

No. _____
Term of _____

IN THE
Supreme Court of the United States

Malik Derry,
Petitioner,

v.

United States of America,
Respondent.

**On Petition for a Writ of Certiorari
to the Third Circuit Court of Appeals**

**APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI**
Volume II
F-S
290a – 524a

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3 UNITED STATES OF AMERICA

4 vs. CRIMINAL NUMBER:
1:14-cr-00050-NLH

5 MYKAL DERRY, MALIK DERRY,

6 Defendants.

MOTION

UNITED STATES COURTHOUSE
ONE JOHN F. GERRY PLAZA
4TH AND COOPER STREETS
CAMDEN, NEW JERSEY 08101
JULY 17, 2017

10 B E F O R E: THE HONORABLE NOEL H. HILLMAN
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

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23

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

/S/ Karen Friedlander, CRR, RMR

000297a

1 THE DEPUTY CLERK: All rise.

2 (OPEN COURT, July 17, 2017, 1:54 p.m.)

3 THE COURT: All right. Good afternoon.

4 RESPONSE: Good afternoon, Your Honor.

5 THE COURT: Sorry for the late start here. This is

6 United States versus Derry. Mic's up high.

7 May I have appearances, please.

8 MR. MARKOWITZ: Joshua Markowitz and Greg Corcoran on

9 behalf of Malik Derry.

10 THE COURT: All right. Welcome to you both.

11 MR. MADDEN: Emmett Madden here for Mykal Derry.

12 Good afternoon, Your Honor.

13 THE COURT: Yes, Mr. Madden.

14 Mr. Markowitz didn't want to make room for you at

15 the front table, Mr. Madden?

16 MR. MARKOWITZ: I have a seat for him.

17 MR. MADDEN: Stay under the radar.

18 THE COURT: All right. Very good.

19 MR. GROSS: Good afternoon, Your Honor. Could I get

20 Mr. Askin to sit at the back table?

21 (LAUGHTER)

22 MR. MADDEN: I should have asked that.

23 THE COURT: Please be seated on the left side here.

24 MR. GROSS: Norman Gross on behalf of the United

25 States, and Patrick Askin, Assistant United States Attorney,

1 attorney for the United States. Mr. Danilewitz is currently
2 on trial in front of Judge Simandle.

3 THE COURT: All right. Well, excuse the Court's
4 attempt at levity here. I recognize the seriousness of the
5 application here.

6 Mr. Madden, do you have a jury out somewhere.

7 MR. MADDEN: I do, in Philadelphia, Your Honor.

8 THE COURT: Well, we will take breaks, if necessary,
9 if you need to respond to that or...

10 MR. MADDEN: I put my phone where I can see it right
11 now and I'll --

12 THE COURT: Okay. All right. So this is the
13 defendant's motion. So I read the briefs. I'm very familiar
14 with this matter. I don't expect you to go back over
15 everything, but if I could just get short argument from the
16 defense on this and response from the government and it may
17 inspire some questions for me.

18 I do have a couple that are lurking around in the
19 back of my brain. So, Mr. Madden, do you wish to be heard, or
20 Mr. Markowitz? Who wants to go first?

21 MR. MADDEN: I would ask that Mr. Markowitz goes
22 first, Your Honor, and I would join in.

23 MR. MARKOWITZ: And Mr. Corcoran will be handling the
24 argument for us.

25 THE COURT: For Malik Derry?

1 MR. MARKOWITZ: Correct.

2 THE COURT: All right. Mr. Corcoran.

3 MR. CORCORAN: You want me at the --

4 THE COURT: Wherever you are comfortable, sir.

5 MR. CORCORAN: Well, that would be Bermuda.

6 (LAUGHTER)

7 MR. CORCORAN: So, Your Honor, you're right, we're
8 here for the Rule 37 motion. The Rule 37, we're asking you to
9 indicate to the Third Circuit how you would rule if there was
10 another *Brady* motion before you. The other *Brady* -- the
11 second *Brady* motion in this case concerns the government's
12 gift to the defense after the trial of 302s from two
13 coconspirators in the underlying matter. Those coconspirators
14 are Ambrin Qureshi and Laquay Spence.

15 Both of these 302s reveal that upon being asked by
16 the government if they knew a motive or a reason for the
17 slaying or the shooting at of Tyquinn James, and they replied
18 in the negative. We feel that this is something that is both
19 favorable to the defense and something that was suppressed.
20 It was suppressed, obviously, because we didn't get it until
21 after the trial.

22 It's favorable because it shows that members of the
23 conspiracy were not aware of a conspiracy-related reason for
24 the shooting at Tyquinn James, and obviously, there was
25 prejudice, the third factor in the *Brady* analysis because

1 Malik Derry was found guilty of a 924(c) violation, which
2 required violence, use of a gun in furtherance to or in
3 relation to the underlying drug conspiracy.

4 We also believe that the 302 of Jodi Brown, which
5 was the subject of the first *Brady* motion, also was
6 suppressed. We recognized that the government -- that Your
7 Honor ruled at the previous *Brady* hearing that you did not
8 believe it was suppressed. We bring the Jodi Brown to your
9 attention again, in part because the government's brief in
10 opposition to ours says, well, you never objected in your
11 motion to that initial ruling.

12 I kind of thought the inclusion of any Jodi Brown
13 material in our initial briefing was implicit evidence that we
14 still disagreed with Your Honor on that point, and so it
15 becomes, why do we still believe that? We believe it in part
16 because, just to quickly review the history of the disclosures
17 in this case, there was a letter sent from the government to
18 the counsel in this matter in September 2014.

19 That letter alerted defense counsel that the
20 government had spoken with a witness that it declined to name,
21 that that witness had certain information, that they would
22 continue to interview this witness. That once that interview
23 was done, there would be a transcript made and then a 302s
24 would be made and that both would be forwarded to the defense
25 in time for trial.

1 That was in September 2014. We skip ahead to
2 July 25th or 26th, the Sunday during the middle of the trial
3 and the government sends an e-mail to defense counsel alerting
4 counsel that the witness that they had spoken to in
5 September 2014 was one Jodi Brown. That she had made a number
6 of statements to the government, one of which was, and if I
7 could just read from the initial e-mail: "Miss Brown told us
8 that she does not know why they," in quotation marks, and then
9 in parenthesis, "the Derry brothers, killed TY. She was in
10 the hospital when the homicide occurred."

11 The government obviously said, well, that's -- we've
12 disclosed what we had to disclose, but I would argue again
13 that this is not disclosure. What I would argue is that they
14 sent us a statement that was couched in their language, not
15 Jodi Brown's language.

16 Why do I say that? Well, one, in the actual 302,
17 the statement from Jodi Brown as recorded by the government
18 is, Brown did not know the reason James was murdered. Brown
19 knew James, as well as Trevin Allen, AKA Kriff, from when they
20 were young children. Completely different reading from the
21 302 where her statement is objective. It refers to no actor
22 for being shot. Yes, she said earlier in that 302 that she
23 had thought Mykal had shot Tyquinn James. She didn't really
24 believe that. Fine.

25 We're not contesting for the purposes of this

1 hearing that any statement that Jodi Brown makes about who
2 shot at Mykal is part of this hearing. We never once
3 mentioned it in the Rule 37 briefing. In the original
4 briefing, it was a very, very small part of our 25-page entry.
5 I think it was two or three pages.

6 Our entire theory from the beginning in this *Brady*
7 matter has been, not that Malik or Mykal is the one to have
8 shot at Tyquinn James. It's not part of our analysis, it's
9 not part of our thinking.

10 THE COURT: Well, let me just stop you there for a
11 moment, Mr. Corcoran. I didn't go -- I haven't gone back and
12 looked at the transcript and perhaps I should. Maybe the
13 government doesn't -- hasn't highlighted this either, so maybe
14 it's not important, but I don't -- I did not understand Malik
15 Derry's defense to -- not that he had an -- to be clear, he
16 didn't have an obligation to have one, but to shy away from or
17 to question or to seek to undermine Mykal Derry's testimony
18 that he killed TY, correct?

19 It's not that Malik Derry ignored the issue of who.
20 If anything, it was supportive of and sought an acquittal
21 based on the theory that Mykal Derry was telling the truth
22 when he said the murder was not related to drugs, right?

23 MR. CORCORAN: I'm sorry, Your Honor, I'm not getting
24 the exact question that you're trying to ask.

25 THE COURT: Okay. Your position to me is, we never

1 said the issue is who, we've always said the issue was why.

2 MR. CORCORAN: For the purposes of the *Brady* motion.

3 THE COURT: Right.

4 MR. CORCORAN: The purposes of showing that what Jodi
5 Brown was to us was impeachment of Kareem Young and not
6 corroborative of Mykal Derry's admission on the stand.

7 THE COURT: All right. So you're disavowing any
8 claim that those 302s would be used to corroborate, leaving, I
9 guess, for Mykal to argue that, that that corroborates his
10 testimony.

11 MR. CORCORAN: Right. Our point was, in that, was
12 that this potential -- the statement of Jodi Brown -- was
13 potentially, addressed both. But our argument, the thrust of
14 our -- the major thrust of our argument was always that Malik
15 Derry was convicted of a 924(c) of use of a gun in furtherance
16 of the conspiracy, and Jodi Brown's lack -- being a part of
17 the conspiracy and not knowing of a conspiracy-related reason
18 because she was -- I know you have stated that she's on the
19 periphery of the conspiracy, but in actuality, she's
20 geographically in the center. Her house was used as a trap
21 house. There were weapons that were kept in her house.

22 The people that were the enforcers in the group came
23 to her house. She was a clearinghouse of information amongst
24 the gang and that she would have been in a position to know of
25 a conspiracy-related motive to the shooting and she doesn't,

1 and we find that as -- plus Ambrin Qureshi is in the same way
2 and Laquay Spence, while more on the periphery, but as someone
3 who is on the periphery, meaning he's sort of negotiating this
4 disputed turf between all of the different factions of
5 Atlantic City, would have to be acutely aware of who to hang
6 out with and who not to hang out with, because as the
7 government stated so eloquent all throughout the trial, you
8 can get shot for hanging out with the wrong person.

9 So he would have known. He had to have known. It
10 was his business to know what were the various beefs at issue,
11 to know who he could hang out with and who he could not hang
12 out with.

13 So, yes, Your Honor, our thrust for the purposes of
14 the *Brady* motion is that the government said she doesn't know
15 -- know the reason why they killed her, killed TY, but that's
16 not what she said. All she said, according to the
17 government's note, is, Brown did not know the reason James was
18 murdered. Brown knew James. She was familiar with him.

19 If somebody said in the gang, you know, we're on the
20 outs with TY, her ears would have picked up. This is a guy I
21 grew up with. She said she grew -- she knew him and Trevin
22 Allen from when they were growing up as children. This was
23 somebody who was familiar to her. She would have known if
24 people in the conspiracy were talking about it.

25 Well, what makes us believe that people in the

1 conspiracy were talking about it? Well, the government itself
2 has said that this was a very public and long-standing
3 grievance. There had been previous attempts on TY's life. If
4 this was such a public and long-standing grievance, and she's
5 asked, after everybody is arrested, do you know why he was
6 killed, and she says no, well, it sort of goes against the
7 government's theory that it had to be related to the
8 conspiracy.

9 Similarly, Ambrin Qureshi says the same thing.
10 Again, she was somebody who knew all of the players in the
11 Derry organization, so to speak.

12 THE COURT: Let me stop you there again. Just so I'm
13 clear, and Mr. Madden will have an opportunity to address this
14 on behalf of his client, but Malik Derry is not arguing that
15 these 302s are material because they corroborate Mykal Derry's
16 testimony that he shot TY over a girl. You're disavowing that
17 theory. Your theory is, it goes not to who, it goes to why
18 because it undermines Tyquinn James's (sic) testimony.

19 MR. CORCORAN: Kareem Young, Your Honor.

20 THE COURT: Kareem Young, sorry. Kareem Young's
21 testimony as to the -- that it was drug -- which I'll talk
22 about in a minute, but Kareem Young's testimony regarding the
23 beef between the rival gangs. Is that right?

24 MR. CORCORAN: Yes. Our argument has from -- the
25 main thrust has always been that the statement -- first of

1 all, Ambrin Qureshi didn't say anything about Mykal being the
2 shooter of Tyquinn. She didn't say anything about Malik being
3 the shooter of Tyquinn, so she's irrelevant to that issue.
4 And the same with Laquay Spence. He has not said anything
5 about who he thought the shooter was, either. So it's
6 axiomatic that we can't use those 302s to proffer the theory
7 that -- that would have; 2corroborated Mykal's testimony.

8 THE COURT: Fair and intellectually honest, thank
9 you.

10 But let's talk about Mr. Young's testimony for a
11 moment. My recollection, and perhaps I should go back and
12 read his transcript to be clear, I'll probably take the drafts
13 out. He -- I don't recall him ever testifying directly that
14 TY was shot because he was a rival drug seller. Rather, he
15 testifies, as I recall, that there was a history of violence
16 between competing gangs, that there were other shootings and
17 beatings, and that he was told in a series of meetings, along
18 with other people who were fairly characterized as enforcers,
19 that anyone associated with Trevin Allen, including TY, should
20 be shot on sight.

21 And it's almost derivative of that, unspoken
22 directly but derivative of that, that the reason is that these
23 are drug gangs that are shooting at each other. Rather than
24 him saying point blank, I know that TY was shot, that Malik --
25 Mykal Derry wanted him shot because we weren't going to let

1 him sell drugs in Stanley Holmes. Am I right about that?

2 That he never actually comes out and says that directly?

3 MR. CORCORAN: That he never comes out and says that

4 TY was shot because of a drug rivalry?

5 THE COURT: Yes.

6 MR. CORCORAN: Well, but he does testify that the

7 drug members were told to shoot TY.

8 THE COURT: Yes.

9 MR. CORCORAN: So isn't that a motive in furtherance
10 of the conspiracy? I mean, the whole basis of the
11 government's argument, especially as concerned with Malik,
12 because this is the only violence that they have on Malik
13 which they say is in furtherance of the conspiracy, is that he
14 shot TY. But Kareem Young testified that he was told by
15 members of the conspiracy, specifically Mykal Derry, to --
16 that they were beefing -- I hate the term, but --

17 THE COURT: Yes.

18 MR. CORCORAN: -- which seems to be the term of art.

19 They were beefing with this rival clique, for what, I'm
20 confused about what exactly Trevin Allen was forming, and that
21 they were to be shot on sight. So the very fact that he was
22 shot, the government intimated that this proved that it was in
23 furtherance of the conspiracy.

24 THE COURT: Yes.

25 MR. CORCORAN: Because of the conspiracy, but --

1 THE COURT: But that's different than him saying
2 directly out of his mouth, I was in a meeting and Mykal Derry
3 said, you are to shoot TY, he's selling drugs in Stanley
4 Holmes, and if he dares to do that, you shoot him on the spot.

5 MR. CORCORAN: Right.

6 THE COURT: That testimony never happened, that I
7 recall.

8 What it is is, all this cumulative evidence of rival
9 drug gangs shooting at each other, and a reasonable inference
10 to be derived from that, that when Mykal Derry says, shoot him
11 on sight, that it's because of drugs, not because it was
12 explicit -- ever explicitly stated, and we all know that
13 conspirators don't necessarily sit down and map it all out.
14 That it's inherent in the nature of the business. That's my
15 sense of the general evidence here.

16 Not that there was a direct statement, you are to
17 shoot TY because he's a rival drug dealer, he's in Allen's
18 gang, we're beefing with them, and if he shows up within a
19 mile of Stanley Holmes, all of you guys with guns can shoot
20 him, and if you don't have a gun, call me, you will get it and
21 you go get him.

22 MR. CORCORAN: And that's what he testified to,
23 right? But, I mean, he was asked, were you at a meeting where
24 Mykal Derry told you to put down TY, and Kareem Young said
25 yes.

1 THE COURT: Begs the question, why? Right? It begs
2 the question why.

3 MR. CORCORAN: Why was he told this or why did
4 they --

5 THE COURT: Why would they shoot him? Why would they
6 put him down?

7 MR. CORCORAN: Well, Kareem Young testified to the
8 reason, although his testimony is fairly sketchy, he said, I
9 heard they were beefing. I heard it from -- there were rumors
10 in the neighborhood. I had been told when I got out who we
11 were beefing with and who we weren't beefing with.

12 But this is all Kareem Young's hearsay, but it's his
13 hearsay that was used to tie the shooting of -- of Tyquinn
14 James to the conspiracy. There was nothing else to tie it. I
15 mean, Kareem Young himself testified he had seen James on
16 Atlantic Avenue at one point. Didn't shoot him, but according
17 to the government, he was on orders to shoot him on sight.
18 Didn't happen.

19 THE COURT: Right.

20 MR. CORCORAN: Kareem Young had a number of
21 statements, where all he was testifying to what he was heard,
22 but the government used these hearsay evidences to build its
23 -- the tentacles of the conspiracy. I heard about -- Raymond
24 Mack told me about the shooting of Mack's brother, Derreck. I
25 heard about the arrest of the two Derry groups around the same

1 time, from two other people. Most of his testimony was what
2 he had heard from other people, and it was what he had heard
3 from other people that enabled the government to link the TY
4 shooting to Malik Derry in furtherance of the conspiracy. But
5 other people in the conspiracy, who would have been in a
6 position to know, profess ignorance about any kind of tie to
7 TY and the conspiracy.

8 As a matter of fact, this wasn't introduced, but it
9 was one of the 13 -- containing one of the 302s that was
10 presented by the government after the trial, I believe it's
11 Franklin Simms, I don't know why they killed him. The guy was
12 homeless and he's doing PCP on the streets. He's not a threat
13 to them.

14 Nobody understands why they killed TY. TY's
15 childhood friends don't understand, the people in the
16 conspiracy don't understand. The only one who's able to tie
17 it all together for the government was Kareem Young, and
18 that's based on his testimony, which, as we all know, was
19 procured in exchange for what proved to be time served on
20 reduced charges.

21 THE COURT: No, I don't mean to minimize the
22 importance of his testimony, it's just -- and perhaps I'm
23 parsing this out too -- with too much detail, but -- and
24 there's a lot of language in the briefs about this being
25 impeachment material. It's not impeachment in the sense of

1 Giglio material.

2 It's not that Kareem Young testified or gave some
3 testimony or made a statement earlier that's inconsistent with
4 what he testified to at trial. What it is is, it's
5 impeachment by -- it's material, it's impeachment by
6 contradiction, I think as the government uses it or describes
7 it, in the sense that it's inconsistent with his testimony or
8 could be used to undermine his testimony. It's evidence of a
9 different point.

10 MR. CORCORAN: Yes, Your Honor.

11 THE COURT: But my question -- my point is, I'm not
12 sure how different it actually is. It becomes less different,
13 if Young doesn't directly testify that he was shot over drugs.
14 Stated differently, it's a shorter bridge between "I don't
15 know" and "I did what I was told and this is what we all did."
16 It's a shorter bridge than "we were told to shoot him because
17 of drugs, and members of the conspiracy didn't have that
18 knowledge." Do you understand what I'm saying?

19 MR. CORCORAN: I do, but I would say, Your Honor, the
20 impeachment is contradiction. If the jury was allowed to hear
21 Kareem Young testify to one set of facts, we were under orders
22 to shoot at TY on sight. We had been told to put him down.
23 Unclear exactly what that means, but that's what the
24 government used to tie Malik Derry to gun violence to get him
25 on the 924(c). There was nothing else to tie Malik Derry to

1 that. They -- Malik Derry wasn't armed at any other point in
2 this conspiracy to this point.

3 He was not involved in any other acts of violence.
4 He wasn't at the Tropicana, he wasn't at the Derreck Mack
5 shooting. He wasn't around, and he wasn't an enforcer, for
6 all intents and purposes.

7 THE COURT: And you point out that he was denied
8 access to a weapon when -- at other times.

9 But let me ask you this: What evidence is there
10 that Brown, Spence and Qureshi actually were to testify for
11 the government -- I mean, for the defense at trial?

12 MR. CORCORAN: There's no testimony right now, but
13 there's -- I don't see any reason why they wouldn't, because
14 they're not implicating themselves in any further crimes. All
15 they're -- all they would be testifying for is to say there
16 was no conspiracy-related reason that I knew that TY was shot.

17 THE COURT: Well, each of them in their 302s describe
18 various acts of criminal behavior, at the point where, I
19 believe, all of them had not yet been sentenced. Wouldn't any
20 competent lawyer advise them not to testify, given the
21 possibility that a full exploration of everything in the 302
22 and any other discussions on the record might implicate their
23 sentencing?

24 MR. CORCORAN: I don't see what Jodi Brown could have
25 been charged in addition to. I mean, she was charged with --

1 she was going to be charged with running a trap house. She
2 was going to be charged with running -- selling drugs of
3 specific quantities. She ended up taking a plea to lesser.
4 But I don't see how her saying that, I don't know why he was
5 killed, exposes her to any greater damage on the 302.

6 All the 302 for Jodi Brown and Ambrin Qureshi show
7 is that they had wide-ranging knowledge of the conspiracy and
8 could have testified to that, but nothing to their own actual
9 -- their own actions that would have exposed them to much
10 greater criminal penalty, I don't believe.

11 THE COURT: Well, there's always the issue of
12 relevant conduct or possible revocation of the plea agreement,
13 if their testimony is -- would be -- well, I guess -- no,
14 they're not all -- they weren't -- I don't believe any of them
15 were cooperators, now that I think about it. But they could
16 -- maybe one of them was.

17 But to the extent that they were a cooperator, they
18 would run the risk of losing the benefits of that deal. There
19 are sentencing ramifications. There could be information
20 available to the government that they don't know about that
21 could be used to cross-examine them, that might be related to
22 other investigations or prosecutions.

23 Every good defense lawyer is going to tell their
24 client, not until after you're sentenced, or I want -- or I
25 want immunity from the government before I'll do it. Which

1 the government would be unlikely to give.

2 MR. CORCORAN: I'm sorry, Your Honor, I didn't mean
3 to over --

4 THE COURT: I'm just trying to think through all the
5 ramifications.

6 MR. CORCORAN: No, no --

7 THE COURT: The ramifications for a defendant facing
8 sentencing, who's been part of a large drug conspiracy, who
9 has probably not been a good boy or a good girl in other
10 respects, is to sit silent. It's their Fifth Amendment right
11 to do it, and most of those -- and all three of them were
12 represented by counsel. The chances that they would testify,
13 it seems to me to be extremely unlikely.

14 MR. CORCORAN: I guess what I would say to that, Your
15 Honor, without knowing more about the details of Ambrin
16 Qureshi and Laquay Spence, is, it's Jodi Brown who told us
17 that she gave the 302s. Jodi Brown contacted counsel to
18 say -- or contacted Malik to say, wait a second, I gave a 302
19 that you should be interested in. So that alone makes me
20 believe that she might have been predisposed to testifying. I
21 can't guaranty that, but at a certain point I think there's
22 only so much Monday morning quarterbacking that's allowed in
23 this particular forum for this motion.

24 The Dennis standard is whether it's material or
25 admissible, but -- or likely to lead to admissible. It

1 doesn't say that admissibility is required.

2 THE COURT: Well, that's true, that's a good point,
3 but I don't know why they were shot at, seems unlikely to lead
4 to other admissible evidence. The statement is, I don't know.

5 It would be another thing if the statement was,
6 someone else did it and I know who it is. That might lead to
7 other evidence, but this is not a factual circumstance that's
8 likely to meet that exception.

9 But beyond that, Brown -- the disclosure of Brown
10 and what she said, I don't -- the core of what was in her 302
11 was disclosed to the defense prior to the close of the defense
12 case. Ms. Brown did not testify. She could have, right? Why
13 wasn't she called by the defense at trial?

14 MR. CORCORAN: I can't answer that question right
15 here except to say that the government did not tell us what
16 she said. The government gave us their spin on what she said.
17 If we had seen the 302s and realized that what she said was, I
18 don't know why they killed him, and I know James.

19 Instead, what the defense got was, she doesn't know
20 why they -- the Derry brothers, which isn't what she said,
21 according to the notes of the 302 -- I don't know why they
22 killed him, I was in the hospital. That's a profoundly
23 different statement. At one point she's saying, I don't know
24 why they killed him, and I know James. If I knew James, I
25 would probably know the reason because I would have been

1 attuned to hearing his name mentioned in the various places
2 that the conspiracy gathers and talks about its business.

3 THE COURT: Doesn't that cut both ways, though? If
4 it was over a girl, and she was so close -- I mean, the same
5 isn't I talked to him every day. It's I knew him from
6 childhood. That just means a long-standing relationship, not
7 a contemporaneous one.

8 MR. CORCORAN: Understood.

9 THE COURT: Second, doesn't that cut both ways by
10 suggesting that if it had been something other than drugs, her
11 relationship with him would have engendered particularized
12 knowledge about that? She doesn't say, oh, it was over a
13 girl, everybody knew that; in fact, I talked to TY about it
14 two weeks before; Mykal is pretty upset with you, better stay
15 away from so and so.

16 But none of that happens. There's none of that in
17 the 302. So, I mean, it seems to me that the fact that they
18 knew each other from childhood doesn't mean that they have an
19 ongoing relationship that undermines the government's theory.
20 I'm not clear what that would be, but -- and that it arguably
21 goes both ways.

22 MR. CORCORAN: I must admit, I don't see it going
23 both ways, but what I would say is that Kareem Young testified
24 and was cross-examined, but there was no witness on the other
25 side saying, he's saying there was a conspiracy-related

1 reason, we have -- are able to present three people who are in
2 the conspiracy, who say they have no idea why this guy was
3 shot. Admittedly, the point is subtle.

4 I mentioned in the first brief there's a famous
5 Sherlock Holmes story, where the clue is that the dog didn't
6 bark. This is the dog that didn't bark. If the dog didn't
7 bark in that case it was important because it showed that the
8 dog knew who had cut the horse's tendon, Silver Blaze -- not
9 important.

10 THE COURT: I'm familiar with it because it popped up
11 in another case, actually.

12 MR. CORCORAN: You're kidding me.

13 THE COURT: Well, no, it's the concept of the absence
14 of evidence being evidence.

15 MR. CORCORAN: And that's what we're dealing with
16 here. People who are intricate to the conspiracy, not
17 intricate to the decision-making part of the conspiracy,
18 they're not giving the orders, but they're talking to
19 everybody who gives the orders and who receives the orders,
20 and they don't know of a conspiracy-related reason for TY
21 being shot.

22 And that shows that if the jury could hear three
23 people potentially say -- get up and say, I'm in the
24 conspiracy and I don't know why he was shot, that counteracts
25 Kareem Young, whose only testimony is that he heard things.

1 It's a very tenuous connection, and that, three against one.
2 I mean, it's axiomatic that that could at least
3 place reasonable doubt into the minds of the jury, and all we
4 have to show is a reasonable prospect that the verdict could
5 have been different, which, as the Judge that I mentioned in
6 our brief characterized in a percentage term, is only 20
7 percent point of proof. It's not 50 percent, it's not 75
8 percent reasonable doubt, it's not 50 percent preponderance of
9 the evidence, just 20 percent, but there's a reasonable chance
10 that the result could have been different.

11 The result could have been different, at the very
12 least, on the 924(c) by Malik Derry because it had to be in
13 furtherance of the conspiracy, and these three people say that
14 the conspiracy -- they don't know of a reason why he was shot
15 and they're in the conspiracy.

16 He's saying, one person, I'm in the conspiracy, and
17 I heard about this motive. That's for the jury to decide.

18 THE COURT: Let's unpack this a little bit because
19 the government makes a point about, and I think they're right,
20 that the relief you seek is overbroad. Not acquittal, but
21 retrial. But yet, I don't have any assurance that those three
22 would actually -- those three would testify. So it's not
23 clear that there's three people.

24 And then, if you actually look at what they would
25 testify to, I'm not sure it's all that helpful to you.

1 Qureshi is going to testify, and there's another Sherlock
2 Holmes reference and this relates to what she says. Do you
3 remember what she says at the end of her 302: They didn't
4 tell me why they were shooting at people because they would
5 have to kill me. Right? So how helpful is that to the
6 defense? I don't know because they didn't tell me those kinds
7 of things; I didn't want to know. And she's basically just
8 Jodi Brown, later version.

9 MR. CORCORAN: Except in this case, her telling them
10 that there was not a conspiracy-related reason for the murder
11 doesn't expose her to any punishment from the group. It helps
12 the group. It helps Malik. So what motive would there be to
13 punish her for saying, I don't know why they killed him?

14 THE COURT: But she would have to admit that she was
15 kept in the dark on purpose and that she wanted it to be that
16 way.

17 MR. CORCORAN: But her 302 also shows that she -- in
18 spite of this shielding of her, which you have read into the
19 302, she also testified that she was well aware of some of the
20 beefs that were going on and the reasons why people were
21 killed. I mean, there's a whole discourse on why they killed
22 one guy in, I believe, it's -- why they went after one guy in
23 her 302.

24 So, yes, she said that she was shielded, but she
25 also showed that she know more -- she knew more than she led

1 on.

2 THE COURT: All right. Spence, though, you
3 characterize him as having a self-interest in understanding
4 the beef between the rival groups, but he just strikes me as
5 an opportunistic drug dealer. He's trying to buy the
6 cheapest, best -- cheapest, best heroin he can, and he ends up
7 with Mykal because he's a seller of heroin, not because he has
8 any specific -- any specific information about an organization
9 that he's not a member of.

10 Why would -- why would Spence know -- why would he
11 be privy to why -- to discussions about why TY was killed?

12 MR. CORCORAN: Well, I think we're assuming that all
13 of these conspiracies are very tight-lipped groups of people.
14 This is -- they are bunches of neighborhood people,
15 neighborhood people who gather in the central part of their
16 neighborhood and just talk about their business.

17 THE COURT: And there's evidence to support that.

18 MR. CORCORAN: And so why wouldn't Laquay have heard
19 of a conspiracy-related reason, if there was one, in his
20 travels both through the territory and also traveling in other
21 territories looking for, as you said, the best price?

22 Because he travels among all these worlds, it was --
23 his survival depended upon knowing who was beefing with who,
24 who I need to avoid, who I don't need to avoid.

25 And against that backdrop he says, I don't know why

1 the conspiracy killed TY and I hung out with TY. That's his
2 last statement in the 302.

3 THE COURT: All right. So the question -- assuming
4 that Spence, Qureshi and Brown would testify at a trial,
5 retrial, they would take the stand and say, I don't know, and
6 that would contradict Kareem Young's testimony, that in a
7 series of meetings, without a reason why, expressly stated, he
8 and the other enforcers were told to shoot TY on sight.

9 MR. CORCORAN: I would say that that doesn't fully
10 state what Kareem Young testified to, because he also
11 testified that he had heard about the beefs from other people.
12 Not necessarily from the leaders of the group, but he had
13 heard from, as was characterized in the cross-examine, the
14 rumors about why they were beefing with who. So Kareem Young
15 got up and testified that he knew about a beef.

16 He may not have knew -- he didn't know why it
17 started, but he knew that there was a beef. And then he
18 heard, supposedly, Mykal tell him to put down TY on sight. So
19 we have one person saying that they're in the conspiracy and
20 they knew about the beefs between these two groups, and he
21 knew that the order had been put out to take out TY because of
22 that beef.

23 Then if all three trials -- if the three 302s are
24 allowed -- proffers of the 302s are allowed to testify, they
25 would say, I'm also in the conspiracy and I don't know of a

1 reason to shoot TY. It's just I never -- I talked with
2 everybody and I don't know -- I've never heard it discussed
3 that there's a beef with him.

4 THE COURT: All right. But to be clear, Brown had --
5 was not withdrawn -- at least in part, withdrawn from the
6 conspiracy at the time that TY was shot.

7 And the reference to the hospital seems to be a
8 statement, in-artful, that she had no contemporaneous
9 knowledge of why because she was -- she had stopped allowing
10 her house to be used, she was going into detox, she later
11 starts using drugs again, but she's -- she's kind of
12 withdrawn, if you will, maybe -- I'm not talking about a legal
13 term.

14 MR. CORCORAN: I know what you mean, Your Honor.

15 THE COURT: She's -- she's detached for a significant
16 period of time and around the time that TY is --

17 MR. CORCORAN: Right. According to the second 302
18 that was done after the *Brady* motion, which we -- which we
19 also thought was a little Monday morning quarterbacking, and
20 the -- I'm sorry, Your Honor, you were just saying -- I lost
21 my train.

22 THE COURT: And same with Qureshi, right?

23 MR. CORCORAN: Yes, but she had -- okay, let's grant
24 that she had pulled out of the conspiracy from the Derreck
25 Mack shooting.

1 THE COURT: Right.

2 MR. CORCORAN: To the end of the conspiracy. She's
3 out. She gave up the trap house, she's in the hospital. But
4 remember, the government's whole theory is that TY had been a
5 long-standing grievance. This -- you know, there had been --
6 a year and-a-half before, there had been shootings that
7 involved him. So she may have withdrawn, Ambrin Qureshi may
8 have withdrawn, but they still would have known if the
9 conspiracy -- if the conspiracy-related reason for shooting
10 him was related to the conspiracy in that way, they would have
11 known because it predated their withdrawal.

12 They knew -- you know, this is what I was referring
13 to about institutional knowledge. I mean, they were there
14 helping the gang get start, helping Mykal get start. They
15 were there at the beginning, they would have known all these
16 things, regardless of whether they tried to distance
17 themselves from the conspiracy, they still would have --

18 You know, they didn't erase their disks. They still
19 had all that knowledge in there. And that knowledge says,
20 there's no -- they don't know why he was killed, as members of
21 the conspiracy.

22 THE COURT: All right. Anything else, sir?

23 MR. CORCORAN: I think that's it. Thank you, Your
24 Honor.

25 THE COURT: Thank you.

1 Mr. Madden, are you arguing the why? I mean the
2 who, or just the why?

3 MR. MADDEN: I think I'm more in line with how Your
4 Honor was looking at it, which is -- I mean, it goes to the --
5 it goes to the crux of our case, the argument that these
6 people are saying they don't know or they didn't know about
7 this, and they didn't hear any word about why TY was being
8 murdered. It goes to the crux of the defense that it wasn't
9 related to the drug conspiracy, which is why it's relevant.

10 THE COURT: Okay. So your main argument is that it
11 goes to why?

12 MR. MADDEN: Correct. Which was, as the Court
13 recalls, that was our defense. I mean, Mykal Derry got up and
14 said he murdered him, but he said it was for a different
15 reason. So the why was our -- was our defense, that that was
16 not part of the drug-related conspiracy, and, in fact, there
17 was a long discussion and cross-examination even with the
18 government's own expert about that very issue of -- a lot of
19 Mr. Mykal Derry, my client's testimony, both on direct and
20 cross had to do with that issue.

21 And frankly, the government's witness was only Mr.
22 Young, who got up and testified, and where that kind of
23 solidified and came together. And had there been other people
24 who would have said, yeah, we were involved, and we didn't --
25 you know, we didn't know why he was killed and what the

1 motivation is for it, it would have supported the argument
2 that we made, that Mr. Derry made on the stand, that was, this
3 killing was unrelated to any kind of drug conspiracy.

4 There was a lot of talk and a lot of evidence about
5 how this was just a loose group of disorganized people who
6 lived in the neighborhood and it wasn't some conspiracy, and
7 these 302s point towards that.

8 The other issue the Court asked, what if they really
9 have been called, would they even testify and wouldn't their
10 attorneys just keep them from testifying? And I don't
11 remember all the facts of it, but I'm sure the Court recalls
12 when the attorney was Mr. Engle, and I tried to call his
13 client and there was a big thing in there, where, despite his
14 attorney not wanting him to testify and him taking the Fifth,
15 he almost did get up there and testify, and we kind of went
16 back and forth with it.

17 My point being, is that you don't know what's going
18 to happen. These are an unpredictable, certainly un-savvy
19 group of people, who were all involved in these conspiracies,
20 and one of them very well might have come in and done
21 something unorthodox, like Mr. Engle's client almost did, like
22 my client did on the witness stand, and come in and said
23 something, and come in and wanted to talk more about this and
24 gone above and beyond what the 302 was.

25 THE COURT: I just wonder whether the law requires

1 more certainty in that. Because if the only relief that this
2 Court can grant, if the Court were inclined to grant relief,
3 would be a new trial. It would seem to me to be a significant
4 waste of everyone's time, frankly, and judicial resources to
5 have a retrial in which all the same evidence went in and
6 there were no three witnesses from the defense. There seems
7 to be -- have to be some sense that they are ready, willing
8 and able to testify in a manner that would actually be
9 material to the defense.

10 MR. MADDEN: Well, how it's also material, aside from
11 them actually getting up and testifying is, in
12 cross-examination of the government's experts and of the agent
13 and of the -- they proffered the -- or they had the expert who
14 talked about gang-related violence and all that type of stuff.
15 This could have been material and impeachment of all that, it
16 could have been material impeachment of Mr. Young. In other
17 words, well, all these other people were involved in
18 conspiracy, they were part of it, you know, and did you know
19 that they said nothing?

20 And who knows, objections, what comes in and
21 whatnot, but it's not just -- this evidence, had we had it,
22 would not only potentially come in if these people were going
23 to testify. There's a lot of other ways that it could have
24 come in in the examination of these other witnesses.

25 THE COURT: All right. Well, that's -- I think you

1 would have a good faith basis to ask that question, so I don't
2 think it would have to come in, perhaps be useful on
3 cross-examination. So that's one possible use, that short of
4 testimony. But the question might remain how effective it
5 would be.

6 And -- all right. What else?

7 MR. MADDEN: Well, and when the Court asked how
8 effective it'll be, obviously, we can't know that, but this is
9 not a case where the jury deliberated for two hours and was
10 back. I mean, they took their time deliberating in this, so
11 other evidence would -- you know, could very well have made a
12 difference. This jury took their job seriously, and I don't
13 remember if it was -- I remember it was more than a day. I
14 don't remember how long, but there were deliberations and
15 serious deliberations here. So that has to raise that
16 question. That's it.

17 THE COURT: All right, Mr. Madden, thank you.

18 MR. MADDEN: Thank you.

19 THE COURT: All right. Mr. Gross.

20 MR. GROSS: Thank you, Your Honor.

21 THE COURT: What about the notion that even in the
22 absence of their testimony, that Mr. Markowitz or Mr. Madden
23 could have used statements of the 302s to question Mr. Young
24 about the knowledge of other conspirators about the reason for
25 the killing of TY?

1 MR. GROSS: Your Honor, there's two problems with
2 that. First of all, it's not at all clear to me that if
3 defense counsel would have attempted to cross-examine Kareem
4 Young by saying, for instance, are you aware that other
5 members of the conspiracy state that they don't know the
6 reason why Tyquinn James was killed, that you would have
7 overruled that objection from the government; certainly an
8 objection would have been forthcoming.

9 THE COURT: What's the objection?

10 MR. GROSS: The objection is, there's no prior
11 inconsistent statement, it doesn't impeach. The fact that --
12 none of these witnesses are coming forward and saying, I spoke
13 to Kareem Young or I spoke to somebody else who had knowledge
14 about the motive for this murder. It simply doesn't -- I'm
15 trying to think of the word from trial advocacy class about
16 how cross-examination has to undermine the testimony.

17 THE COURT: So you agree with my characterization of
18 Mr. Young's testimony, that he never actually said TY was shot
19 because he was a rival drug dealer?

20 MR. GROSS: I do, I do. But even if Your Honor
21 overruled the objection and Mr. Young were allowed to answer
22 it, yeah, I -- what would he say? He would say, I don't know
23 anything about what Jodi Brown or Ambrin Qureshi or Spence
24 said to the FBI? He would just say he doesn't know. And I
25 don't see how that would undercut his testimony at all, unless

1 they could have -- so Your Honor has focused on a crucial
2 point here and that is, why retry this case with the same
3 evidence? And it's the same evidence, Your Honor, unless we
4 had affidavits from Jodi Brown, Ambrin Qureshi and Laquay
5 Spence, that if the defense had called them to testify, they
6 would have been ready, willing and able to testify.

7 We turned these 302s over to the defense too late,
8 Your Honor. But I think, as Your Honor found, not with intent
9 to suppress and partly because we were really blind-sided by
10 this testimony of Mykal Derry that we didn't anticipate, that
11 may have made these 302s relevant.

12 But -- but they've had these 302s for quite some
13 time now. And according to the defense, Jodi Brown was the
14 one who called up Malik Derry and said, hey, I gave a 302 to
15 the government that might be helpful to you. Well, if she's
16 so helpful, if she wants to help Malik Derry, then where's her
17 affidavit, you know, saying I would have come in and testified
18 to this had I been called by a defense witness?

19 And as Your Honor pointed out, there are plenty of
20 good reasons why her lawyers would have told her, oh, no,
21 you're not testifying at this trial. I mean, for one thing,
22 Jodi Brown had a cooperation agreement with the government.
23 And I just can't imagine that experienced counsel like Mr.
24 Madden or Mr. Markowitz, had they been representing Jodi
25 Brown, would have said, well sure, go on and take the stand as

1 a defense witness and, you know, don't worry about what that
2 will do to your cooperation agreement, if anything.

3 So without their testimony at a retrial, there's no
4 point in granting relief. That's not the purpose of granting
5 a retrial, in order to present the jury with the same
6 evidence. So that's one problem.

7 Here's another one --

8 THE COURT: I assume that the government would not
9 revoke someone's plea agreement if they testified truthfully,
10 to anybody, right?

11 MR. GROSS: No, no, we certainly wouldn't.

12 THE COURT: But it does present complications.

13 MR. GROSS: Yes, I think that a defense attorney
14 would say, nothing good could come of you testifying as a
15 defense witness in this case, and I'm only going to allow you
16 to testify if I think there's going to be some benefit of that
17 to you. And otherwise, you have, you know, the right -- she
18 hadn't been sentenced yet, her Fifth Amendment privilege
19 persists until after sentencing, and you could just say, I
20 want you to take the Fifth and not testify.

21 THE COURT: It might also -- certainly, it would
22 extend to other crimes after sentencing as well.

23 MR. GROSS: Yes.

24 Now, Your Honor, remember that there were two and
25 only two competing theories at trial about why Tyquinn James

1 was murdered, and that's what this entire *Brady* claim is
2 about, why was he killed. No doubt he was killed. No doubt
3 he was killed by the two defendants acting in concert with
4 each other.

5 We were a little surprised in the reply brief where
6 Malik's attorney said, oh, we never -- we never said that this
7 evidence would have been helpful to cast doubt on who was the
8 shooter. Well -- so having conceded that, they conceded away
9 the defensive theory at trial.

10 So the two competing theories, of course, was, the
11 government said, murdered in furtherance of a drug trafficking
12 experience, they got 924(c), and the defense theory was, oh,
13 no, murdered because of a sexual rivalry between Mykal Derry
14 and Tyquinn James.

15 THE COURT: Well, let me interrupt you there.
16 Because to be clear, I'm not sure -- I'd have to go back and
17 look, but I'm not sure how much of that theory was adopted by
18 Malik.

19 MR. GROSS: It was, Your Honor, it absolutely was
20 adopted by him. And here's where you will find this. Mr.
21 Markowitz in his summation, on Page 5277 of the transcript,
22 right out of the box, Mr. Markowitz told the jury that they
23 should believe Mykal's confession because it was against his
24 interest.

25 On Page 5978, Mr. Markowitz said, Mykal lied to Buck

1 when he said that, quote, Leak splashed TY. And on Page 5979,
2 Mr. Markowitz said, Mykal was just trying to right a wrong
3 when he testified that he was the killer.

4 So Mr. Markowitz went in with both feet. On the
5 defense theory, presented by Mykal, that Malik was not the
6 shooter. That it was a -- it wasn't a "what" defense, it was
7 a "who" defense.

8 And the reason that's important, Your Honor, was
9 because once you conceived the who, the what becomes very
10 clear.

11 THE COURT: You mean why.

12 MR. GROSS: The why, the why. Because once you
13 concede that Malik is the shooter, what possible motive does
14 he have to kill Tyquinn James, other than in furtherance of
15 the drug conspiracy. He doesn't have any sexual rivalry with
16 Tyquinn James. Why would he do it? What we've heard in these
17 intercepts, Your Honor, over and over again, that there's
18 evidence tying Malik to enforcement. You heard the
19 interception where --

20 THE COURT: You mean once the evidence firmly
21 establishes that Malik was the shooter?

22 MR. GROSS: Even before that, Your Honor. Remember
23 that there's a conversation between Mykal and the
24 coconspirator daily.

25 THE COURT: Because they don't concede Malik was the

1 shooter. To be clear. You misspoke, but I understood what
2 you meant.

3 MR. GROSS: Well, Your Honor, they may not concede
4 Malik is the shooter, but they're saying that this evidence
5 doesn't do anything to undermine the overwhelming evidence
6 that Malik was the shooter, as I understand in their reply
7 brief.

8 THE COURT: Right. They are disavowing, right.

9 MR. GROSS: Right. So what would they have done --
10 at trial, you know, they said, Mykal testified truthfully that
11 he was the shooter; therefore, Malik could not have committed
12 this murder in furtherance of the conspiracy. He didn't
13 commit the murder.

14 But now they're saying, if you go behind their
15 arguments, they're saying, well, if we had these 302s, we
16 would have a different defense. But what would that defense
17 have been? The defense would have been, Malik was the
18 shooter. I mean, we can't get around the security video, we
19 can't get around Mykal's statement to Kim Spellman or to Buck,
20 Leak splashed TY.

21 Or remember the conversations the next day, where
22 Kim Spellman is laughing and says that Malik doesn't have to
23 go to the range because he's already a crack shot.

24 You know, the evidence just couldn't be overcome,
25 and so their defense would have to be, then, okay, Malik was

1 the shooter, but he didn't shoot him in furtherance of the
2 conspiracy.

3 Well, why did he do it, then? They have nothing to
4 offer, Your Honor. There's no plausible reason why Malik
5 would have called up Mykal and said, hey, TY is down here at
6 Red Klotz, bring me that thing.

7 You know, and the way that conversation is, that
8 series of calls went down, just was completely consistent with
9 Young's testimony, that the way this gang operated was, you
10 see that other group here, shoot on sight.

11 And you're right, it's an inference that the
12 government argued and the jury was entitled to draw, but it's
13 a powerful inference. That they are protecting their drug
14 turf and -- and that any shootings that are carried out
15 against members of the Allen organization are because they're
16 trying to keep rival gangs out of their -- out of their drug
17 territory.

18 THE COURT: The alternative defense could have been
19 that Malik shot TY at Mykal's direction because of a girl.

20 MR. GROSS: Where's the evidence of that, Judge?
21 There's none.

22 And the counterargument to that was, well, then do
23 it yourself, right? Why would Mykal call upon Malik to shoot
24 him because of a sexual rivalry? Remember, Mykal was so
25 indignant that he was shot at while he was holding his child

1 by one of the Allen organization's members, whose name is
2 escaping me at the moment. Sedrick Lindo.

3 Now, he was so offended. Remember he got into an
4 argument with Mr. Askin on cross-examination. What would you
5 have done, Pat, if someone shot at you while you were with
6 your kid? He was so offended that he went out and took the
7 law into his own hands and, you know, but --

8 THE COURT: I think it was someone else who shot
9 Lindo, right? Wasn't it Spencer?

10 MR. GROSS: Yes, that's right.

11 THE COURT: So other members of the conspiracy --
12 well --

13 MR. GROSS: You're right, other members of the
14 conspiracy, they would support each other by -- you know, it's
15 like the Hatfields and the McCoys. You shot one of ours --
16 you know, the famous line from the movie about Al Capone,
17 maybe it was entitled Capone where Sean Connery says, you
18 know, they put one of yours in the hospital, you put one of
19 theirs in the morgue. And so, yeah, that's how this group
20 operated.

21 But there's just absolutely no evidence that would
22 support that even more far-fetched theory that Malik was
23 shooting at Tyquinn James to avenge Mykal's, you know, dignity
24 or the assault upon him.

25 THE COURT: So you would say -- would you say that

1 who and why is inextricably intertwined in this matter?

2 MR. GROSS: Absolutely, Judge.

3 THE COURT: In the sense that once the defense,
4 apparently joined by both, was that Mykal did it over a girl,
5 then those three 302s must be viewed through that defense.

6 MR. GROSS: Yes, that's right.

7 THE COURT: And it would seem a tougher hurdle -- but
8 in any event. All right.

9 MR. GROSS: And, Your Honor, let's not forget that
10 the -- that Kareem Young's testimony, that he was in these
11 meetings, where Mykal was ordering him to put Tyquinn James
12 down, although the most compelling evidence of the motive for
13 the murder wasn't the only evidence.

14 There's testimony -- first of all, it's clear that
15 the Derry drug trafficking organization is an extremely
16 violent group, that's using guns and gunfire and shootings to
17 protect its turf. There's testimony, admittedly from Kareem
18 Young, but there's testimony that Spencer -- Buck, who is
19 probably the preeminent enforcer for this organization, is in
20 a park with Kareem Young and Tyquinn James, and a guy named
21 Green happened to ride by on a bike. And that inflamed
22 Spencer so much he jumps on another bike and chases after him
23 and shoots into an apartment building.

24 And that account by Kareem Young was fully
25 corroborated by testimony from officers of Atlantic City

1 Police Department, who said they got a call about a shooting,
2 and when they show up, you know, the building is all shot up
3 in a way that lines up entirely with Kareem Young's account of
4 how this happened.

5 And, you know -- and then there is, you know,
6 there's the testimony from Bailey that Mykal says he's going
7 to be strapped the day he comes out of prison. He's not just
8 going to be selling drugs, he's going to have a gun. He's one
9 of the enforcers.

10 THE COURT: And there's no -- the evidence doesn't
11 support that that actually happened, though, does it? I know
12 he says that.

13 (Counsel confers.)

14 MR. GROSS: But then you have this meatball incident,
15 Your Honor, where -- where someone complains to Mykal Derry,
16 hey, Malik is out there threatening people with guns, friends
17 of ours, and Mykal says, oh, no, he doesn't get guns for
18 threatening friends, he only gets guns for threatening
19 enemies. And that, again, I think is pretty powerful evidence
20 that Mykal has commissioned Malik as an enforcer for this
21 organization.

22 I don't have much else to say, Judge, other than I
23 think that -- that Mr. Corcoran has somewhat twisted the
24 government's -- Mr. Askin's e-mail, which Your Honor found
25 when you denied the *Brady* claim with respect to Jodi Brown's

1 302s. Mr. Corcoran says, well, the government
2 mischaracterized the Brown e-mails because the government, as
3 Mr. Askin's e-mail said, Jodi Brown didn't know who shot or
4 why James was shot because she was in the hospital.

5 And if you go back and look at Mr. Askin's e-mail
6 of --

7 THE COURT: There are two -- the sentences are
8 juxtaposed.

9 MR. GROSS: Exactly.

10 THE COURT: The "because" is not there.

11 MR. GROSS: That's right.

12 THE COURT: But I understand the defense argument
13 that that fails to note other things in the 302 that establish
14 her potential access to information.

15 I read the statement as being, she had no
16 contemporaneous knowledge because she had disassociated
17 herself, she was in the hospital, she wasn't actively running
18 a stash house, she wouldn't have been privy to a discussion
19 that we -- that they or in the aftermath as to why.

20 Again, I think it just kind of supports the overall
21 notion that -- and I said before, and I -- I'll say it again,
22 I don't think any of this was -- these issues do not arise
23 because of an intentional decision by the government to hide
24 these matters. I think it was just somebody that didn't
25 appear to be prominent, given all the other evidence in the

1 case, and I credit this notion that there was a surprise by --
2 I certainly was surprised by Mykal's testimony.

3 But I would say this that in terms of the
4 government's law of the case argument, that while I may have
5 made those determinations then, which was that it was not
6 exculpatory and material, and even if it were, it was
7 disclosed, that doesn't mean in my view I can't reexamine that
8 now in light of the other disclosures. Because there's --
9 there's two prongs to a *Brady* analysis when there's more than
10 one piece of *Brady*. It's an individualized discussion of each
11 piece and then a separate cumulative analysis, and subsequent
12 disclosures of related or other things that could inform one's
13 judgment anew about the materiality or the exculpatory nature
14 of the original materials, as well as inform one's judgment as
15 to whether or not there was a critical -- a link missing that
16 might lead to other admissible evidence.

17 So I don't -- I don't view myself as having ruled --
18 my ruling on the Brown 302 at that time precluding any
19 reanalysis at all of the evidence here, in terms of both the
20 individualized inquiry under *Brady* or the cumulative analysis
21 under *Brady*. Unless you can convince me otherwise, it seems
22 to me that that's -- not only do I have the ability to do
23 that, I think I have an obligation to do it.

24 MR. GROSS: That's right, Your Honor, and I think I
25 pointed out in my brief that you're -- that the law of the

1 case is not binding. It's a law of guidance, and the fact
2 that Your Honor analyzed in really excruciating detail the
3 last time we were before you on this issue, I think, it is
4 that analysis -- although you're right, now has to take into
5 account this new information, that analysis is still valid
6 with respect to the Jodi Brown 302s.

7 And the Jodi Brown 302s, I would venture, are -- I
8 don't think that they are material -- Your Honor didn't find
9 them material. I think they're quite a far distance from
10 materiality, but they're certainly more material than the 302s
11 of Ambrin Qureshi and Laquay Spence.

12 And so our argument is that the law of the case,
13 although not at all binding, Your Honor, and requiring you to
14 go back and look at this new information, it certainly points
15 in the direction that this additional information, which
16 doesn't really add anything to the overall defense claim that
17 suppressed information was material, that the law of the case
18 should -- should not compel, but suggest to Your Honor that
19 the same analysis and result should be reached here with
20 respect to the totality.

21 THE COURT: I wanted to ask you a procedural
22 question. I was un -- I was confused by something in your
23 brief and maybe there's some case law interpreting it that I'm
24 unaware of. But you've asked me -- I took the government's
25 brief to ask me for an indicative ruling that I would deny the

1 motion.

2 But Rule 37, I think it's C, I'd have to look at the
3 rule, says that's not one of my options. It actually allows
4 me to deny it outright. And that makes sense to me, because a
5 denial of the motion would not complicate the appeal except
6 that it would create another issue to appeal. But granting
7 the motion would be more disruptive to the appellate process
8 and less respectful for the appellate process, and hence, the
9 rule was drafted in a way that says, well, if this issue were
10 before me properly in the sense that there hadn't been a
11 notice of appeal, then I would grant it, which is basically a
12 request to the Court of Appeals to send it back. You don't
13 have to do it, I'm going to do it. Or there's such a
14 substantial issue that I need hearings and those kinds of
15 things makes more sense to do it at the District Court level.
16 But the rule on its face allows me simply to deny it.

17 MR. GROSS: Judge, Rule 307 was adopted in 2012.

18 THE COURT: Right.

19 MR. GROSS: I've searched high and low for cases that
20 apply it, and they are as rare as hen's teeth. So Rule 37(c)
21 says the District Court may decide the motion if the Court of
22 Appeals remands for that purpose. So I read that to mean that
23 -- that Your Honor would, at this stage, issue an indicative
24 ruling and then -- there's a rule of appellate procedure,
25 which requires the parties to inform the Court of Appeals of

1 -- now come under Rule 37.

2 THE COURT: It's 12.1. But that -- I think it's
3 12.1. I think that that -- well, the C provision -- then
4 you'd have the latter portion of the rule undermining an
5 earlier portion of the rule and that doesn't make sense.

6 What I think that means -- that's simply referring
7 to if the Court were to grant relief under A3. The rule on
8 its face says the Court has three options. It can defer
9 considering the motion. Why you would do that, I don't know.

10 MR. GROSS: Right.

11 THE COURT: Two, deny the motion.

12 MR. GROSS: Right, yep.

13 THE COURT: Or three, state that you would -- would
14 grant the motion, if the Court of Appeals remands for that
15 purpose, which I think is all C does, it implements that.

16 MR. GROSS: Yep, that's right.

17 THE COURT: Or that the motion raises substantial
18 issue, meaning, before you do any of that appeal stuff, send
19 it back here so I can make a fuller record and reexamine all
20 of this.

21 But on the face of the rule, it's -- I deny it. And
22 that makes sense to me that that's different than saying -- it
23 doesn't say would deny, it says would grant. It doesn't say
24 would grant or deny. It just says deny.

25 MR. GROSS: That's right, you're right.

1 THE COURT: And that makes sense that that wouldn't
2 have any impact on the appellate process, only the -- well,
3 you're appealing on all these other reasons, issues, but by
4 the way, this *Brady* thing, I want to give him a new trial.
5 That's something where, out of respect for the Court of
6 Appeals, I can't take away their jurisdiction. I would have
7 to indicate that that's what I would do.

8 MR. GROSS: Yeah.

9 THE COURT: If they provided the opportunity to me.

10 MR. GROSS: Yeah, okay.

11 THE COURT: So I think the plain face of the rule
12 says, if I were to deny the motion, that I would just deny it.
13 Do you disagree?

14 MR. GROSS: No, I don't, now looking at it in that
15 light.

16 THE COURT: All right. And I think Rule 12.1 is
17 consistent with that.

18 MR. MADDEN: For what it's worth, I agree.

19 THE COURT: Oh, thank you. All right. Don't worry,
20 I'm not saying -- I have not issued a ruling. And I'm sure
21 Mr. Corcoran wants -- and Mr. Madden want to respond to the
22 government, but I just want to confirm this.

23 MR. ASKIN: Your Honor, while the Court is doing
24 that, may I have a minute to speak with Mr. Gross?

25 THE COURT: Yes.

1 For example, in A, the notice says they would notify
2 the clerk if -- the Circuit clerk, if the District Court
3 states either that it would grant the motion, or B -- or that
4 the motion raises a substantial issue.

5 There's nothing in Rule 12.1A that says the movant
6 must promptly notify the Circuit clerk if the Court states it
7 would deny the motion.

8 Mr. Gross doesn't care.

9 (Laughter.)

10 THE COURT: All right.

11 MR. CORCORAN: We heard it, Your Honor.

12 THE COURT: All right. The Rule 12.1 says, the
13 notice of the Court of Appeals says, "The movant must promptly
14 notify the Circuit clerk if the District Court states either
15 that it would grant the motion or that the motion raises a
16 substantial issue."

17 MR. GROSS: Right.

18 THE COURT: There's no notice to the Circuit clerk if
19 the Court were going to deny the motion. So that's consistent
20 with my interpretation.

21 MR. GROSS: Yes, it is.

22 THE COURT: Okay. The government in its disclosure
23 to Mr. Markowitz provided Ms. Brown's attorney's phone number
24 during the e-mail?

25 MR. GROSS: I don't know if they did, but they

1 certainly provided his name, Your Honor, and I think
2 Mr. Jarvis would have been easy to find once they had his
3 name.

4 MR. ASKIN: I believe I said Roland Jarvis of
5 Philadelphia.

6 MR. GROSS: Yeah.

7 MR. ASKIN: And I believe I said also, if you need
8 any help, let me know.

9 MR. MARKOWITZ: That is accurate.

10 THE COURT: Mr. Markowitz, thank you, sir.

11 All right, Mr. Corcoran, what say you to the
12 government's arguments -- I'm sorry, Mr. Gross, are you
13 finished?

14 MR. GROSS: Just one last thing, and Your Honor, I
15 think, picked up on this. So the most relief that the
16 defendants could get out of this would be a new trial only on
17 the 924(c) count, and I would argue only with respect to
18 Malik.

19 I don't see how Mykal having testified that he was
20 the shooter, but then pointing to these 302s, which he would
21 claim undermines the reason for the shooting, that if -- if
22 these 302s, in other words, are at all material to Malik's
23 defense, I don't see how they are material to Mykal's defense.
24 But be that as it may, I just want to make sure -- tell me if
25 you disagree.

1 THE COURT: Because it goes to the -- it goes to the
2 924 (c) .

3 MR. GROSS: Right.

4 THE COURT: I think -- I don't think -- I don't hear
5 the -- I don't think it goes to the other -- the other counts
6 were drug or drug-related counts.

7 MR. GROSS: That's right.

8 THE COURT: So I don't know how -- I'll ask them, but
9 I don't see how it undermines those decisions.

10 MR. GROSS: Thank you.

11 THE COURT: So I guess we will start with
12 Mr. Corcoran. Is it true that this is a challenge to the
13 924(c) and must be viewed through that lens? You would get a
14 new trial on the 924(c), yes?

15 MR. CORCORAN: That is my belief, yes, Your Honor.

16 THE COURT: And none of the other counts would -- are
17 suspect in any way if I were to indicate my intention to grant
18 the motion.

19 MR. CORCORAN: The only parts of the 302 that we
20 stated were not disclosed had to go to the motive for the
21 shooting of TY and whether that was in furtherance of the
22 conspiracy.

23 So by implication, let alone my saying it out loud,
24 that the -- it doesn't go to challenging the drug offenses,
25 the underlying drug offenses themselves, however, it does go

1 to potentially sentencing issues.

2 Malik Derry was sentenced to life imprisonment plus
3 ten years. Granted, life imprisonment is not a lot different
4 than life plus ten, but the reason -- one of the reasons why
5 Your Honor went to the life sentence was because of the
6 relevant conduct of the violence. But if the violence that
7 Malik has been -- well, assuming it's -- is not then convicted
8 of -- would not be relevant conduct to the conspiracy because
9 it was not related to the conspiracy, based on the -- the
10 302s.

11 So I think there would be sentencing --

12 THE COURT: That particular act of violence.

13 MR. CORCORAN: Well, but that's the only one that
14 goes to Malik on the 924(c).

15 THE COURT: Yes, yes. Fair enough.

16 MR. CORCORAN: So -- which is why we went through
17 that whole Collado recitation at sentencing, where we ended up
18 in a much lower base offense level, but for the 924(c) and the
19 mandatory ten years and then the relevant conduct.

20 So, yes, that's a long-winded way of saying yes,
21 Your Honor.

22 THE COURT: Yeah, and -- but the government has
23 argued that resentence -- that this is moot, because they
24 would get life anyway, and that's something I can't -- I don't
25 think it would be proper for me to say. I mean, I would

1 think, if I were to -- if somehow the 924 did not survive,
2 here or elsewhere, and elsewhere, that sentencing would have
3 to occur and I would have to take everything into
4 consideration and begin anew.

5 MR. CORCORAN: Right, because Your Honor has -- Your
6 Honor sentenced him to life, in part, because you found that
7 he was an enforcer of the group, but this was the only act
8 that was testified -- or brought up at trial that connotes him
9 as an enforcer. As a matter of fact, all of the other
10 instances with Malik, or I would say the lack of instances
11 with Malik being an enforcer, are there.

12 So the Jermaine Reynolds conversation over the -- so
13 if the government said, well, Malik was an enforcer because
14 Michael said to Kareem Bailey, I think it was when Malik was
15 still in jail, he's going to be strapped from day one. And
16 the government says -- and this couple of days later, Malik is
17 asking for a gun, and this shows that he's an enforcer and
18 especially since -- but what it shows that he wasn't strapped
19 from day one and that Mykal denied him a weapon, not just
20 because oh, we only keep them for the -- I just don't trust
21 you.

22 THE COURT: No, I remember that in your brief and
23 from the case, so -- and I understand your point.

24 But going back to this issue of sentencing, in the
25 absence of the 924(c), this Court could still determine by a

1 preponderance that Malik Derry shot TY as part of a drug
2 conspiracy. And, one, would be the nature and circumstances
3 of the offense and relevant conduct that could be relevant in
4 determining whether or not I varied or departed or accepted
5 the guidelines, which for the drug conspiracy in this case,
6 were life, as I recall, absent 924(c).

7 MR. GROSS: The statutory maximum was life.

8 THE COURT: The statutory maximum was life. I'm not
9 sure what the guidelines would have been --

10 MR. ASKIN: No, if you apply the cross-reference,
11 Your Honor, because of a drug-related murder or, I believe,
12 arguably, even a murder that under 1(b)1.3 was relevant
13 conduct to the drug conspiracy, then the guideline become --
14 the advisory guideline becomes life. That -- which is where
15 the Court came to, and then the Court heard arguments for a
16 variance downward for the defense, and ultimately, after a
17 long argument denied them.

18 But that's -- that's actually how we arrived at a
19 life on the conspiracy, was that the advisory guideline the
20 Court adopted by a preponderance of the evidence was life
21 based on the cross-reference in 2(d) 1.1 for the murder.

22 THE COURT: No, I don't think I made a separate
23 finding of preponderance. I think that was -- I relied -- I'd
24 have to go back and look. I mean, that would be interesting
25 if I did. Because that would -- would be -- I wonder whether

1 that would -- maybe your mootness argument has some -- some
2 merit beyond my cursory dismissal of it. In other words, I
3 think what I did was, I based that on the jury's finding, not
4 my own separate, independent finding by a preponderance.

5 MR. ASKIN: But I think you -- well, we would have to
6 look at it. I don't want to speculate. We'd have to look at
7 it again. But I think you made findings, that I find, the
8 Court finds, that these are the facts. I don't think you just
9 said, well, the jury found. But we would have to look at it.

10 So -- and I think that is a question of whether or
11 not, you know -- and it may well be that the Court would have
12 to sentence again and -- but I guess the question for the
13 government is, if the Court had to sentence again, would the
14 Court have to revisit the sentencing on the conspiracy, and
15 that's something the Court was just referring to.

16 THE COURT: Well, but it's -- at best, it's a
17 guideline, just a guideline.

18 MR. ASKIN: Right.

19 THE COURT: I could vary or depart from it.
20 Downward, obviously, in that case.

21 MR. ASKIN: Right.

22 THE COURT: Although I suppose I could still -- I
23 could still impose consecutive sentences on top of the life
24 for the multiple counts. Normally, they would group together,
25 but I could depart on my own or application to the government

1 to depart for consecutive sentences and still come to the same
2 sentence.

3 But the -- I didn't -- I didn't examine this. I
4 don't know that I would have gone so far as to say that even
5 if the 924(c) were not in the case, I would still give him
6 life, but it -- and it doesn't really matter because life is
7 not the same as life plus ten. As a legal matter.

8 The sentence should accurately reflect -- it would
9 have to be a resentencing, or dismissal of a count would have
10 to necessitate a resentencing, even if the result was very
11 likely to be the same.

12 He shouldn't stand convicted, for example -- I guess
13 I could vacate it and then -- but perhaps it's angels dancing
14 on the head of a pin. I view this as -- if there were to be a
15 resentencing, that it's not -- I can't say now what I would do
16 then. That's basically what I'm saying. And you wouldn't
17 want me to do anything but that.

18 MR. CORCORAN: I think the defense could only hope
19 that you get to fully explore the contours of these questions
20 that you're posing.

21 THE COURT: Good response.

22 All right. What else do you want me to know, Mr.
23 Corcoran.

24 MR. CORCORAN: I believe that's it, Your Honor. I
25 believe we've said our piece.

1 THE COURT: All right. Thank you, sir.

2 Mr. Madden.

3 MR. MADDEN: Just, Your Honor, that I obviously
4 disagree that this only applies to Malik and not to Mykal. It
5 certainly does apply to Mykal. This goes to the crux of our
6 defense.

7 And just because the government doesn't believe that
8 Mykal was the shooter and doesn't believe his testimony
9 doesn't mean that this information would not have been
10 relevant and helpful in his *Brady* and whatnot for Mykal. Just
11 because it doesn't fit with their theory, or what the jury
12 found doesn't mean it wouldn't be different had we had it.

13 THE COURT: And in that sense, it's less that -- it's
14 more like we will end up where we started, in the sense that
15 it could be viewed as being corroborative of Mykal's testimony
16 that he shot TY over a girl if members of the drug conspiracy
17 didn't know why.

18 MR. MADDEN: Correct. And it could also, obviously,
19 have been used in cross-examination.

20 THE COURT: Right. And I'm not -- I'm not
21 discounting that aspect of it as well.

22 MR. MADDEN: Sure, yes.

23 THE COURT: But it's -- seems to me that that's where
24 you and Malik might differ.

25 MR. MADDEN: Correct.

1 THE COURT: All right.

2 MR. MADDEN: Thank you.

3 THE COURT: All right. Thank you, Mr. Madden.

4 All right. Well, thank you for your helpful
5 arguments. Obviously, this is a matter of importance to not
6 only the parties but the Court of Appeals, which has a pending
7 appeal. I want to reflect on the arguments, but we'll -- I
8 promise you that a decision will be made, I know you've been
9 patient already, but in relatively short order, I would
10 anticipate by the end of the month, and unless there's any
11 reason to request any additional briefing, I'll rest -- the
12 parties will rely on the submissions that have been made.

13 There was a *Brady* decision from the Supreme Court, I
14 don't know that it changes much. It seems to be fairly
15 consistent with the law as before.

16 But thank you for being here this afternoon.

17 For the record, there had been a delay in this
18 proceeding because of some uncertainty about the defendants'
19 presence. I didn't want to proceed without them. The
20 defendants have a right to be present at all proceedings.
21 There was a question about, they were in the custody of the --
22 are they -- they are in the custody of the state.

23 MR. GROSS: That's right.

24 THE COURT: Which complicated matters. I understand,
25 Mr. Corcoran, that there's a letter, which --

1 MR. ASKIN: Your Honor, we filed that today, and I
2 forgot to give it to counsel and the Court before the hearing.
3 That is a letter that indicates -- confirming to the Court and
4 to counsel that both defendants have waived their appearance
5 here today. Both through their respective state attorneys and
6 the homicide case that's pending in the Atlantic County
7 Superior Court have indicated that they refused -- both Mykal
8 and Malik Derry refused to waive the anti-shuttling provisions
9 on the Interstate Agreement on Detainers Act, which, without
10 that waiver, the government couldn't bring them into federal
11 custody without jeopardizing the state indictment, the
12 dismissal of the state indictment, so we had asked them for
13 that waiver.

14 They both refused to waive the Interstate Agreement
15 on Detainers Act anti-shuttling provisions, and both have
16 indicated through counsel that they've waived their appearance
17 here in Federal Court for purposes of these *Brady* hearings.

18 And I attached as exhibits for Malik Derry, there's
19 actually the Interstate Agreement on Detainers Act, he refused
20 to sign it and he had it modified to indicate his refusal and
21 his waiver of his appearance here in Federal Court.

22 And for Mykal Derry, his attorney sent a letter to
23 me indicating the same, that he wants to waive his appearance
24 in Federal Court and is refusing to waive the IADA.

25 THE COURT: All right. This is the only -- only

1 basis for the government to compel them to be here.

2 MR. ASKIN: Excuse me, Your Honor?

3 THE COURT: Which would be the only basis for the
4 government to compel them to be here or arrange for their
5 transportation.

6 MR. ASKIN: We could only bring them in here legally
7 if they waive the IADA anti-shuttling provision. Otherwise,
8 if we brought them in here before the state matter was
9 concluded under the Interstate Agreement on Detainers Act,
10 which the federal government and the state government is a
11 party to, the defendants could have the state homicide matter
12 dismissed with prejudice for violation of the anti-shuttling
13 provisions of the IADA, which is why the federal government
14 insisted on an IADA waiver before we would bring them into
15 court, into Federal Court.

16 THE COURT: Okay. Since that laws -- this is not a,
17 to use a colloquialism, but this is not a cute way of saying,
18 I waive because you're asking me to give up another important
19 right that I have, is it?

20 MR. ASKIN: No, I don't believe that's what they're
21 saying. I think it was explained to them what waiving would
22 involve, and they had counsel. I mean, obviously, you see
23 from the papers that they had counsel and they were advised.

24 I spoke to Erik Bergman, who is the assistant
25 prosecutor handling the homicide in Atlantic County, and I

1 spoke with the -- with the lawyer for Mykal and I think a
2 former lawyer for Malik Derry, and they indicated that their
3 clients wished to waive.

4 But I don't -- I think it's sort of, to some extent,
5 immaterial. I think it's totally proper for this Court to
6 find that if they're not going to waive the Interstate
7 Agreement on Detainers Act, this Court and the government
8 shouldn't be compelled to bring them in, resulting in a state
9 homicide case being dismissed against them, because, you know,
10 either they want to be here or they don't, and I think that's
11 the price of being here, is that you have to waive the
12 anti-shuttling --

13 THE COURT: If you make the motion, then --

14 MR. ASKIN: Right.

15 THE COURT: -- you should expect this Court to move
16 forward --

17 MR ASKIN: Right.

18 THE COURT: You're asking the Court to do something.
19 I don't think that their presence here is even necessarily
20 required as much as it would be the position of this Court
21 that, all things being equal, they should have that right.
22 And it's a right I should make sure I protect, I guess.

23 Mr. Markowitz.

24 MR. MARKOWITZ: Your Honor, if I can be helpful. I
25 spoke to Malik Derry ten days ago, and he was very clear that

1 he didn't want to be at this proceeding and he was waiving his
2 right. And we discussed it and I -- you know, for his own
3 reasons, he had no intention of, you know, waiving it.

4 So just let the record reflect, I had a conversation
5 with him, and as I've always said, you know, he's very
6 articulate and he understands everything, so if that puts any
7 clarity on the situation.

8 THE COURT: He's not passive when it comes to his own
9 defense.

10 MR. MARKOWITZ: No, no, no. No, he is not, Your
11 Honor.

12 THE COURT: All right, Mr. Markowitz, thank you, sir.
13 Mr. Madden.

14 MR. MADDEN: Regarding that issue, all correspondence
15 I've had from Mr. Derry, Mykal Derry, is that he wants to be
16 here. Having said that, he doesn't want to sign the papers
17 that would preclude his state case from being dismissed,
18 according to what Mr. Askin said. So those are the facts and
19 we can read into them as they are.

20 THE COURT: The letter -- his counsel sent a letter.

21 MR. ASKIN: Right. To be clear, when -- if you
22 notice the dates, they're different. Like Malik's counsel was
23 presented with that waiver back in, I think -- Malik's counsel
24 in state court, back in April of 2017.

25 And initially, Mykal, when Malik refused to waive

1 the IADA and said that he would waive his appearance here in
2 Federal Court, Mykal initially indicated that he wanted to be
3 present and would waive the IADA.

4 MR. MARKOWITZ: Correct.

5 MR. ASKIN: But then afterwards he changed his mind,
6 apparently, and with new counsel, he indicated that he does
7 not want to sign the IADA waiver, does not want to be brought
8 to Federal Court and waives his presence in Federal Court, and
9 that's the most recent letter I just got from his attorney,
10 which I've attached as Exhibit B.

11 THE COURT: It seems to me his rights have been
12 explained to him. I think in part, perhaps Mr. Madden is
13 trying to say, don't -- don't read in his absence -- into his
14 absence the notion he doesn't care about what happens here and
15 what the result might be. He would want to be here, but he's
16 chosen, given the fact that he's facing separate charges by
17 that sovereign and he wishes to remain in state custody,
18 that's his right.

19 In fact, the statute was designed to protect him in
20 that regard. That exercise of that right is up to him and
21 he's exercised it.

22 Do you disagree with that in any way, Mr. Madden?

23 MR. MADDEN: I'm not sure what his intentions are. I
24 know that he told me he would like to be here, and I'm seeing
25 what he signed and they're kind of contradictory, but...

1 THE COURT: Well, this is only a letter from his
2 lawyer. He hasn't signed anything, right?

3 MR. ASKIN: Well, that's what I was referring to. He
4 did sign and I didn't include that. He did sign a waiver of
5 the IADA initially.

6 THE COURT: All right.

7 MR. ASKIN: Back in April. Then the government was
8 making arrangements to just try to figure out how to bring in
9 Mykal Derry because he hadn't waived his appearance here and
10 had waived the IADA, and then before that process could be
11 completed with the Marshals and the Bureau of Prisons, I
12 received word from Erik Bergman, who is the assistant
13 prosecutor in Atlantic County, that his new counsel had said
14 he would waive his appearance in Federal Court. So
15 essentially, I looked at that as Mykal Derry changing his
16 mind.

17 THE COURT: Right. But this letter -- it refers to
18 his decision not to waive, in the past tense. It's not --
19 doesn't appear to be a revocation of that waiver on its face.
20 He signed a written waiver and then revoked it, you're telling
21 me.

22 MR. ASKIN: He signed a written waiver back in April
23 for -- but the written waiver was for a particular court
24 hearing, which is something I brought up with Atlantic County,
25 it said for a particular date, which has passed, because that

1 date we couldn't bring in -- we couldn't arrange for both of
2 them to be brought here.

3 So he signed it for a particular date saying he's
4 waiving it as to that date.

5 THE COURT: Okay.

6 MR. ASKIN: And then he subsequently told his lawyer
7 he didn't want to be brought in for the hearing that was a few
8 days ago that was rescheduled for today.

9 THE COURT: All right. I think the record will
10 reflect what their decisions were. We live in a federal legal
11 system, it appears. I know of no reason why I can't proceed
12 in their absence, given the application for relief.

13 I've heard counsel and will take the matter under
14 consideration, reserve as of today, but please expect a
15 decision by the end of the month.

16 All right. Anything else from the United States?

17 MR. ASKIN: No, Your Honor.

18 THE COURT: All right. Thank you both.

19 Anything else from the defense?

20 MR. MADDEN: No, Your Honor.

21 MR. CORCORAN: No, Your Honor.

22 MR. MARKOWITZ: No, Your Honor.

23 THE COURT: All right. Thank you all three as well,
24 I wish you safe travels home and a good rest of the day.

25 RESPONSE: Take care, Your Honor.

1 THE DEPUTY CLERK: All rise.
2 (3:30 p.m.)
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*United States District Court
Camden, New Jersey*

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

vs.

MALIK DERRY

: CASE NO. 1:14-CR-0050-005(NLH)
:
:
: NOTICE OF APPEAL

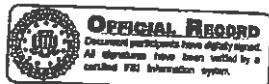
NOTICE is hereby given that Malik Derry, defendant in the above-captioned case, through his attorney, Joshua Markowitz, Esq., hereby appeals to the United States Court of Appeals for the Third Circuit, from the Judgment entered by the Honorable Noel L. Hillman in this case on the 23rd day of August, 2016.

Respectfully submitted,

/s/ Joshua Markowitz

Joshua Markowitz, Esq.
Markowitz O'Donnell, LLP
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FEDERAL BUREAU OF INVESTIGATION

Date of entry 11/06/2013

Pursuant to a proffer agreement with the District of New Jersey, United States Attorney's Office (USAO), LAQUAY SPENCE, Date of Birth July 4, 1990, Social Security Account Number (SSAN) 138-90-9413, was interviewed at USAO, Camden, New Jersey (NJ). After being advised as to the identities of the interviewers and the nature of the proffer session/interview, SPENCE provided the following information:

The proffer session started at approximately 11:00 a.m. and ended at 1:30 p.m. Interviewers present during the proffer session were Federal Bureau of Investigation (FBI), Special Agents (SA) Marcus W. Perry and Sean Yan. The government was represented by Assistant United States Attorneys (AUSA) Patrick C. Askin and Justin C. Danilewitz. Additionally, SPENCE's attorney, John F. Renner was present to represent SPENCE.

By way of background, SPENCE advised that he was born in Atlantic City, NJ and resided there until the age of six (6). Between the ages of six (6) and 17, he resided in Pleasantville, NJ. Sometime around the age of 17 to 18, SPENCE and his mother, SHARON SPENCE, relocated to Richmond, Virginia. SPENCE advised that he and his mother relocated to Richmond upon a work transfer request. SPENCE's mother works for a contract company that cleans GREYHOUND buses. At the approximate age of 19 or 20, SPENCE and his mother relocated to Atlantic City, NJ and resided at 525 North Indiana Avenue, whereby he resided until his arrest on March 26, 2013 for captioned matter.

SPENCE advised that he attended Pleasantville High School until the tenth grade at which time he was expelled for "too many write-ups, skipping school, and skipping class." Subsequent to being expelled from Pleasantville High School, SPENCE attended the Decatur Avenue Alternative School. SPENCE remained at the alternative school until he completed the tenth grade and part of the eleventh. The remainder of the eleventh grade was completed at a high school in Richmond, VA. While in the Richmond high school, SPENCE repeated the eleventh grade then dropped out of high school and never received a diploma. Subsequent to dropping out of high school, SPENCE began a General Education Development (GED) program administered by LAST STOP. SPENCE never completed the LAST STOP GED program.

Investigation on 11/05/2013 at Camden, New Jersey, United States (In Person)

File # 281D-NK-118649-302

Date drafted 11/06/2013

by PERRY MARCUS W, YAN SEAN L

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Continuation of FD-302 of Proffer of Laquay Spence, On 11/05/2013 , Page 2 of 4

Prior to relocating back to NJ, SPENCE advised that he spent eight (8) months with JOB CORPS, located in Monroe, VA. While there, he continued to pursue his GED and learned the plumbing trade. SPENCE left JOB CORP in 2010 and returned to NJ.

Upon returning to NJ in 2010, SPENCE enrolled in the YOUTHBUILD Program, sponsored by the Boys and Girls Club of Atlantic City. SPENCE completed the YOUTHBUILD Program in 2012 and learned the carpentry trade.

SPENCE advised that subsequent to completing the program, he searched for job opportunities in the construction trade for months but could not find a job.

By way of family, SPENCE again advised that his mother is SHARON SPENCE. His father is GREGORY KNOX who has been in federal custody for cocaine possession since he was eight (8) years old. SPENCE advised that he has two (2) sisters, TEOSHA (Last Name Unknown) LNU and GENENE LNU, on his dad's side of the family, one (1) sister, IYANNA SPENCE, and two (2) brothers, GERALD SPENCE, TAAHIR SPENCE, on his mom's side of the family. TEOSHA and GENENE are both currently enrolled and attending college.

IYANNA currently resides at the Woodland Avenue Apartments in Pleasantville, NJ. GERALD currently resides in Atlantic City, NJ. TAAHIR is currently incarcerated at South Woods State Prison, Bridgeton (NJ) on a home invasion case that occurred in 2008.

Regarding drug use, SPENCE advised that he started smoking "weed" (Note: known to interviewers as marijuana), when he was approximately 14 years of age. At the approximate age of 17, he began to smoke "woki", further described as cigarettes dipped into Phencyclidine (PCP). SPENCE explained that "woki" can also be referred to as "wet." Prior to his most recent arrest, SPENCE stated that he used Percocet pills for approximately one and one half years. SPENCE obtained Percocet pills from a variety of people such as the elderly and others with access to legitimate prescriptions, "fiens" and drug dealers whom sold them on the street.

SPENCE stated that he used up to four (4), ten (10) milligram pills per day.

SPENCE advised that he began selling drugs, specifically marijuana, at the age of 16 while attending Pleasantville High School. He obtained the marijuana by stealing small amounts from his older brother.

SPENCE, referring to a 2007 drug and gun possession charge on his criminal history, stated that police executed a search warrant and located crack cocaine and a gun at friends house while he was there. SPENCE went on to explain that the same friend ultimately took responsibility for the gun and the cocaine. The charges against him (SPENCE) and several other individuals that were also present but did not reside at the aforementioned

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Continuation of FD-302 of Proffer of Laquay Spence, On 11/05/2013 , Page 3 of 4

residence were dismissed. It was during this time that SPENCE began to learn how and sell crack cocaine. SPENCE sold crack cocaine during the 2006 to 2007 time-frame.

According to SPENCE, he stopped selling crack cocaine when he realized that it was not very profitable. He further explained that he purchased three (3) grams of powder cocaine for \$130.00 in United States Currency.

The initial powder cocaine purchase would only return \$175.00 in United States Currency after turning it into crack cocaine. His profit would be approximately \$40.00 to \$45.00 in United States Currency. SPENCE then advised that he used his profits to primarily purchase "weed." The general areas that he sold crack cocaine in were in Pleasantville, NJ in the vicinities of Washington Avenue, "right off Main Street" and Decatur Avenue.

Between 2010 and 2012, SPENCE stated that he lived with his mother and was not employed. He spent most of his time going around the CARVER HALL public housing complex located in Atlantic City, NJ. For the first nine (9) to ten (10) months, he would only hang out with a friend. Shortly thereafter, he started to sell crack cocaine. SPENCE explained that he did not want to start selling "dope" (Note: known to interviewers as heroin), because there were too many people selling dope in the that area and he did not want to cause trouble for himself. SPENCE then stated that he eventually sold "dope."

Sometime during 2012, SPENCE stated that he began to go around the STANLEY HOLMES VILLAGE public housing complex. He did not sell heroin in STANLEY HOLMES VILLAGE, he would only obtain heroin and sometimes Percocet pills in and around that area. Sometime during September of 2012, SPENCE advised that is when he met and started dealing with MYKAL DERRY.

According to SPENCE, DERRY approached him because he knew that SPENCE sold heroin on Atlantic Avenue. DERRY wanted SPENCE to buy his heroin from him (DERRY). At this time, SPENCE stated that DERRY was not his only supply to obtain heroin. He sometimes obtained it from his cousin, LEE LNU. SPENCE then advised that he obtained DERRY's cellular telephone number upon travelling to STANLEY HOLMES VILLAGE and meeting DERRY a second or third time. SPENCE stated that he generally purchased approximately one brick of heroin from DERRY each time they interacted.

When asked by interviewers to explain how much he knew about DERRY's drug distribution network, SPENCE advised that he was not very close with DERRY because he heard that DERRY was "grimy." He would only go to DERRY for heroin when he had to. However, he was aware that DERRY would send his

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Continuation of FD-302 of Proffer of Laquay Spence, On 11/05/2013 , Page 4 of 4

guys to sell drugs at the RENAISSANCE PLAZA located on Atlantic Avenue.

SPENCE was also aware that DERRY was in control of the heroin sold at BROWNS PARK, located adjacent to STANLEY HOLMES VILLAGE.

SPENCE explained that when he dealt with DERRY, he sold approximately two (2) to three (3) bricks of heroin per day. Most times, he purchased each brick of heroin from DERRY for \$175.00 in United States Currency. On one occasion that he could recall, SPENCE purchased one (1) brick of heroin from IBN ABDULLAH. SPENCE advised that he only dealt with ABDULLAH once because ABDULLAH shorted him 11 bags of heroin from the brick that he purchased. SPENCE knew that ABDULLAH sold heroin for DERRY. Of noteworthy heroin stamps, SPENCE recalled PURPLE HAZE, LADY BUG, CHECK MATE, BATMAN, and SUPERMAN. SPENCE advised that LADY BUG and CHECK MATE were sold the best.

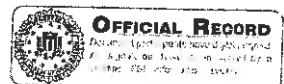
At this point during the interview, AUSA Justin Danilewitz reviewed specific line sheets containing transcriptions of phone calls with DERRY.

Copies of the line sheets were given to both SPENCE and his attorney.

During the review of the line sheets, SPENCE clarified that when he asked for a "whole one" or "joint" from DERRY, that he meant "one brick." SPENCE also clarified calls in which it appeared multiple bricks of heroin were requested from DERRY. SPENCE stated that he would buy one (1) brick from DERRY on most occasions. If it appeared to be two bricks, he (SPENCE) was paying the balance on a brick that he had already obtained from DERRY and was requesting (and paying for) an additional brick of heroin during the same transaction. SPENCE explained that DERRY did not like to front him heroin.

Prior to the conclusion of the interview, SPENCE was asked by interviewers if he could provide information regarding the TYQUINN JAMES homicide that occurred on February 10, 2013. SPENCE advised that he knew JAMES but did not know why JAMES was killed.

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/27/2014

On February 19, 2014, and on August 27, 2014, AMBRIN QURESHI (Protect Identity), date of birth August 8, 1980, was interviewed at the United States Attorney's Office in Camden, New Jersey, as part of a proffer. Present during the interviews were QURESHI's counsel David Bahuriak, Assistant United States Attorney Justin Danilewitz, and Special Agent Christopher C. Kopp. After being advised of the identities of the interviewers and the nature of the interview, QURESHI provided the following:

QURESHI was previously convicted of a drug trafficking offense when her husband at the time, AMIN BUTLER, was the subject of a federal investigation. QURESHI was sentenced to 24 months and served 13.

QURESHI met MYKAL DERRY through his brother, MICHAEL DERRY. QURESHI knew MICHAEL from grade school, and began corresponding with him after he was incarcerated in 2005, and visited him in prison. At one point, MICHAEL informed QURESHI that MYKAL, aka Koose, was going to be released from prison. In 2008, MYKAL contacted QURESHI and thanked her for her friendship with MICHAEL. MYKAL DERRY was released from prison in June 2010, and moved to a halfway house. QURESHI stated that she and DERRY were 'fighting' in the summer of 2010, when DERRY began a relationship with KIMBERLY SPELLMAN, smoking marijuana, and was "not the same person."

QURESHI claimed that she has acted as a "caretaker" for MYKAL DERRY's daughter Sanaiyah Derry. QURESHI referred to Sanaiyah as her own daughter, or daughter in common with DERRY, however, Sanaiyah resides with her mother, SHIARA TALIAFERRO.

QURESHI met MYKAL DERRY's brother, KALIM SELBY, when he came home from prison and was in a halfway house. In March 2011, QURESHI was driving in a vehicle with SELBY when she was stopped by police. The police mentioned to QURESHI that she "knew" she was supposed to stay away from SELBY, and the police were looking for guns. QURESHI was aware that SELBY later cut off

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Investigation on 02/19/2014 at Atlantic City, New Jersey, United States (In Person)File # 281D-NK-118649-302Date drafted 02/19/2014by KOPP CHRISTOPHER C

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APPENDIX I

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Continuation of FD-302 of AMBRIN QURESHI proffer, On 02/19/2014, Page 2 of 6

his electronic monitoring bracelet, and had been "on the run" from law enforcement. QURESHI believed that SELBY assumed DERRY would take care of him.

QURESHI was familiar with DERRY's uncle, LEON GARRISON, and knew that DERRY warned KALIM SELBY not to "hang out" with GARRISON.

QURESHI met MALIK DERRY when he was in a halfway house.

At a time, MYKAL DERRY lived in his mother's assigned public housing unit on Brigantine Boulevard, while his mother actually lived in Philadelphia.

In the summer of 2012, MYKAL DERRY was fasting and not selling drugs during Ramadan, when KIMBERLY SPELLMAN called him and said she was pregnant. When asked how she knew DERRY had been selling drugs, QURESHI replied, "his name is all over the streets." DERRY was spending all of his time with SPELLMAN, but QURESHI did not know how they were paying any bills. At one point, DERRY tried to "do the right thing" and left SPELLMAN. QURESHI told DERRY, "Stop doing whatever you are doing."

QURESHI heard from "people" that DERRY was involved in murders, and that he was telling people to kill other people.

QURESHI was introduced to TYRONE ELLIS by MYKAL DERRY in October 2012. QURESHI took several, less than five, trips with ELLIS to Paterson.

QURESHI stated, "that's what you have in your paperwork." QURESHI stated she also drove to Paterson by herself. QURESHI spoke with "Khabir" (MAURICE THOMAS) on the telephone to arrange the trips, but when she arrived, she met with a "fat," "ugly," individual with "big hair." This individual (MARK FRYE) informed QURESHI, "I don't do what Khabir does, take this and give it to your boyfriend." The individual then gave QURESHI a quantity of marijuana.

Also during 2012, MYKAL DERRY asked QURESHI to drive him to Paterson, New Jersey. DERRY knew an individual from prison, whom QURESHI knew as "Reesie" or "Kahbir," who lived there. QURESHI took three to four trips with DERRY to Paterson, and saw DERRY meet with Kahbir. QURESHI stated she knew "Kahbir" previously from a girlfriend named Juanita McNiel, but was introduced again to him by DERRY. DERRY would bring a felt designer bag that he kept in the glove box.

QURESHI did not recognize a picture of MAURICE THOMAS, but identified a picture of MARK FRYE as the individual she met with in Paterson, who supplied her with heroin for MYKAL DERRY.

QURESHI said she was never paid to make the trips to Paterson.

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Continuation of FD-302 of AMBRIN QURESHI proffer, On 02/19/2014 , Page 3 of 6

QURESHI saw DERRY with different handguns on numerous occasions. At one point in 2011, or 2012, DERRY wanted to used QURESHI's vehicle, and pointed his gun at QURESHI and threatened her.

QURESHI stated that she and DERRY used an App on their phones that acted as a police scanner. QURESHI stated she was listening for "violence" and would warn DERRY not to be in that area. QURESHI also used the App to warn DERRY of the location of police.

QURESHI said that at one point she had heard "from people in the street," that dope being sold in Stanley Holmes had to be from MYKAL DERRY.

QURESHI recalled on one occasion when she was in a laundry mat in or near the Back Maryland section of Atlantic City, that MALIK DERRY informed her that as she was associated with MYKAL DERRY, it was not safe for her, or MALIK, to be in the laundry mat. QURESHI described how some businesses are "village friendly," meaning safer for people associated with Stanley Holmes to be in, while others are not. This is due to the fact that people associated with Stanley Holmes are "beefing" with people associated with Back Maryland.

QURESHI identified a picture of SHAWN PETTUS and recalled an incident where QURESHI drove her vehicle into Back Maryland and PETTUS approached her with a handgun. QURESHI informed MYKAL DERRY of the incident, and DERRY told QURESHI that PETTUS likely associated her vehicle with DERRY. QURESHI believed that after the arrests as part of this investigation, PETTUS was "running" Back Maryland. QURESHI originally met PETTUS years previously when PETTUS and DERRY were friends.

QURESHI identified a picture of ANTHONY ALLEN, and stated that ALLEN was referred to by MYKAL DERRY as "Ridamans." QURESHI believed the name came from a movie where it represented a killer's code name. QURESHI stated that DERRY became close with ALLEN and SHAAMEL SPENCER when they were incarcerated together in 2009. DERRY told QURESHI that ALLEN had gone "south" after a murder, to avoid law enforcement, as well as retaliation (Agent note: believed to be the murder of KENDEL HUDGINS, aka Hudge, murdered January 1, 2012). QURESHI stated that MYKAL DERRY's "organization" was "built" by SPENCER and DERRY. SPENCER was not from Stanley Holmes, but lived there because the mother of his child lived there.

QURESHI went inside RASHADA ALLEN's residence on one occasion to meet with MYKAL DERRY. QURESHI did not know ALLEN, but saw KAMAL ALLEN inside the residence.

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Continuation of FD-302 of AMBRIN QURESHI proffer, On 02/19/2014, Page 4 of 6

QURESHI identified a picture of KRYSIE COBB and stated she had met COBB when COBB came to RASHADA ALLEN's residence to acquire heroin from MYKAL DERRY. COBB informed QURESHI that all her possession had been destroyed by Hurricane Sandy, and that COBB had received a check from FEMA.

QURESHI identified a picture of WALLACE BOSTON as an individual who was always in Brown's Park.

QURESHI identified a picture of COURTNEY GRIFFIN as a cousin of MYKAL DERRY who goes by the name Machiavelli. After DERRY's arrest, GRIFFIN visited QURESHI and informed her that he had "molly" to sell. QURESHI believed that DERRY sent GRIFFIN for an unknown purpose.

QURESHI identified a picture of MUHAMMAD GRIFFIN as MYKAL DERRY's right hand man. QURESHI believed that GRIFFIN was about to be released from incarceration.

QURESHI identified a picture of UTHMAN GRIFFIN, and said that MYKAL DERRY knew why GRIFFIN was murdered, but had no further information.

QURESHI identified a picture of SHAKEEM YOUNG, and stated YOUNG had a tattoo representing MYKAL DERRY and UTHMAN GRIFFIN on his arms.

QURESHI identified a picture of DEVONTE MOLLEY and stated that he was "an Allen."

QURESHI identified a picture of SALEEM REYNOLDS, aka Meatball, and stated that he was a "nobody," a low level individual who can't hold money, and a want-to-be gangster.

QURESHI identified a picture of JERMAINE REYNOLDS as SALEEM REYNOLDS older brother, and an associate of KALIM SELBY.

QURESHI stated that when KALIM SELBY is released from custody, he will come looking for QURESHI to support him.

QURESHI identified a picture of RASHAD STEPHENS, aka Buttus, and stated that he was MYKAL DERRY's cousin, and was associated with Back Maryland.

QURESHI had seen STEPHENS in possession of a handgun while he was on electronic monitoring. STEPHENS was known as a rapper.

QURESHI identified a picture of ISAIAH TOULSON, aka Zay, and stated he was MYKAL DERRY's best friend. QURESHI also identified a picture of MARK TOULSON, and stated that both of the TOULSON's were to be released from custody soon.

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Continuation of FD-302 of AMBRIN QURESHI proffer, On 02/19/2014, Page 5 of 6

QURESHI identified a picture of KEVIN WILLIAMS, and stated he was MYKAL DERRY's cousin, and a half brother to SHAKEEM YOUNG.

QURESHI stated that she was with MYKAL DERRY on the day that SHAMIR HARPER, aka Monk, was murdered. QURESHI stated that DERRY informed her that he had sent HARPER to the deli, just prior to HARPER being shot in the deli. QURESHI knew HARPER as a drug dealer, but had heard that the murder was retaliation for HARPER shooting somebody, and that CHRISTIAN BLACKMAN, aka B.G. killed HARPER, and that KALIM SELBY and SHAKEEM YOUNG were also involved.

QURESHI identified a picture of TYQUINN JAMES and stated that she knew him as an associate of MYKAL DERRY. QURESHI did not know why JAMES had been murdered.

QURESHI identified a picture of KEVIN WASHINGTON as MYKAL DERRY's cousin. QURESHI once drove DERRY to a residence in Northfield or Lynwood to meet with WASHINGTON. QURESHI believed this was immediately after WASHINGTON was released from custody.

After DERRY was arrested, QURESHI put money on DERRY's books at the Atlantic County Jail.

QURESHI was shown an intercepted text message sent from her telephone number to DERRY's that mentioned the ability to get prescription drugs.

QURESHI stated she likely let somebody use her phone to contact DERRY, as she would not give out his telephone number, and she was unaware of the text message.

After QURESHI's arrest, DERRY has called her approximately eight or nine times. QURESHI has not spoken with MALIK DERRY since she was arrested. QURESHI spoke with SAEED ZAFFA on one occasion, and QURESHI attempted to put ZAFFA in contact with DERRY while DERRY was in the Atlantic County Jail.

Since his incarceration, MYKAL DERRY has accused QURESHI of not "caring" for him, by not sending him money, and has threatened her by saying, "You know what I tell you before." QURESHI believed this was a reference to burning down her parents residence. DERRY told QURESHI, "Don't tell them anything," referring to law enforcement. Some of these comments were made to QURESHI through an e-mail account from the FDC.

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 06/05/2015

On June 20, 2014, Tyrone Ellis, aka Rome, date of birth [REDACTED] Social Security Account Number [REDACTED] was interviewed at the United States Attorney's Office in Camden, New Jersey. Present during the proffer were Assistant United States Attorney Patrick C. Askin, Special Agent Christopher C. Kopp, Task Force Officer Robert Cecchini, and Ellis's attorney Rocco Cipparone. After being advised of the identities of the interviewers and the nature of the interview, Ellis provided the following information:

Ellis was born in Philadelphia, Pennsylvania, and was raised in Atlantic City, New Jersey. Ellis has one son, Nahjajuan Ellis.

Ellis was most recently released from custody, and was on parole in February of 2012. Ellis was living at the time at the [REDACTED] in [REDACTED] New Jersey, [REDACTED] [REDACTED]. Ellis was working at the Wal Mart for a couple of months as an overnight stocker.

Ellis then moved to [REDACTED] New Jersey, with [REDACTED] while using the address of [REDACTED] in Atlantic City to register with parole.

At some point Ellis began selling heroin in Atlantic City, mostly in bundle quantities he obtained from various sources.

Ellis met Maurice Thomas, aka Khabir, when they were both incarcerated in Bordentown, New Jersey. After Ellis was released from custody, he met somebody else who knew of Thomas. Ellis then drove to Paterson, New Jersey, to the area that Ellis believed Thomas lived. Ellis encountered an unknown female who knew of "Khabir," and Ellis provided her his telephone number to give to Thomas.

Ellis knew Mykal Derry prior to 2012, but had not seen him in approximately 10 years. Ellis did not know if Mykal Derry knew Maurice

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Investigation on 06/20/2014 at Atlantic City, New Jersey, United States (In Person)File # [REDACTED] Date drafted 06/20/2014
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APPENDIX J

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Continuation of FD-302 of Proffer of TYRONE ELLIS

, On 06/20/2014, Page 2 of 3

Thomas prior to 2012, however, Ellis was aware that both Derry and Thomas had been incarcerated in Bordentown at the same time.

Ellis began dating Latasha Cherry in 2012, and registered his vehicle in her name.

Ellis knew Franklin Simms since childhood.

Ellis knew Shaamel Spencer, aka Buck, from prison. Mykal Derry attempted to have a conversation with Ellis, and Ellis later provided his telephone number to Spencer, who provided it to Derry. Derry called Ellis and inquired about the heroin that was being distributed in the area. Ellis knew Derry to have a bad reputation. Ellis began supplying Derry bundles of heroin, and fronted the heroin at \$25 per bundle.

Ellis was arrested by Atlantic City police officers in Stanley Holmes. While he was resisting arrest, Ellis lost his cellular telephone in the scuffle, and a female picked it up. Ellis later found out that the female then provided the phone to Derry. Ellis believes Derry called all of the numbers in his phone until he reached Maurice Thomas. Derry then told Thomas that Ellis had been arrested.

Derry provided Ellis with Ambrin Qureshi as a driver for several trips to Paterson, New Jersey. Qureshi drove Ellis to meet with Maurice Thomas or Mark Frye to obtain heroin. Ellis obtained heroin from Maurice Thomas at approximately \$125 per brick.

Kareem Young lived in Stanley Holmes next to Dawon Brown. Young warned Ellis not to deal with Mykal Derry.

When Trevin Allen, aka Qadaf, was not in custody, there was a period of time that Mykal Derry could not sell drugs in Stanley Holmes. After Allen was incarcerated, people only dealt with Derry "out of default."

When Shaamel Spencer was released from custody, he began hanging out with Mykal Derry. Spencer was involved in multiple shootings, and he had "respect" for "going after anybody."

Sedrick Lindo was aligned with Trevin Allen and once tried to shoot Mykal Derry.

Ellis met Tyquinn James in Bordentown, and knew him as an associate of Trevin Allen. On the night that James was murdered, Franklin Simms called Ellis and said that he had received a call that Mykal Derry had been murdered. Ellis believes Simms mixed up the information, and the caller had reported that Derry killed James. Ellis called Derry, who told Ellis

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Continuation of FD-302 of Proffer of TYRONE ELLIS

, On 06/20/2014, Page 3 of 3

to watch the news. Ellis knew that that meant that Derry had been involved in the murder. Ellis was aware that "they" had shot at James before. Ellis did not know why Derry wanted to kill James, as James was no threat to Derry. Ellis said that James was homeless and smoked PCP laced cigarettes referred to was "wocky."

Anthony Rosario, aka Ant 50, was "harmless," and had just been trying to sell drugs in Stanley Holmes. Ellis believed that Rosario had been selling drugs not supplied by Derry, at the time Rosario was assaulted. Tyrone Ellis had been incarcerated with Kevin Washington in Bayside Prison. Washington spoke of shooting Anthony Rosario because Rosario "told" on Derry. Washington was released, and then returned after shooting Rosario. Washington told Ellis that he was directed to shoot Rosario by Derry, and that he did it out of loyalty. Ellis asked Washington why he did not kill Rosario. Washington told Ellis that he tried to kill Rosario, but he didn't die.

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 10/28/2014



On September 8, 2014, and October 2, 2014, Jodi Brown, date of birth May 6, 1974, was interviewed at the United States Attorney's Office in Camden, New Jersey. Present during the proffers were Assistant United States Attorney Patrick C. Askin, Special Agent Christopher C. Kopp, Detective Michael Buccafurni, Detective James Barrett, and Brown's attorney Roland Jarvis. After being advised of the identities of the interviewing interviewers and the nature of the interview, Jodi Brown provided the following information:

Brown moved to 238 North Rosemont Avenue, Atlantic City, New Jersey, located within the Stanley Holmes Apartment Complex, on or about June 2, 2012. Rent for the apartment was approximately \$409 a month and the lease was in her name. The apartment was obtained after filling out an application with the Housing Authority.

Rashada Allen lived next door to Brown at 236 North Rosemont Avenue, Atlantic City, New Jersey. Allen was already living at this address when Brown moved in. Brown knew Allen from childhood. Allen was back and forth staying at 236 North Rosemont and her mother's house on Tennessee Avenue in Atlantic City. Allen used prescription pills and marijuana, but was not known to be involved in harder drugs.

Brown initially stated that several individuals were only known to her as being involved in the sale of cocaine, and requested that the role of these individuals, including Lamar Macon, Kareem Bailey, Terry Davis, Raymond Mack and others, be "downplayed" as higher level drug dealers had been charged.

Brown confirmed that a group of individuals associated with Mykal Derry, aka Koose, had been using Brown's residence to store and distribute drugs, and to store weapons and a ballistic vest. (Agent note: Brown initially stated that she only knew of two handguns that had been stored at her residence). Brown herself sold and used heroin, and sold heroin on

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Investigation on 10/02/2014 at Atlantic City, New Jersey, United States (In Person)
File # 281D-NK-118649-302

Date drafted 10/07/2014

by KOPP CHRISTOPHER C

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APPENDIX K

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Continuation of FD-302 of Proffer of Jodi Brown

, On 10/02/2014, Page 2 of 6

behalf of Mykal Derry. Derry would occasionally provide Brown heroin for the use of her residence. Derry would never provide Brown with cash for the residence, but would provide Brown with small amounts of cash when she needed it to pay bills such as for cabs and food. Brown would allow Derry, Aree Toulson, Lamar Macon and other select individuals to use her residence to hang out in, however, when too many others were hanging out, and making noise and breaking things, Brown would get angry.

Rashada Allen's residence was also used by the group to store and distribute drugs and to store weapons.

Mykal Derry would leave bundles of heroin in Brown's apartment almost every day. Brown would either use the heroin herself and pay for it, or sell it to customers she had or that Derry directed her to. Derry would come to her apartment every day at approximately 5:30 a.m. He would then go to Rashada Allen's apartment afterward. At approximately 9:00 a.m., other people would start to come to Brown's apartment.

When Brown's apartment window was broken, a neighbor described two males that were there. Based on the descriptions, Brown determined it was Mykal Derry and Dwayne Townsend, aka Tweek. Brown was in the hospital for heroin detoxification at the time of the incident. Approximately two weeks after the incident, Brown confronted Townsend who retrieved approximately \$300 from his pocket, gave it to her, and had her window fixed. Aree Toulson told Brown that Townsend wanted a firearm that was stored inside her apartment because someone had just killed his brother.

Brown identified the following individuals as associates of Mykal Derry:

Kamal Allen, aka Mally, aka Geez. Allen was often at Brown's apartment or at Rashada Allen's apartment and was often seen with Mykal Derry. Allen went to a shooting range with Brown, Mykal Derry and Kim Spellman on Brown's birthday.

Aree Toulson, aka Beyah. Toulson sold heroin out of Brown's residence that was supplied by Mykal Derry.

Lamar Macon, aka Mar, aka Gunner. Macon sold bundles of heroin that were supplied by Mykal Derry, as well as cocaine. Brown described Macon as an individual that just wanted to hang around with Derry's group. Macon would regularly hang out at Brown's residence, Rashada Allen's residence, and was seen at Audrey Bailey's residence. Brown once made Macon return proceeds from "bad" drugs he had sold to associates of Brown. Macon was a close associate of Kareem Bailey and Terry Davis.

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Kasan Hayes, aka Erk. Hayes sold heroin supplied by Mykal Derry. Hayes would come to Brown's residence and wait to meet with Derry to be supplied.

Ibn Abdullah, aka Ib. Brown knew Abdullah to be a drug dealer, but Abdullah did not regularly hang out at her residence.

Kareem Bailey, aka Baby Boy. Bailey sold cocaine and often came to Brown's residence. Brown is related to Bailey through marriage. Bailey's oldest brother, Terry Bailey, is Terry Davis, aka Mace's father. Bailey was also closely associated with Lamar Macon and Aree Toulson, as well as Raymond Mack. Bailey supplied heroin to Brown that was from his mother, Audrey Bailey.

Terry Davis, aka Mace. Davis was a close associate of Derreck Mack, Raymond Mack, Lamar Macon and Kareem Bailey. Brown did not know Davis to possess handguns until she found out about the incident when Derreck Mack was killed. Davis and Derreck Mack were usually together. Davis is a relative of Brown.

Audrey Bailey is Kareem Bailey's mother, and was supplied heroin by Mykal Derry. Brown and Bailey often used heroin together. When Brown could not obtain heroin from Derry, on occasion she would obtain it from Bailey, through Kareem Bailey.

Wallace Boston, aka Gator. Boston obtained heroin from Mykal Derry. Boston would meet Derry at or near Brown's residence.

Ronald Davis, aka Black. Davis was supplied heroin by Mykal Derry, Davis would hang out at Brown's residence and smoke marijuana. On one occasion Derry sent Davis to Brown to get heroin, however Brown stated she did not have the heroin at the time.

Dominique Venable, aka Dom, is an associate of Mykal Derry. Venable came to Brown's residence prior to turning himself in to the Atlantic County Jail and requested Brown's assistance with inserting cigarettes, marijuana, cocaine and heroin inside his body. Brown packaged the drugs inside plastic wrap and put Vaseline on the wrap. Brown stated that the jail has an x-ray device so the drugs must be packaged to look like it belongs in your bowels. Derry and Aree Toulson were present when Brown inserted the drugs into Venable's anal cavity.

Kareem Young, aka Crash. Young sold cocaine and heroin, and was seen by Brown on occasion meeting with Derry, including at Brown's residence. Young sold heroin to Brown on occasion. Young once brought an individual into Brown's residence that was from Washington D.C. Derry saw the

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individual and made them leave, as Derry did not know the individual. Brown saw the individual get into a vehicle and leave. FNU LNU, aka Smitty, later told Brown that the individual was a police officer, and had been seen at the police department.

Saeed Zaffa sold cocaine and heroin, and was a close associate of Malik Derry after they had been incarcerated together. Malik and Zaffa were the "tightest" of the group of Derry associates.

Derreck Mack, aka Sonny, aka Dirt. Mack was a close associate of Terry Davis, Kareem Bailey, and his brother Raymond Mack.

Malik Derry is Mykal Derry's brother. Brown met Malik when he was a small child. Malik sold heroin, but did not condone Brown's use of heroin. Brown and Malik were in a romantic relationship. Brown stated that Malik was "raised" by the system, meaning that he had been in custody for a large portion of his young adult life. Brown had heard from several individuals that Mykal Derry had murdered Tyquinn James, but Brown felt that Mykal "doesn't have the heart for it," but that Malik had anger issues, and had "beat" individuals on at least three occasions in front of her, including his own associates. Brown did not know the reason James was murdered. Brown knew James, as well as Trevin Allen, aka Qadaf, from when they were young children. Brown never saw Malik with a firearm, however, Brown's nephew Corey Green warned Brown to "be careful" around Malik because he "plays with them things," meaning firearms, and that "somebody could blow your head off going for Malik."

Quasim Duncan was supplied heroin by Mykal Derry. Duncan came to Brown's house to meet with Derry and obtain heroin. Duncan is Brown's nephew through his father, Omar Carey.

Raymond Mack, aka Bread. Mack met with Mykal Derry often, but did not regularly hang out with him. Mack came to Brown's house to meet with Derry and obtain heroin. Mack sold crack cocaine in and around Stanley Holmes, including to Brown. Brown knew Mack since he was a young child and lived on Bacharach Boulevard. Mack was closely associated with Kareem Bailey, Terry Davis, Derreck Mack, Ibn Abdullah, and Levi Young. Mack "practically lived" with Audrey and Kareem Bailey at their residence in Schoolhouse apartments. Brown never saw Mack with a firearm.

Mykal Derry informed Brown the day that Rashada Allen was arrested with a firearm that Derry believed Allen had just talked to her husband on the phone, and that was the reason she had been arrested. Derry informed Brown that he used a bail bondsman who initially wanted \$1500, but then charged \$2500 as well as heroin.

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Tyrone Ellis, aka Rome, met with Mykal Derry approximately four times at Rashada Allen's residence. Ellis once used Brown's residence after a meeting to go to the bathroom. When Ellis exited the residence, he was approached by Atlantic City Police Officers. Brown watched Ellis resisting arrest, and then being "fucked up" by the police officers. Brown never obtained heroin from Ellis, but other heroin users informed her that he supplied heroin. Brown refused to obtain heroin from Ellis because of his mistreatment of women.

Brenda Solomon, aka Kadija. After Derreck Mack was shot leaving Brown's residence, Mykal Derry and his associates began to use Solomon's residence at 307 North Dr Martin Luther King Boulevard, also in Stanley Holmes, to hang out at. Brown once fought Solomon when Solomon called Brown at 4:00 a.m. for heroin.

Ambrin Qureshi was involved in a relationship with Mykal Derry. Qureshi came to Brown's house on one occasion with Derry.

Kim Spellman was the mother of Mykal Derry's child, always drove Derry around. On occasion Spellman would hang out at Brown's residence.

Laguey Spence was known to Brown as an individual who hung out on Atlantic Avenue, and not "from around" the rest of Derry's associates.

Shaamel Spencer, aka Buck. Spencer sold heroin supplied by Mykal Derry. Brown purchased heroin from Spencer on several occasions that was stored in Spencer's residence. Spencer "always" had heroin. Spencer had a reputation as a "gun guy" and discussed with Brown that if she had problems with individuals he could take care of it. However, Brown never saw him with a handgun.

Rayshell Strong was a girlfriend of Tyrone Ellis.

Rhamir Bethea, aka Moo Moo, is Tammy Bethea's son. People have said that Bethea is working for the police.

Krystie Cobb was often seen around Mykal Derry's group, but Brown did not know of her drug involvement.

Devon Cornelius used to "get high" with Brown.

For Brown's birthday in 2012, Mykal Derry, Kim Spellman, Aree Toulson and Kamal Allen went to a shooting range. They took pictures with their phones of the guns on display, the guns that they used, and the targets that they shot.

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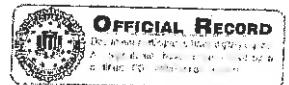
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Several Derry associates that frequented Brown's apartment would discuss shootings that had occurred, and the rivalries between residents of Stanley Holmes and Back Maryland, and Stanley Holmes and Carver Hall.

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 08/16/2016

On August 16, 2016, Jodi Brown, was interviewed at the United States Attorney's Office in Camden, New Jersey, pursuant to a proffer agreement. Present during the proffer was Assistant United States Attorney Patrick C. Askin, Federal Bureau of Investigation Special Agents Christopher C. Kopp, and Marcus Perry, and Brown's attorney Roland Jarvis. After being advised of the identities of the interviewers and the nature of the interview, Jodi Brown provided the following information:

Brown lived at 238 Rosemont Place, Atlantic City, New Jersey, in the Stanley Holmes housing projects from approximately June 2012 through December 2012. Brown began the process of securing a residence at 441 Beach Avenue, which she rented from her cousin, in approximately October 2012. Brown paid for the residence on Beach with money she received after the death of her mother. However, Brown believed she did not move into the residence on Beach until some time during or after the two week period following the shooting of Derreck Mack, which occurred on December 17, 2012. On December 17, 2012, prior to the shooting, Mack had a brief conversation with Brown inside 238 Rosemont Place. Mack discussed purchasing a Raiders hat to match the jacket he was wearing that day. Brown also recalled Mack standing outside the back door of her residence talking with several individuals, including Mykal Derry.

Shortly after Mack's shooting, Mykal Derry ceased using Brown's residence as a place to store and sell drugs, and began using "Kadijah's" residence, also located in Stanley Holmes. Kadijah discussed with Brown the use of Kadijah's residence by Derry and others to sell drugs when Brown saw Kadijah in Renaissance Plaza. Brown informed Kadijah, "that's your problem" [Agent note: Kadijah is known to writer to be Brenda Solomon]. At the time Mykal Derry ceased using Brown's residence, Brown had already begun drug detoxification and no longer needed to acquire drugs from Derry, and therefore did not need to interact with him. Brown did not acquire drugs from Mykal Derry, or Malik Derry after the Mack shooting. Brown further stated that she did not want "them" following her to her new residence.

Brown's co-defendants and others regularly talked in front of Brown, including inside her residence in Stanley Holmes, regarding shooting incidents involving their rivals from the Back Maryland section of Atlantic

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Investigation on 08/16/2016 at Camden, New Jersey, United States (In Person)File # 281D-NK-118649-302Date drafted 08/16/2016by KOPP CHRISTOPHER C

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City.

Brown did "not really" have any conversations with Mykal Derry or Malik Derry after the Mack shooting, and after the Derry's ceased using Brown's residence. Brown did occasionally speak briefly to Malik Derry, primarily over the phone but once or twice in person, regarding whether he had a place to stay and food to eat, and then Brown "kept it pushing," meaning moved on and did not continue the conversation.

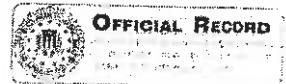
Brown was in the hospital for drug rehabilitation and complications from Grave's disease for approximately one month at the time Tyquinn James was murdered on February 10, 2013, as well as again for approximately three weeks including on March 26, 2013, when the majority of her co-defendants were arrested.

Approximately two to three weeks after the shooting of Tyquinn James, Brown was in Brown's Park in Atlantic City with a group of individuals who were "talking, drinking, and smoking." Brown stated, "You know when they off on their crack shit," referring to the individuals smoking crack cocaine in Brown's Park. In the park at that time with Brown was an individual known to Brown as "Ya Ya," and another known as "Ice." Ya Ya mentioned that Mykal Derry shot Tyquinn James. Ya Ya had heard that Shaamel Spencer, also known as Buck, had heard about the murder of James over a police scanner. Brown had no further information regarding the discussion that Mykal Derry had shot James. Brown was again using drugs at the time of this conversation, but specifically not on that day. Brown also knew Ya Ya to use drugs, including using heroin with Brown, however Brown did not know if Ya Ya was using drugs that day. Brown described Ya Ya as having short hair with a long beard, and was approximately Brown's age [Agent note: writer believes Ya Ya to be John Wellman].

While incarcerated at the Federal Detention Center (FDC) in Philadelphia, Brown often came into contact with Mykal Derry. Brown and Derry never discussed their case, with the exception of Derry informing Brown that he was going to trial. Brown did not talk to Malik Derry while in FDC because Malik was constantly in the Special Housing Unit. Brown did not believe her co-defendants ever knew she had proffered with the government, or that she was available to testify at trial.

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 09/15/2016

On September 14, 2014, Ambrin Qureshi (Protect Identity), date of birth August 8, 1980, was interviewed at the United States Attorney's Office in Camden, New Jersey, as part of a proffer. Present during the interviews were Qureshi's counsel David Bahuriak, Assistant United States Attorneys Patrick C. Askin and Justin Danilewitz, and Special Agent Christopher C. Kopp. After being advised of the identities of the interviewers and the nature of the interview, Qureshi provided the following:

Qureshi did not know, and to her knowledge had never met Tyquinn James, aka T.Y., aka T-Weeze. The first time Qureshi heard of James was in the news reports of his murder, and after the arrests of Mykal Derry and Malik Derry. Qureshi first heard of James's murder from her "God brother" Robert Rechter on the day of the Derry's arrests. Rechter called Qureshi and told her to turn on the television news which was reporting the arrest of her "ex-boyfriend" Mykal Derry. Qureshi stated that all of Mykal Derry's friends used nicknames, and she did not know a nickname for Tyquinn James.

Qureshi stated several times that if she had previously identified a photograph of Tyquinn James in a proffer, it was possibly due to having seen his picture in the newspaper after his murder. Qureshi did not recall seeing a photograph of James on the television news.

Qureshi was attending Stockton College at the time of James's murder, and was not actively involved with Mykal Derry at the time.

Qureshi never discussed Tyquinn James with Mykal Derry or Malik Derry. Qureshi noted that word on "the streets" as well as the news informed her of the Derry's involvement in the murder of James. Qureshi also stated that many people questioned how the Derry's were arrested so quickly after the murder.

Qureshi was able to identify a photograph of Shaamel Spencer and knew him as "Buck."

Qureshi was able to identify a photograph of Quasim Duncan and knew his true name. Qureshi had become acquainted with Duncan through Facebook after

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his release from prison, but did not know him prior to his arrest in this investigation.

Qureshi was not able to identify a photograph of Tyquinn James.

Qureshi was not able to identify a photograph of Clevon Lindo.

Qureshi was able to identify a photograph of Trevin Allen but believed his name was "Trevor" Allen. Qureshi knew he was "an Allen" and knew he had been married to Nafeesah Allen, aka Andrea Stephens, who was Mykal Derry's cousin. Qureshi stated that Trevin Allen and Mykal Derry had been friends until the incident with "Ant 50" (Agent Note: Anthony Rosario) where Rosario was at Mykal Derry's residence and was assaulted. Mykal Derry talked to Qureshi about Derry's dislike of Allen. Qureshi only knew that the split between Derry and Allen occurred after the assault of Rosario.

Qureshi stated that in the years that she knew Mykal Derry he never spoke to her about any shooting that he was involved in. Qureshi was asked to confirm that Mykal Derry never informed her of any shooting incident he was involved in, and Qureshi replied, "Why, so they could kill me?"

Malik Derry did once inform Qureshi that she should not do laundry in a laundromat associated with the Back Maryland area of Atlantic City because she was associated with the Stanley Holmes area of the city and it would be dangerous for her, but Malik did not provide specific details.

Qureshi first met Mykal Derry in 2008 through his brother, Michael Derry, whom Qureshi referred to as her "best friend." Michael Derry was found guilty at trial for a robbery and was sentenced to 35 years in prison. Michael Derry then informed Qureshi that his brother Mykal Derry was going to be released from prison soon. Qureshi went to Northern State Prison and visited Mykal Derry, who thanked her for her kindness to Michael.

Qureshi was familiar with Kalim Selby, aka Boo, and stated that she did not know he was currently a fugitive, but that he was currently still in Atlantic City.

It should be noted that Qureshi often referred to Mykal Derry as her "baby daddy" and to Derry's daughter Shanayah (phonetic) as her own daughter. Qureshi stated that she provides Shanayah \$40.00 allowance per week, and provides Shanayah with a cellular telephone.

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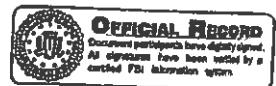
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FEDERAL BUREAU OF INVESTIGATION

Date of entry 03/17/2016

On March 9, 2016, Franklin Simms, date of birth September 24, 1983, was interviewed as part of a proffer at the United States Attorney's Office in Camden, New Jersey. Present at the proffer was Assistant United States Attorney Patrick Askin, Federal Bureau of Investigation Special Agents Christopher Kopp and Marcus Perry, and Simms's attorney Troy Archie. After being advised of the identities of the interviewing Agents and the nature of the interview, Simms provided the following information:

Simms was born in Atlantic City, New Jersey, and lived there most of his life, where he graduated from an alternative high school. Simms lived in Greensboro, North Carolina for a period of time in 2010 to 2011, with his sister Jody Simms. Simms also has a brother, Walter Simms, who is approximately eight years older than Simms. Walter Simms owns Big Man Limousine and Big Man Tow Truck. Simms has two sons, Xavier and Franklin, with Thelma Rice.

Simms started selling drugs (marijuana) at age 16. He was arrested several times for simple assault as a juvenile. Simms has held several jobs, including at McDonald's, and K-Mart, for approximately six months. Simms has also worked for his brother Walter, dispatching and instructing taxi drivers.

Simms started selling heroin in approximately 2003 when his first child was born, and Simms felt he needed the money. Simms was supplied by Corleone Hayes at the time. Simms primarily sold heroin in the Atlantic City Apartments and Six Bedrooms apartments. Simms was arrested in October 2002 in possession of a firearm. He plead guilty to the firearm charge in conjunction with an unrelated heroin charge and was sentenced to five years incarceration. After Simms was released he was working at a Sunoco gas station in Galloway, New Jersey when he was arrested for a Domestic Violence related charge. Simms lost his job, and was sentenced to three years probation. He violated probation when he was arrested for selling marijuana.

Simms was shot in 2007 while he was sitting in a vehicle on Beach Avenue in the Venice Park section of Atlantic City. Simms was in the vehicle with a friend named Richie Last Name Unknown (LNU) (Agent Note: Richard Jackson)

Investigation on 03/09/2016 at Atlantic City, New Jersey, United States (In Person)

File # 281D-NK-118649-302

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by KOPP CHRISTOPHER C

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who was grazed by a bullet in the shooting. Simms believed he was "ambushed" by two individuals due to Simms's association with Laquay LNU (Agent Note: Laquay Hall). Laquay was approximately the same age as Simms. Laquay sold crack cocaine and heroin, and told Simms he had recently been robbed by individuals associated with "Adams Court." Prior to the shooting, Simms saw Carlos Woodall, aka DT, First Name Unknown (FNU) LNU, aka Buster (Agent Note: Terryn Kelsey), FNU LNU, aka D-Hayes, and FNU LNU, aka Coodie (Agent Note: Braheem Stowe), sitting in the area. Simms did not believe Woodall was the individual who actually shot him because of Woodall's location prior to the shooting. Simms did not report any of this information to the Atlantic City Police Department at the time of the shooting.

In 2012, Simms was living at his mother's residence at 602 Michigan Avenue, Atlantic City. He was using prescription pills (percocet/oxycodone) and marijuana on a daily basis. Simms's cousin Anthony Washington, aka Ace, left a shotgun at Simms's residence. Simms got into an altercation with his brother Walter, and Walter alleged that Simms pointed the shotgun at him. Simms had pending aggravated assault charges in Atlantic County due to the incident.

Simms needed money to pay the bail bondsman due to the arrest for aggravated assault. Simms knew Tyrone Ellis from school and growing up in Atlantic City. Simms knew Ellis as a drug dealer, and Ellis had approached Simms several times offering heroin for sale. Simms asked Ellis for marijuana to sell on several occasions. Simms had approximately \$200, and called Ellis to purchase heroin. Ellis provided Simms with two bricks of heroin at \$200 per brick, and Simms owed Ellis the balance. Simms took approximately a week to sell two bricks of heroin at that time. However, Ellis also provided Simms with an additional two bricks of heroin. As Ellis continued to supply Simms with heroin, Rayshell Strong would deliver the heroin to Simms, and collect money from previously supplied heroin. Soon, Ellis was leaving bricks of heroin with Simms for Ellis' other customers. Simms believed Strong was no longer dealing with Ellis due to Ellis not paying her for her activities. Ellis would tell Simms how many bricks to give each customer, and how much money to collect. Ellis' customers included Jeffrey Harvey, Wanda Bishop, Ronald Johnson, and Patricia Taylor. Ellis "fronted" these customers the same way that he had dealt with Simms in that he would provide more heroin than they ordered or payed for, and they would owe Ellis for the extra heroin at a later date.

On one occasion law enforcement officers conducted a traffic stop on a vehicle containing Simms' sons after they left Simms's residence. The

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officers showed them a picture of Tyrone Ellis and asked if they had seen Ellis at Simms's residence. They informed the officers that they had not seen him, but reported the incident to Simms.

On at least three occasions Ellis obtained raw heroin by the gram. Ellis brought the heroin and packaging materials to Simms's basement where Simms and Ellis processed and bagged the heroin. Simms vomited after working with the heroin. Ellis obtained the raw heroin from an individual in Newark that previously supplied Anthony Washington. Washington had provided Simms the individual's phone number, and Ellis called him "cold." Ellis also obtained raw heroin from an individual in Vineland that Simms did not know.

Simms obtained firearms locally in Atlantic City. Simms obtained the .38 caliber revolver that was seized from his residence, from a heroin customer FNU LNU, aka Tia. Simms stated that Tia was "hooked up" and would have a lot of information regarding criminal activity in Atlantic City and Philadelphia. Tyrone Ellis obtained the .40 caliber Glock seized from Ellis's residence from Jovani Rodriguez, aka Jo Jo, in Egg Harbor City, New Jersey.

Dawon Brown's brother, FNU LNU, aka Brit, lives in Durham, North Carolina, and supplies firearms to individuals in Atlantic City. Simms and Ellis discussed obtaining firearms from Brit, but never actually acquired any. Ellis talked about getting firearms from an individual named Michael in Georgia, but Simms did not know the individual.

At one point Ellis was storing a .45 caliber Llama in Simms's residence. Anthony Washington took the firearm from the residence due to an altercation he was having.

Former Atlantic City Police Officer Mike Jones lived behind Simms. Simms did not believe Jones was involved in any criminal activity because Jones would "scare" drug customers away from Simms's residence.

FNU LNU, aka Africa (Agent Note: Lenny Ross) warned Simms that Simms's residence was going to be "raided" prior to Simms's arrest. Africa told Simms that he received the information from a girlfriend that worked with law enforcement. Simms believed that Africa was an informant, and that was how he actually received the information. Simms did not have heroin in his residence at that time, and Ellis assured Simms that he had removed the packaging materials from the basement.

The night that Tyquinn James was murdered, Simms was driving in a cab. Simms heard the incident over a police scanner, and drove to the location. Simms saw the body on the sidewalk prior to police arriving. Simms heard another individual on the corner state the name "Koose." Simms then assumed

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the individual that had been shot was Mykal Derry, aka Koose. Simms contacted Tyrone Ellis and informed him that Derry had been shot.

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