive interview for hours and hours and hours and he was denied food, water and smokes to the point that he just caved. He was talking to the agents, he was engaging in a conversation with them back and forth both before he got the cigarette and after he got the cigarette, and there was nothing here that the agents did that was so coercive that it overbore his will. And in fact, as the evidence suggests, and the reasonable inferences for the evidence, that Mr. Hickson wanted to speak with the agents both before and after the cigarette so that he could curry some favor with them and perhaps help his legal situation after he got caught red handed with these 12 guns in this hotel room as a convicted felon.

So, the Government submits that the evidence, including the testimony of Special Agent Daly, the signed Miranda waiver from April 29, 2014 at 2:12 p.m., the audiotape which is Government's Exhibit G-2, and the transcript of that, Government's Exhibit G-3, all establish by a preponderance of the evidence, and then some, that this was a statement that was given after a knowing, intelligent and voluntary Miranda waiver and in compliance with *Colorado versus Connelly* and the

voluntariness requirement in the sense that it was not coerced by the agents.

That's our argument, your Honor.

THE COURT: Thank you.

03:15 Mr. Huff?

MR. HUFF: Thank you, Judge.

Your Honor, I think it's very clear -- well, first with regard to the Government's argument that Mr. Hickson had smoked a cigarette outside prior to the interview, I guess 03:15 what they're trying to do there is attack his credibility as to whether or not he really even needed a cigarette or not. I would argue to the Court, if the Court -- this is one of the circumstances where you can actually listen to the interview and we don't have to truly rely on the impressions of the 03:15 agent who was doing the interview himself, you can listen to the audio itself. And I would argue to the Court that Mr. Hickson's distress as well as his request repeatedly, just about on every page of the transcript for a cigarette was because he really needed one. We all know, Judge, the 03:16 addictive nature of nicotine, so much so that the Government requires a label printed on the side of cigarette packs because they know how dangerous and how addictive cigarettes can be.

And, Judge, it really, I would argue to the Court it is 03:16 crystal clear, again throughout the transcript itself, but

specifically on Page 14 of 65 when Agent Brooks says to my client, all right, if you're going to do that, meaning not be honest about having not come there to buy guns from Ms. Jackson, all right, if you're going to do that, if you're going to start talking shit, I'm not going to find you a light. So, I really think, Judge, it's just crystal clear that the agents were using Mr. Hickson's addiction, the agents were using Mr. Hickson's repeated requests for a cigarette light in order to induce him to overcome his will, in order to get him to continue talking with them, in order to get him to quote/unquote be honest with them. It simply appears all over the transcript. And they may have been looking for a light at that time, Judge, they may have been looking for it, but even had they gotten one, there's no guarantee that they would have provided it to Mr. Hickson, again unless he started to play ball with them.

So, I would argue, Judge, again given the circumstances, the agents coming into the room to do this bust, everybody armed, Mr. Hickson obviously scared, worried, nervous about the amount of time that he's facing, and again his repeated requests for a cigarette and the officers, or agents couching their willingness to give him a light for that cigarette in terms of him continuing to talk with them, shows that this was coercive, that this was not a voluntary statement. And I would ask that the Court suppress it.

As far as the voluntariness of the Miranda warnings itself, it does appear that the Court is going to -- and counsel will be provided with an audio of what specifically took place between that short period of time before the agents coming into the room and my client signing the Miranda. So, I would ask that that matter just be kept open until the Court and counsel have an opportunity to review that audio.

THE COURT: Well, I don't think there's any need to keep it open because there's no indication that that audio, if it addresses this issue, is going to have any bearing whatsoever on the testimony that we heard today. So, if you find something in that audio, you can come back.

MR. HUFF: Very well.

THE COURT: Are you aware of any cases in which a court has found that the temporary deprivation of a cigarette leads to the conclusion that a subsequent statement was involuntary?

MR. HUFF: I am not, your Honor. And it does appear that the district court in Georgia actually came to the same conclusion. So this could be a matter of first impression in the court.

THE COURT: Are you aware of any science that would indicate to me that the temporary deprivation of a cigarette would lead the smoker to have his will overcome and do things he otherwise wouldn't want to do?

MR. HUFF: Well, again, your Honor, I think -- I'm not, to answer the Court's question, but I think it does also need to take place on a case by case basis. And I think in this case you have, you know, the audio, you have the
03:19 transcript, and the Court can listen to the audio, listen to my client's voice, and you can hear the stress in his voice of constantly asking for the cigarette. And when he's met with laughter that he asks that they not mock him, essentially. So I do think that you need to look at my client specifically,
03:20 and I think you can glean from his tone of voice, from the repeated requests for the cigarette and the responses from the agents, that in fact -- you know, repeatedly says I'm willing to help, I'm willing to cooperate, please, just get me the cigarette.

03:20 So, I would argue, Judge, that to -- for the Government to say that this was somehow made up, that he was anticipating that this proceeding would take place to suppress the statement based on the cigarette either here or in Georgia, you know, really just doesn't make a lot of sense, and these
03:20 were his true feelings.

THE COURT: I don't think the Government's suggesting it's made up at all.

MR. ASKIN: No, your Honor.

THE COURT: Suggesting that this didn't overcome his
03:20 free will.

MR. HUFF: I think the fact that they brought up the point that he had a cigarette earlier may have been said in order to suggest that he really didn't need one, he had already smoked a cigarette.

03:20 THE COURT: Well, it raises the suggestion how desperate can he really be.

MR. HUFF: Exactly.

MR. ASKIN: I was just trying to show what the limited time frame was, you know, the parameters of the time

03:21 frame of when he had had his last cigarette until they gave him a light. That's all I was suggesting. And that that sort of shows it wasn't that long a period of time and that it wasn't enough to overcome his will.

THE COURT: Anything else, Mr. Huff?

03:21 MR. HUFF: No, your Honor. Not on that.

THE COURT: All right. Thank you.

Well, let me deal with some of the arguments raised in the brief but not raised here orally, and that's the waiver and the collateral estoppel arguments. This is all based upon

03:21 proceedings in the District of the Georgia where a United States magistrate judge found that the Government had waived the voluntariness argument, and therefore recommended the motion to suppress the statements be granted. Counsel raises that as a potential collateral estoppel or *res judicata*.

03:21 However, the district judge in the case did not adopt the

report and recommendation, dismissed the motions to suppress and when the district judge granted the motion to dismiss based upon violation of the Speedy Trial Act, and interestingly enough, removed the reference to the magistrate judge. That can mean a lot of things. One of the things it can mean is he didn't want the magistrate judge to hear it again. But, so that disposes, really, of the waiver and the collateral estoppel arguments because it was never the subject of a court order in the District of Georgia.

Moreover, interestingly enough, this is Document 17-4, which was included as an exhibit, which is the guilty plea and plea agreement entered January 7th of 2016 in the District of Georgia, signed by the defendant. Paragraph 4 of Page 2 says, by pleading guilty, defendant also gives up all rights to pursue any affirmative defenses, Fourth or Fifth Amendment claims, and any other pretrial motions that may have been filed or could have been filed. So, there's an equally strong waiver argument going the other way.

But turning to the merits of the application here. The Court easily finds there's been compliance with *Miranda*, the only testimony the Court's heard is that minutes after the arrest, defendant was orally advised of his Miranda warnings, and minutes after that he signed the waiver form and decided to cooperate.

The question then becomes whether it was a voluntary

statement. There's no doubt in my mind that it was. It was a knowing, intelligent and voluntary waiver of his rights. There's no threats or coercion no promises made about any potential sentence. In fact, the agents were very clear to
03:23 explain to Mr. Hickson that they couldn't make those promises. This appears at least twice in the transcript of the interview. There's no doubt that there was a discussion about the need to smoke a cigarette. There was at least ten references in the first 27 pages of this transcript wherein
03:24 there's discussion about the defendant wanting to smoke a cigarette. However, there's no case law whatsoever that indicates that temporary deprivation of a cigarette is sufficient to find a statement involuntary, nor does science, that I'm aware of, support such a finding anyway.

03:24 Was the defendant agitated? Well, clearly he was agitated. He'd just been arrested. If you look at Page 13 of the transcript, about a third of the way down, Mr. Hickson says, my life is over.

Daly: No, it's not.

03:24 Brooks: It's not over.

Hickson: Yes, I -- you know how much time I'm going to do?

Brooks: Your life's not over.

And then there's a discussion about religious beliefs.
03:24 Clearly he knows he's in trouble, he's been arrested. Clearly

he knows he faces -- and this occurs later on when he's discussing about how much time he's going to do, which the agents declined to speculate, clearly he knows he's going to prison for some significant period of time on this charge. That's why he's agitated, more than the fact that he hasn't had a cigarette.

Throughout this, from the very beginning, the defendant indicates that he wants to cooperate. There's a discussion about the Chinese guys and the drugs and things of that nature. He repeatedly says that he wants to try get out from under this. Page 11, down toward the bottom: Man, please, man, dude, I will help you bring a lot of stuff, he didn't use the word stuff, down, if you just help me, help me. So this goes on throughout the transcript, the things that he thinks he can do.

So, from the very beginning on this, he wanted to cooperate, he knew exactly what had happened to him and exactly what he was doing. His responses to the questions he's asked, he's certainly competent of having a conversation. He seems to understand the predicament he's in. In fact at one time, this is at page 19 he says, apparently to Daly: You look familiar.

Daly: Do I?

Hickson: I've seen you.

Daly: Really, you think?

Hickson: Yes. So you was following me in Jersey.

He knew exactly what's going on. He know who he's dealing with. He's certainly competent and capable.

For all those reasons I deny the motion to suppress. Anything else?

MR. ASKIN: Your Honor, may I speak with counsel for a minute?

THE COURT: Sure.

(The Assistant U.S. Attorney conferred with defense counsel.)

MR. ASKIN: Your Honor, may counsel and I see you at sidebar briefly?

THE COURT: Yes.

(Counsel approached the bench for a sidebar conference out of the hearing of the court reporter.)

THE COURT: All right. Back on the record. The Government needs to identify expressively and specifically those portions of the other tapes that they have that they believe are admissions, and notify Mr. Huff of that so that I can have a hearing, if necessary, to rule on any objections to it before they're obviously played at trial.

The Government also has asked that the transcript be sealed until further order of the Court, and that is granted, obviously. Mr. Huff can have access to it.

MR. ASKIN: Yeah.

THE COURT: The Government has access it, but no public access to it until further order of the Court. And we have to deal with the issue of a trial date and Speedy Trial order. I mean we can set this down quickly for trial. But I don't know what counsel wants to do.

(Brief pause.)

MR. HUFF: I'm sorry. Thank you, Judge, for your time.

THE COURT: Ready to go for trial?

MR. HUFF: Well, I guess it depends on the date that the Court is --

THE COURT: I know.

MR. HUFF: I'm definitely not ready for trial at this point. We're still...

THE COURT: How much time do you need?

MR. HUFF: A summer date? I mean, and of course my client wants to appeal the double jeopardy issue as well.

THE COURT: You really want a summer date? I'm serious, I'm not kidding.

MR. HUFF: Yes, right.

THE COURT: That's what you want. Okay.

MR. HUFF: July?

THE COURT: Fine. I assume this trial is going to take two weeks?

MR. ASKIN: I was going to suggest in an abundance of

caution three weeks, your Honor, but -- put it down for three weeks, I think. It could be a little shorter. I would suggest we reserve three weeks.

THE COURT: What do we look like in July? How about the 17th of July?

MR. HUFF: If I could just have one moment?

(Brief pause.)

THE DEFENDANT: Excuse me, your Honor.

THE COURT: Yes, sir.

THE DEFENDANT: Can I just say something?

THE COURT: You may want to talk to your lawyer, because whatever you say obviously can be recorded.

THE DEFENDANT: I'm cool with that.

THE COURT: It's up to you.

THE DEFENDANT: I would have never been prosecuted in Atlanta, I was not thinking about doing anything with any firearms in Atlanta. New Jersey got the ATF informant to call me and the only reason I didn't go to trial on entrapment is because they said they was going to use all the New Jersey evidence against me if I went to trial. So, I'm just asking how can it not be double jeopardy if they're splitting one prosecution -- I mean one conspiracy into multiple prosecutions? How can it not be double jeopardy?

THE COURT: Mr. Hickson, I've ruled on the application. You have a right to appeal.

THE DEFENDANT: And I can get a direct interlocutory appeal?

THE COURT: I'm not telling you that. That's not up to me.

03:37 THE DEFENDANT: Okay.

THE COURT: It's up to the court of appeals whether they accept your appeal at this time or not. That's entirely up to them, I have no control over it.

THE DEFENDANT: All right.

03:37 MR. HUFF: The 17th is fine. Thank you, Judge.

MR. ASKIN: And that will be fine with the Government, I mean obviously I haven't checked with any witnesses at this point, but if there's a problem, I'll come back to the Court. But at this point July 17th appears to be

03:37 fine for the Government.

THE COURT: Okay. And then, Mr. Huff, you'll also let me know about if you're going to challenge these experts in any way?

MR. HUFF: Yes, your Honor.

03:37 THE COURT: Once you have a chance to look that over?

MR. HUFF: Absolutely.

THE COURT: And please, if there are any other motions, let's get them well before trial.

MR. ASKIN: Absolutely, your Honor.

03:37 THE COURT: All right.

MR. ASKIN: Your Honor, may I have a moment to speak with Mr. Huff for one minute before we break?

THE COURT: Yes.

(The Assistant U.S. Attorney conferred with defense counsel.)

MR. ASKIN: Your Honor, counsel and I agree that we need time to prepare for trial now that the motions have been decided, and we both need time, the Government and the defense, to prepare for trial, and that July 17th is an appropriate date for exercising reasonable due diligence on the part of counsel for each party. And that the parties in the interest of justice need that amount of time to prepare for trial and, therefore, I would ask the Court by agreement to rule that it's in the interest of justice, and to exclude time on the docket between today's date, February 15th and the denial of the motions, until at least the date of July 17th when the case is scheduled for trial, and that that's in the interest of justice. And I would ask the Court to make that ruling now on the record, and the Government will follow up with a proposed order if the Court asks me to do that.

THE COURT: Mr. Huff, anything you want to say on this issue?

MR. HUFF: No, your Honor, thank you.

THE COURT: I'm going to grant the Government's motion. Just to note, it's always been my practice to ask

defense counsel first how much time they need. It's easy for the Government because they've normally been investigating these things for years, it's a lot harder for defense counsel. Take someone like Mr. Huff, who has such a busy trial
03:39 schedule, and it's certainly reasonable to give him that much time. There's lot of information that has to be gone over; video, audio recordings, I'm sure a lot of paper discovery in this case. So, I think July 17th is a very reasonable request, which is why I granted it, and I think in the
03:39 interest of justice I'm going to suspend the right under the Speedy Trial Act between now and then.

Thank you, everybody. Submit an order, please, Mr. Askin, about Speedy Trial.

MR. ASKIN: I will do that, your Honor.

03:39 THE COURT: You can put in there about the transcript being sealed also, please.

MR. ASKIN: Put that in the same order, your Honor?

THE COURT: Yes.

MR. ASKIN: I will do that. Thank you, your Honor.

03:40 THE COURT: Thank you, everybody.

MR. HUFF: Thank you, Judge.

(The matter was then concluded.)

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Fw: Hickson

Vionnette Johnson to: Vionnette Johnson 12/23/2015 10:49 AM

----- Forwarded by Vionnette Johnson/GANG/11/FDO on 12/23/2015 10:49 AM -----

From: "Traynor, Will (USAGAN)" <Will.Traynor@usdoj.gov>
To: Vionnette Johnson <Vionnette_Johnson@fd.org>
Date: 12/22/2015 07:32 PM
Subject: RE: Hickson

That's the low end of his guideline range in the PSR, which I thought I had said was available to him. I apologize for my ambiguity. I'm sure that I won't be any clearer at this hour; let's talk tomorrow, I'm going home.

wgt

From: Vionnette Johnson [mailto:Vionnette_Johnson@fd.org]
Sent: Tuesday, December 22, 2015 7:13 PM
To: Traynor, Will (USAGAN)
Subject: RE: Hickson

Maybe I missed it, but I never got a 46 month offer. If you did make that offer, I certainly did not convey it to Mr. Hickson. I am in tomorrow. Let's talk.

Sent from IBM Verse

Traynor, Will (USAGAN) --- RE: Hickson ---

From: "Traynor, Will (USAGAN)" <Will.Traynor@usdoj.gov>
To: "Vionnette Johnson" <Vionnette_Johnson@fd.org>
Date: Tue, Dec 22, 2015 6:34 PM
Subject: RE: Hickson

Vionnette:

46 months is as low as we'll go.

Yonette didn't realize that our offer of a low-end plea agreement had been outstanding for so long (the PSR is dates 11/19/2014), so please tell Mr. Hickson that offer will expire January 15, 2016.

She also thinks that we, like Mr. Hickson, should not worry about NJ's case, and so I will plan to

bring Laboo, Jackson, and the other witnesses Pat Askins mentioned in his email to Michael Huff in our case as 404(b), or, where possible, inextricably intertwined, as the Laboo-Jackson-Hickson connection explains how the CI was able to communicate with Hickson in this case. I don't know how Pat will feel about that, but that's an issue for another day.

I'm sorry to take so long to get you this report.

I hope you enjoy your holiday break. I'll be in tomorrow if you want to discuss this email.

Will

From: Vionnette Johnson [mailto:Vionnette_Johnson@fd.org]
Sent: Tuesday, December 22, 2015 5:19 PM
To: Traynor, Will (USAGAN)
Subject: Hickson

Any updates?

Sent from IBM Verse

FILED IN OPEN COURT
U.S.D.C. Atlanta
NOV 23 2015
James N. Hatten, Clerk
By: Deputy Clerk

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

FR'NEIL AZEEM HICKSON
A/K/A PHILLY

Criminal Indictment

No. 1 15-CR-430

THE GRAND JURY CHARGES THAT:

On or about April 29, 2014, in Fulton County, in the Northern District of Georgia, the defendant, FR'NEIL AZEEM HICKSON A/K/A PHILLY, having been convicted of at least one of the following crimes punishable by imprisonment for a term exceeding one year,

Theft by unlawful taking, *State of New Jersey v. Hickson*, New Jersey Superior Court, Law Division-Criminal, Burlington County, Indictment No. 2002-05-657-I, on or about February 27, 2003;

Theft by deception, impersonation, forgery, assuming a false identity, *State of New Jersey v. Hickson*, New Jersey Superior Court, Law Division-Criminal, Burlington County, Indictment No. 2002-06-0943-I, on or about February 27, 2003;

Theft by deception (three counts), *State of New Jersey v. Hickson*, New Jersey Superior Court, Law Division-Criminal, Burlington County, Indictment No. 2003-02-0288-A, on or about February 27, 2003;

Possession of controlled substances, *State of New Jersey v. Hickson*, New Jersey Superior Court, Law Division-Criminal, Burlington County, Indictment No. 2004-04-00369-1, on or about December 11, 2006; and

Unlawful possession of a weapon – handgun, *State of New Jersey v. Hickson*, New Jersey Superior Court, Law Division-Criminal, Burlington County, Indictment No. 2004-11-1293-I, on or about December 11, 2006,

did knowingly possess at least one of the following firearms, that is,

(1) Colt model M1991A1 .38 caliber pistol,

(2) Ruger model P345 .45 caliber pistol,

(3) Smith & Wesson model SW40VE .40 caliber pistol,

(4) Walther model PPK/S .380 pistol,

(5) Berretta model 92F 9mm pistol,

(6) Hi Point model JHP .45 caliber pistol,

(7) Hi Point model JCP .40 caliber pistol,

(8) Heckler & Koch model USP .40 caliber pistol,

(9) Glock model 23 .40 caliber pistol,

(10) Glock model 17 9mm pistol,

(11) Glock model 30 .45 caliber pistol, and

(12) Glock model 27 .40 caliber pistol,

said possession being in and affecting interstate and foreign commerce, all in

violation of Title 18, United States Code, Section 922(g)(1).

A TRUE BILL

FOREPERSON

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United States Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	**Criminal No. 16-** 279- NLH
v.	:	
	:	**18 U.S.C. §§ 371, 922(a)(1)(A), 922(g)(1), & 2**
FR'NEIL HICKSON	:	
a/k/a "Philly"	:	
	:	**INDICTMENT**

The Grand Jury in and for the District of New Jersey, sitting at Camden, charges:

COUNT ONE

(Unlicensed Dealing in Firearms)

From in or about December 2009 through in or about April 2013, in Camden County, in the District of New Jersey, and elsewhere, the defendant,

FR'NEIL HICKSON,
a/k/a "Philly,"

did knowingly and wilfully engage in the business of dealing in firearms, without being licensed to do so under the provisions of Title 18, United States Code, Chapter 44.

In violation of Title 18, United States Code, Section 922(a)(1)(A) and Title 18, United States Code, Section 2.

COUNT TWO

(Conspiracy to Deal in Firearms without a Federal Firearms License)

DEFENDANT AND CONSPIRATORS

1. At all times relevant to this Indictment:

a. Defendant **FR'NEIL HICKSON,** a/k/a "Philly," was a resident of New Jersey and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

b. Co-Conspirator Joshua Jackson, a/k/a "Apple," a/k/a "Trent," was a resident of New Jersey and Ohio and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

c. Co-conspirator Terrance Laboo, a/k/a Terrance Reeves, a/k/a "Mus," was a resident of New Jersey and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

d. Co-conspirator Stan Shor was a resident of Ohio and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

e. Co-conspirator Antonio Berry was a resident of Ohio and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

f. Co-Conspirator Joseph Berry was a resident of Ohio and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

g. Co-Conspirator William Johnson was a resident of Ohio and was not a licensed dealer, licensed manufacturer, or licensed importer of firearms.

2. At all times relevant to this Indictment, under the laws of the State of Ohio, an Ohio resident could purchase firearms, including handguns, by presenting proof of residency to a licensed firearms dealer.

CONSPIRACY

3. From in or about December 2009 through in or about April 2013, in Camden County, in the District of New Jersey, and elsewhere, the defendant

FR'NEIL HICKSON
a/k/a "Philly,"

did knowingly and intentionally conspire and agree with co-conspirators Joshua Jackson, a/k/a Apple, a/k/a "Trent;" Terrance Laboo, a/k/a Terrance Reeves, a/k/a "Mus;" Stan Shor, Antonio Berry, Joseph Berry, William Johnson and others to obtain firearms outside the State of New Jersey, in other states (including the State of Ohio, the Commonwealth of Virginia, and the Commonwealth of Pennsylvania), through straw purchases from licensed firearms dealers and through purchases of used firearms at various gun shows in the State of Ohio that were not subject to background checks on the purchaser, and to transfer those firearms to other co-conspirators who transported them into the State of New Jersey, where they were resold by defendant **FR'NEIL HICKSON** and co-conspirator Terrance Laboo, without a federal firearms license, and in the course of such business shipped, transported, and received firearms in interstate and foreign commerce, without being licensed to do so under federal firearms law, contrary to Title 18, United States Code, Sections 922(a)(1)(A), 922(a)(3), 922(a)(5), and 924(a)(1).

4. It was the object of the conspiracy to obtain firearms in the State of Ohio, the Commonwealth of Virginia and the Commonwealth of Pennsylvania and to resell those firearms for a profit to customers in the State of New Jersey.

5. It was part of the conspiracy that co-conspirator Joshua Jackson recruited two straw purchasers, co-conspirator Joseph Berry and co-conspirator William Johnson, both Ohio residents, and then directed them to purchase handguns for him on numerous occasions in the State of Ohio, both at licensed firearms dealers and at various guns shows held in the State of Ohio.

6. It was further part of the conspiracy that co-conspirator Joshua Jackson paid for the handgun purchases made by co-conspirator Joseph Berry and co-conspirator William Johnson and also paid them additional money as a fee for making the straw purchases.

7. It was further part of the conspiracy that immediately after purchasing each handgun in the State of Ohio, the straw purchasers, co-conspirator Joseph Berry and co-conspirator William Johnson, would immediately transfer the handguns to co-conspirator Joshua Jackson, usually by placing them in the trunk of his vehicle.

8. It was further part of the conspiracy that co-conspirator Joshua Jackson also acquired numerous handguns from co-conspirator Stan Shor, an illegal, unlicensed firearms dealer in the State of Ohio, who took orders from Jackson of the type and quantity of firearms Jackson wished to acquire and then purchased these firearms at various gun shows around the State of Ohio to later resell them to Jackson and other customers.

9. It was further part of the conspiracy that co-conspirator Terrance Laboo at the time was a Camden drug dealer, who sold drugs in the City of Camden with other males on an ongoing basis, and knew many other drug dealers and other criminals in the Camden, New

Jersey area interested in purchasing firearms but who were not able to do so through lawful channels.

10. It was further part of the conspiracy that co-conspirator Terrance Laboo placed orders with defendant **FR'NEIL HICKSON** and co-conspirator Joshua Jackson for the type and quantity of firearms he was interested in purchasing and made the logistical arrangements with them as to where they would meet so that Laboo could acquire the firearms in exchange for cash payments.

11. It was further part of the conspiracy that co-conspirator Terrance Laboo on numerous occasions throughout the time period of the conspiracy purchased and obtained firearms from defendant **FR'NEIL HICKSON** and co-conspirator Joshua Jackson in exchange for cash payments made to defendant **HICKSON** and Jackson.

12. It was a further part of the conspiracy that after co-conspirator Joshua Jackson sold and transferred the firearms to defendant **FR'NEIL HICKSON** and co-conspirator Terrance Laboo, defendant **HICKSON** and Laboo re-sold and delivered the firearms to drug traffickers and felons in New Jersey who were engaged in ongoing criminal activities in the State of New Jersey.

13. It was a further part of the conspiracy that co-conspirator Terrance Laboo paid defendant **FR'NEIL HICKSON** and co-conspirator Joshua Jackson sums of cash for the purchase of firearms at prices substantially above the fair market value for these firearms had they been sold as used handguns through lawful channels, thus generating substantial profits for defendant **HICKSON** and Jackson.

14. It was further part of the conspiracy that defendant **FR'NEIL HICKSON** obtained firearms from other sources (in addition to the firearms that he acquired from

co-conspirator Joshua Jackson) outside the State of New Jersey, including in Virginia and Pennsylvania, and resold those firearms to co-conspirator Terrance Laboo and others in and around southern New Jersey.

15. It was further part of the conspiracy that co-conspirator Joshua Jackson and co-conspirator Antonio Berry transported firearms purchased in the State of Ohio into New Jersey, using a rental vehicle which was rented by Jackson and by having Antonio Berry travel by Greyhound bus from Columbus, Ohio to bus terminals in Philadelphia, Pennsylvania; Camden, New Jersey; and Mount Laurel, New Jersey, carrying a duffel bag containing numerous firearms, where at times he was met by defendant **FR'NEIL HICKSON** or co-conspirator Terrance Laboo, who then purchased and took possession of the firearms from Antonio Berry.

16. It was further part of the conspiracy that firearms purchased from co-conspirator Joshua Jackson were delivered by Jackson and/or co-conspirator Antonio Berry to defendant **FR'NEIL HICKSON** and co-conspirator Terrance Laboo at various places in southern New Jersey including outside Greyhound bus terminals, at defendant **HICKSON'S** residence in Cherry Hill, New Jersey, and at different hotels along Route 73 in southern New Jersey that were close to the Greyhound bus terminal in Mount Laurel, New Jersey.

17. It was further part of the conspiracy that some of the firearms purchased by co-conspirator Jackson and sold to defendant **FR'NEIL HICKSON** and to co-conspirator Terrance Laboo, as well as firearms purchased by defendant **HICKSON** for resale, were semi-automatic handguns that came with high capacity magazines that could hold more than 15 rounds of live ammunition.

OVERT ACTS

18. In furtherance of the conspiracy and to effect its unlawful object, the following overt act were committed in the District of New Jersey and elsewhere:

a. On or about July 12, 2010, co-conspirator Terrance Laboo sold and delivered four handguns to Agin Grant outside a barber shop Grant operated in Camden, New Jersey, which had recently been purchased and acquired from co-conspirator Joshua Jackson, who had acquired them through purchases from co-conspirator Stan Shor in the State of Ohio.

b. On or about December 10, 2010, defendant **FR'NEIL HICKSON** spoke with co-conspirator Joshua Jackson, by telephone while Jackson was incarcerated at Southwoods State Prison in New Jersey. In the phone call, defendant **HICKSON** asked Jackson to provide him with additional guns through Jackson's gun source in Ohio so that defendant **HICKSON** could resell them to other buyers, including co-conspirator Terrance Laboo.

c. In or about June, 2011, co-conspirator Terrance Laboo placed a telephone call to defendant **FR'NEIL HICKSON**, after receiving text messages from defendant **HICKSON** regarding firearms that defendant **HICKSON** had available for Laboo to purchase. After this phone call, co-conspirator Terrance Laboo and V.P. met defendant **HICKSON** at a motel on Route 73 in Mount Laurel, New Jersey and purchased several handguns from defendant **HICKSON** for cash.

d. On or about September 4, 2011, September 8, 2011, and September 9, 2011, co-conspirator Terrance Laboo placed outgoing calls to the cellular phone of defendant **FR'NEIL HICKSON** after receiving multiple text messages from defendant **HICKSON**,

wherein defendant **HICKSON** informed Laboo that he had acquired additional firearms in Virginia and had the firearms available for Laboo to purchase.

e. Between in or about December 2011 and in or about January 2012, defendant FR'NEIL HICKSON possessed several Ruger 9mm caliber semi-automatic handguns inside a residence on Engle Avenue in the city of Burlington, New Jersey.

f. In or about March 2013, defendant **FR'NEIL HICKSON** contacted co-conspirator Antonio Berry through Facebook and asked Berry to call defendant **HICKSON**. In a phone call shortly thereafter, defendant **HICKSON** asked Berry when co-conspirator Joshua Jackson was going to be released from custody. When Berry told defendant **HICKSON** that he did not know Jackson's release date, defendant **HICKSON** then asked Berry if he (Berry) could obtain more of "them things," a reference Berry understood to refer to additional firearms.

g. On or about March 9, 2013, defendant **FR'NEIL HICKSON** posted two photos of semi-automatic handguns on his Facebook account "wall" that were taken inside the Ready, Aim, Fire gun store and range in Bristol, Pennsylvania. Under the photographs of the handguns, Hickson posted the message: "Can't wait. I'm registered nigga."

In violation of Title 18, United States Code, Section 371.

COUNT THREE

The allegations set forth in Count Two, paragraphs 5 through 18 are incorporated and realleged as if fully set forth herein.

From in or about December 2009 through in or about April 2013, in Camden County, in the District of New Jersey, and elsewhere, defendant

FR'NEIL HICKSON,
a/k/a "Philly,"

having been convicted of a crime punishable by imprisonment for a term exceeding one year in the Superior Court of New Jersey, Law Division, Burlington County, did knowingly possess in and affecting interstate commerce, firearms and ammunition.

In violation of Title 18, United States Code, Section 922(g)(1).

A TRUE BILL

FOREPERSON

PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: 2012R00549

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

FR'NEIL HICKSON

INDICTMENT FOR

18 United States Code §§ 371, 922(a)(1)(A), 922(g)(1), & 2

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