

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MALIK MOSS
Petitioner

v.

UNITED STATES OF AMERICA
Respondent.

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

Volume 1 (A1-136)

May 19, 2025

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United States v. Moss

United States Court of Appeals for the Third Circuit

November 12, 2024, Submitted; February 18, 2025, Filed

No. 23-3059

Reporter

129 F.4th 187 *

UNITED STATES OF AMERICA v. MALIK J. MOSS, a/k/a Bleek, Appellant

Prior History: On Appeal from the United States District Court for the District of Delaware. (D.C. Criminal No. 1:22-cr-00024-001). District Judge: Hon. Colm F. Connolly.

Counsel: Daniel C. Breslin, LAW OFFICE OF CHRISTOPHER S. KOYSTE, LLC, 709 Brandywine Boulevard, Wilmington, DE, Counsel for Appellant.

David C. Weiss, United States Attorney, Jesse S. Wenger, Assistant United States Attorney, Chief of Appeals, Benjamin L. Wallace, Assistant United States Attorney, Alexander P. Ibrahim, Assistant United States Attorney U.S. DEPARTMENT OF JUSTICE, OFFICE OF UNITED STATES ATTORNEY, Wilmington, DE, Counsel for Appellees.

Judges: Before: RESTREPO, MONTGOMERY-REEVES, AMBRO, Circuit Judges.

Opinion by: RESTREPO

Opinion

[*189] OPINION OF THE COURT

RESTREPO, *Circuit Judge*

Appellant Malik Moss appeals his 384-month sentence for conspiracy to distribute methamphetamine and heroin in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. He contends that the record does not support the District Court's factual findings related to (1) the weight and purity of the methamphetamine and (2) the application of the obstruction-of-justice enhancement. Seeing no clear error in the District Court's findings, we will affirm the judgment.

I. BACKGROUND

After Moss pleaded guilty to conspiracy to distribute methamphetamine and heroin, the District Court held an evidentiary hearing to determine the quantity and purity of the methamphetamine attributable to him for sentencing purposes. At the hearing, the government focused on two purchases by Moss and his co-conspirator Jacob Santiago to establish drug quantity: one on or about October 27-28, 2021, and another on November 11, 2021. As to the first purchase, DEA Task Force Officer Trevor Riccobon testified that a phone call between Santiago and Moss on October 27 revealed that they collectively planned to buy ten pounds of crystal methamphetamine from a supplier in Reading, Pennsylvania. Cellphone data also showed that [*190] Moss's cellphone traveled from Wilmington to Reading on October 27 and 28. The government then presented multiple communications by Moss related to the purchase. Moss texted several people on the night of October 28 broadcasting that he had methamphetamine for sale. And in a recorded phone call on November 3, 2021, Moss told another co-conspirator

that Reading is "where the ice [*i.e.*, methamphetamine] is" and that he "just went up there" and "bought 10 pounds of ice." App. 57.

As for the November 11 purchase, Officer Riccobon testified that cellphone data showed Moss, Santiago, and another co-conspirator traveled to Reading that day. In a phone call between Santiago and Moss on November 12, Santiago confirmed with Moss that they had five "pound traps" lined up to sell. App. 89. After considering Officer Riccobon's testimony, the wiretap transcripts, and the exhibits submitted by the government, the District Court determined that the government established by "more than a preponderance" that Moss and Santiago bought fifteen pounds of methamphetamine. App. 12-13.

As to purity, the District Court relied on the purity levels of controlled purchases made directly from Moss. Samples from four controlled purchases had purity levels of 95%, 95%, 94%, and 62%. Affording Moss "lenity on this issue," the District Court applied a purity level of 62%—the lowest known purity level of any methamphetamine purchase associated with the conspiracy—to calculate Moss's sentence. App. 14.

The evidentiary hearing was initially scheduled for December 12, 2022, but it was rescheduled for December 21 because of Santiago's absence. During the December 12 proceeding where the hearing was rescheduled, the government notified the District Court that a cooperating co-conspirator—who had been scheduled to testify against Moss—wished to breach his cooperation agreement and no longer testify. Of note, Moss's girlfriend Shannon Ruth and her friend Sharee Christian attended the December 12 proceeding but arrived after the discussion of the co-conspirator's decision.

At the December 21 evidentiary hearing, U.S. Marshals spotted Christian trying to record the proceeding with her phone. The government later submitted a letter to the District Court detailing evidence it obtained from Moss's prison communications showing that Moss had arranged for his girlfriend to record the original and rescheduled evidentiary hearings to expose the cooperating co-conspirator. The letter also outlined evidence that, while in prison, Moss sent the co-conspirator notes threatening his family's safety if he testified against Moss. Based on these findings, the government informed the District Court that it would seek an enhancement for obstruction of justice.

At Moss's sentencing hearing, the District Court reviewed the prison communications about the planned recording of the evidentiary hearing and heard testimony from the co-conspirator about the threatening notes he received. The District Court concluded that either ground would justify an obstruction-of-justice enhancement. Accordingly, it applied the enhancement and added two points to Moss's base offense level. The District Court sentenced Moss to 384 months in prison and noted that he received the equivalent of two years for the obstructive conduct.

II. DISCUSSION¹

The District Court determined Moss's base offense level by applying [*191] U.S.S.G. § 2D1.1(a) and applied an obstruction-of-justice enhancement under U.S.S.G. § 3C1.1. Moss does not question the District Court's legal interpretation of those guidelines. Instead, he challenges its factual findings related to drug quantity, drug purity, and application of the obstruction-of-justice enhancement. As with all "facts relevant to sentencing," the government's burden of proof is a preponderance of the evidence. *United States v. Grier*, 475 F.3d 556, 568 (3d Cir. 2007) (en banc). We review the District Court's "factual findings relevant to the Guidelines for clear error." *United States v. Kirschner*, 995 F.3d 327, 333 (3d Cir. 2021). The clear error standard is highly deferential:

If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have

¹ This Court has appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. The District Court had subject-matter jurisdiction under 18 U.S.C. § 3231.

weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

United States v. Caraballo, 88 F.4th 239, 244 (3d Cir. 2023) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-74, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985)).

Moss points to three of the District Court's factual findings as clearly erroneous. First, he argues the record does not support the finding that he purchased 15 pounds of methamphetamine. We disagree. The government presented ample evidence of the amount of drugs purchased. For the October 27-28 purchase, the District Court based its finding on (1) recorded phone calls between Moss and Santiago in which they discussed buying ten pounds of methamphetamine, (2) cellphone data showing Moss and Santiago traveled to Reading after those discussions, (3) Moss's text messages on the way back from Reading broadcasting that he had "ice" for sale, and (4) statements from Moss confirming he "bought ten pounds of ice" in Reading. App. 13. For the November 11 purchase, the District Court relied on (1) cellphone data and texts that revealed Moss and Santiago traveled to Reading that day and (2) texts and recorded calls from November 12 confirming that Moss and Santiago had five "pound traps" lined up to sell following another trip to Reading. App. 13-14. Given the deferential clear error standard, the District Court's finding is no doubt a "plausible" interpretation of the evidence that Moss and Santiago purchased fifteen pounds of methamphetamine. *Caraballo*, 88 F.4th at 244.²

Second, Moss contends that the District Court unreasonably relieved the government of its burden of proof when it assigned the methamphetamine purchased in Reading a purity level of 62%. In determining drug *quantity*, our precedent instructs that "some degree of estimation must be permitted," particularly because "the government usually cannot seize and measure all the drugs that flow through a large drug distribution conspiracy." *United States v. Collado*, 975 F.2d 985, 998 (3d Cir. 1992). For methamphetamine offenses, "purity matters" because the district court must consider the quantity of pure or "actual" methamphetamine to determine the [*192] offense level. *United States v. Johnson*, 94 F.4th 661, 664 (7th Cir. 2024) (quoting *United States v. Carnell*, 972 F.3d 932, 939 (7th Cir. 2020)); see also U.S.S.G. § 2D1.1(c) n.B (providing that sentencing courts are to "use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the . . . methamphetamine (actual), whichever is greater").

Applying the same principle to *purity* as we do to *quantity*, some degree of estimation by the sentencing court must be acceptable. Other circuits have found it appropriate for a district court to estimate the purity of unseized drugs based on the purity of seized drugs. In *United States v. Newton*, the defendant challenged the district court's purity calculation for "unrecovered" methamphetamine because its purity was "impermissibly uncertain." 31 F.3d 611, 614 (8th Cir. 1994). Because a district court "may estimate total drug quantity based on evidence that reasonably supports a factual finding," the Eighth Circuit held that "[t]he district court properly relied on the purity level of the [methamphetamine] actually seized." *Id.*

In *United States v. Lopes-Montes*, the Ninth Circuit noted its alignment with the Eighth and Seventh Circuits in affirming a sentence based on a drug purity estimate calculated using seized methamphetamine. 165 F.3d 730, 732 (9th Cir. 1999). The *Lopes-Montes* court explained that "using the purity of drugs actually seized to estimate the purity of the total quantity of drugs . . . is an appropriate method of establishing the base offense level." *Id.*

In a more recent case, the Seventh Circuit found that the district court erred in assuming that unseized methamphetamine was 100% pure and should have estimated purity based on the methamphetamine actually seized from the defendant. *Johnson*, 94 F.4th at 664. Similar to the drugs seized in this case, the drugs seized in *Johnson* were of varying levels of purity. *Id.* The Seventh Circuit held that the district court committed plain error

² Even if we found clear error on the five-pound purchase, the guidelines range would be the same. At the relevant purity level, ten pounds and fifteen pounds result in the same base offense level. See U.S.S.G. § 2D1.1(c)(2). "If a district court makes an error in its drug quantity determination that does not affect the base offense level or Guidelines range, the error is harmless." *United States v. Diaz*, 951 F.3d 148, 159 (3d Cir. 2020).

because the 100% purity estimate led to a higher guidelines range than would have applied if the district court had used the lowest purity level from the seized drugs. *Id.* at 664-65. "When faced with competing estimates of drug purity," the Seventh Circuit explained that it "encourage[s] district courts to err on the side of caution and select the more conservative estimate." *Id.* at 664.

We agree with our sister circuits that it is reasonable for a district court to estimate the purity of unseized drugs based on the purity of drugs seized from the defendant. And we echo the guidance provided by the Seventh Circuit to exercise prudence and favor the more conservative estimate when purity levels vary.

That is precisely what the District Court did here. It assigned a purity level based on the lowest purity sample purchased directly from Moss. Rather than assign a significantly higher purity level based on samples from the other controlled purchases or samples from drugs seized at the homes of co-conspirators, the District Court selected the more conservative estimate. Given the short amount of time between the controlled purchases and the bulk purchases by Moss and Santiago, its determination that the drugs were at least 62% pure was not clearly erroneous.

Finally, the District Court's factual findings underlying the obstruction-of-justice enhancement are not clearly erroneous. The District Court considered ample evidence in making its determination—including testimony from the cooperating co-conspirator about the threatening notes he received as well as communications between Moss and his girlfriend confirming that he intended to expose the co-conspirator [*193] by recording the proceedings. Taken together, the District Court had significant evidence supporting the enhancement, and thus the decision to apply it was not clearly erroneous.

III. CONCLUSION

For the foregoing reasons, we will affirm the judgment of sentence entered by the District Court.

End of Document

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

v.

Criminal Action No. 22-24-CFC

MALIK J. MOSS and JACOB
SANTIAGO,

Defendants.

MEMORANDUM

Defendants Malik Moss and Jacob Santiago pleaded guilty to conspiring to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 846, respectively. D.I. 52 ¶¶ 1–2; D.I. 58 ¶¶ 1–2. At the parties’ request, I held an evidentiary hearing to determine the weight and purity of methamphetamine attributable to Defendants for calculating their guideline ranges.

The government called two witnesses at the hearing: New Castle County Police Officer Trevor Riccobon and DEA Special Agent Jerwon Bethel. I found both Riccobon and Bethel to be credible.

The parties submitted extensive briefing before and after the hearing. I have reviewed carefully the briefing, the exhibits, and the wiretap transcripts submitted at the hearing and in connection with the briefing.

The government's investigation that led to Defendants' indictment initially focused on Moss. In June 2021, confidential informants made three controlled purchases of methamphetamine with a combined weight of four ounces from Moss.¹ The government wiretapped Moss's cell phone starting on September 30, 2021. The wiretap revealed that Moss and Santiago were working together and with others to buy and distribute crystal methamphetamine. The investigation ultimately showed that numerous individuals, including Tyrell Pankins, Roland LaPointe, Christina Chamberlain, Christopher Meadow, Jesus Alfaro, and Gerardo Rodriguez worked with Moss and Santiago to distribute various types of drugs.

The investigators conducted extensive visual and electronic surveillance of Moss, Santiago, and their co-conspirators. Undercover officers, for example, tailed members of Moss and Santiago's organization in cars, and the government tracked Moss's cell phone's location. After the investigation concluded, the government also obtained location data from Santiago's cell phone.

The investigators ultimately executed search warrants at the residences of Santiago, Pankins, Chamberlain, and LaPointe, and seized from those locations

¹ A confidential informant later made a fourth controlled purchase of methamphetamine from Moss. The confidential informant "asked for half a pound of crystal meth" and received from Moss "approximately 213 grams," which is about 13 grams less than half a pound. Tr. of Dec. 21, 2022 Hr'g 92–96.

over 1,800 grams of methamphetamine, smaller quantities of fentanyl cut with a horse tranquilizer, 40 pounds of marijuana, several firearms, and \$20,000 in cash.

Weight of Methamphetamine Attributable to Defendants

The government asks me to determine the weight of methamphetamine attributable to Defendants under either of “two separate drug quantity theories.” D.I. 111 at 1. Its first theory, which it calls the “Seizure Side,” attributes to Defendants the methamphetamine seized by law enforcement agents at Pankins’s and Lapointe’s residences. D.I. 111 at 2. The second theory, which the government calls the “Reading Side,” attributes to Defendants 15 pounds of methamphetamine that the government contends Defendants purchased from a supplier in Reading, Pennsylvania. D.I. 111 at 6. To avoid double counting (since it is conceivable that methamphetamine purchased in Reading could have been seized from Pankins’s and/or LaPointe’s residences) and because I find the evidence adduced by the government with respect to the Reading purchases to be compelling, I will not address the merits of the government’s “Seizure Side” theory.

I find that Riccobon’s testimony, the wiretap transcripts, and the exhibits submitted by the government establish by more than a preponderance that Moss and Santiago purchased in Reading 10 pounds of methamphetamine on or about

October 27–28, 2021 and five pounds of methamphetamine on November 11, 2021.

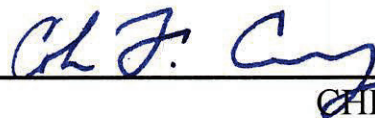
With respect to the October 27–28 purchase, I base that finding on: (1) Moss and Santiago’s October 21, 2021 recorded call in which they discussed the possibility of buying 20 pounds of methamphetamine, Tr. of Dec. 21, 2022 Hr’g 60–69; D.I. 82, Ex. 6B at 11; (2) Moss and Santiago’s October 27, 2021 recorded call in which they discussed buying five or 10 pounds of methamphetamine, Tr. 60–69; D.I. 82, Ex. 6F at 3, Ex. 13 at 3; (3) Moss and Santiago’s trips to Reading on October 27 and 28, Tr. 69–74; D.I. 82, Exs. 10C, 10D, 11A; (4) Moss’s series of text messages sent on the way back from Reading, broadcasting that he had “ice” (i.e., methamphetamine) for sale, Tr. 74–75; D.I. 82, Ex. 6F at 7–9; (5) Moss and Rodriguez’s November 3, 2021 recorded conversation in which Moss stated that “Reading Pa” is “where the ice is” and that he “just went up there” and “bought 10 pounds of ice,” D.I. 82, Ex. 6F at 10–12; *see* Tr. 77–80; and (6) the totality of the evidence (most of which is not disputed), which shows generally that Moss and Santiago were drug dealers who conspired to distribute various drugs, including methamphetamine.

With respect to the November 11, 2021 purchase, I base that finding on: (1) the evidence that Moss, Santiago, and Pankins travelled to Reading on that day, Tr. 81–86; D.I. 82, Ex. 6G at 6–8; D.I. 82, Exs. 10F, 10G, 11B; (2) Moss and

Santiago's November 12, 2021 recorded call during which Santiago confirmed that he and Moss had a total of five "pound traps" lined up to sell, D.I. 82, Ex. 6B at 16–23; *see* Tr. 86–88; and (3) the totality of the evidence (most of which is not disputed), which shows generally that Moss and Santiago were drug dealers who conspired to distribute various drugs, including methamphetamine.

Purity of Methamphetamine

There is no direct or circumstantial evidence to establish by a preponderance that any of the methamphetamine seized by the government during its investigation came from the October 27–28 and November 11 purchases Moss and Santiago made in Reading. The purity levels of methamphetamine purchased directly from Moss on four occasions were 95%, 95%, 94%, and 62%. D.I. 82, Ex. 9 at 2, 3, 5, 6; Tr. 12–15, 92–96. The purity levels of the methamphetamine seized from Pankins's, Lapointe's, and Santiago's residences were 86%, 98%, and 94%, respectively. D.I. 82, Ex. 9 at 7, 8, 11. Affording Defendants lenity on this issue, I think it appropriate to apply the lowest known purity level of the methamphetamine associated with the entire conspiracy and therefore will apply a purity level of 62%.



CHIEF JUDGE

UNITED STATES DISTRICT COURT

District of Delaware

UNITED STATES OF AMERICA

v.

MALIK MOSS
a/k/a Bleek

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:22-cr-00024-CFC-1

USM Number: 78583-509

Daniel C. Breslin, Esquire

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846	Conspiracy to distribute methamphetamine and heroin	12/14/2021	One

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/2/2023

Date of Imposition of Judgment

Signature of Judge



Colm F. Connolly, Chief U.S. District Judge

Name and Title of Judge

Date

11/3/23

DEFENDANT: MALIK MOSS a/k/a Bleek
CASE NUMBER: 1:22-cr-00024-CFC-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a
total term of:
384 months

☒ The court makes the following recommendations to the Bureau of Prisons:
That the Defendant participate in the Residential Drug Abuse Program (RDAP) or other drug program available.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MALIK MOSS a/k/a Bleek
CASE NUMBER: 1:22-cr-00024-CFC-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

60 months

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MALIK MOSS a/k/a Bleek
CASE NUMBER: 1:22-cr-00024-CFC-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: MALIK MOSS a/k/a Bleek
CASE NUMBER: 1:22-cr-00024-CFC-1

ADDITIONAL SUPERVISED RELEASE TERMS

1. The Defendant shall participate in a drug treatment program, which may include testing and cognitive behavioral life skills training.
2. The Defendant shall provide the Probation Officer with access to any requested financial information.
3. When not employed or excused by the Probation Officer for schooling, training, or other acceptable reasons, the Defendant shall perform 20 hours of community service per week as directed by the Probation Office.

DEFENDANT: MALIK MOSS a/k/a Bleek

CASE NUMBER: 1:22-cr-00024-CFC-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ n/a	\$ waived	\$ n/a	\$ n/a

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

TOTALS	\$ _____	0.00	\$ _____	0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MALIK MOSS a/k/a Bleek
CASE NUMBER: 1:22-cr-00024-CFC-1**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Pursuant to the Preliminary Order of Forfeiture (D.I. 157),

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: MALIK MOSS a/k/a Bleek
CASE NUMBER: 1:22-cr-00024-CFC-1

ADDITIONAL FORFEITED PROPERTY

- a. 26 Rounds Assorted 9 caliber Ammunition (assigned asset ID number 22-ATF-044330);
- b. 2016 Ford Taurus (assigned asset ID number 22-DEA-686991);
- c. \$22,863.00 U.S. Currency (assigned asset ID number 22-DEA-686615);
- d. \$13,975.00 U.S. Currency (assigned asset ID number 22-DEA-686613);
- e. 2010 Cadillac SRX (assigned asset ID number 22-DEA-686989);
- f. 2019 Chevrolet Impala (assigned asset ID number 22-DEA-686987);
- g. 9 Rounds Other 762 caliber Ammunition (assigned asset ID number 22-ATF-044328);
- h. 16 Rounds WINCHESTER-WESTERN 357 caliber Ammunition (assigned asset ID number 22-ATF-044327);
- i. Unknown TWO (2) GLOCK AMMUNITION MAGAZINES WITH 15 ROUND CAPACITY AND ONE (1) GLOCK AMMUNITION MAGAZINE WITH 10 ROUND CAPACITY. SN: None. (assigned asset ID number 22-ATF-044325);
- j. Unknown Gun Box Glock SN WZZ588 (assigned asset ID number 22-ATF-044324);
- k. 30 Rounds Assorted multi caliber Ammunition (assigned asset ID number 22-ATF-044318).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
) No. 22-24-CFC
v.)
)
MALIK MOSS AND JACOB)
SANTIAGO,)
)
Defendants.)

Wednesday, December 12, 2022
9:00 a.m.
Miscellaneous Hearing

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE COLM F. CONNOLLY
United States District Court Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
BY: RUTH MANDELBAUM, ESQ.
BY: ALEXANDER IBRAHIM, ESQ.
Counsel for the Government

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APPEARANCES CONTINUED:

BY: DANIEL BRESLIN, ESQ.
Counsel for the Defendant, Malik
Moss

BY: MARGARET GRASSO, ESQ.
Counsel for the Defendant, Jacob
Santiago

P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at
9:00 a.m.)

THE COURT: Good morning.

MR. IBRAHIM: Good morning, Your Honor.

Alexander Ibrahim and Ruth Mandelbaum for the United
States. Now is the time the Court has set for an
evidentiary hearing in this case related to drug weight
against Mr. Malik Moss and Mr. Jacob Santiago.

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The defendant Malik Moss is present along with
his counsel, Dan Breslin. Mr. Santiago, as the Court
knows, is not present. His counsel, Ms. Margaret Grasso,
is here.

MS. GRASSO: Good morning, Your Honor.

THE COURT: So I'm aware of that last
development, and I don't see how we can go forward.

MR. IBRAHIM: The government agrees, Your
Honor. To avoid any issues, the government believes it is
proper that Mr. Santiago be present at this hearing.

There is one other housekeeping matter that we
wanted to bring to the Court's attention.

THE COURT: Sure.

MR. IBRAHIM: If the Court is predisposed to
continue the hearing, which I think it is.

THE COURT: Yes.

MR. IBRAHIM: The government had mentioned that
there was a corroborator in this case, Jesus Alfaro was
his name. Ms. Carrie Cinquante is representing
Mr. Alfaro. Ms. Cinquante is here. She gave the
government a letter dated this weekend that Mr. Alfaro no
longer wants to cooperate with the government. He has a
signed cooperation agreement as the Court knows. One of
those provisions of the cooperation agreement is that any
proffer statements he made are on the record as of the

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date of his cooperation agreement.

The government plans to enforce that provision
and insert his proffer statements through the
testifying -- through evidence of a testifying case agent,
a DEA case agent who is present.

So the government has discussed that with
defense counsel, talked about it, I don't believe that
there's an objection from defense counsel. But I wanted
to let you know since Ms. Cinquante is here, that that was
the government's plan in case the Court wants to inquire
of Ms. Cinquante or anything since she is present.

THE COURT: Well, let me just ask you this, I
mean, I understand hearsay is admissible.

MR. IBRAHIM: Right.

THE COURT: Is he going to invoke the Fifth?

MR. IBRAHIM: Yes. Sorry, Your Honor. I
should have mentioned that. Ms. Cinquante has alerted the
government that he plans to invoke the Fifth.

The government has done the research. There
are Fifth Amendment rights that the government believes
that Mr. Alfaro has not waived by virtue of his guilty
plea, so the government does see an issue there with
regard to forcing Mr. Alfaro to testify, that he does have
Fifth Amendment rights that would protect him in this
scenario.

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So the government thinks, actually --

THE COURT: But let me ask you this. So I forget. What did he -- his status is that he pled and he's wait for sentencing, right?

MR. IBRAHIM: That's correct, Your Honor.

THE COURT: What did he plead guilty to?

MR. IBRAHIM: He pled guilty to conspiracy to distribute methamphetamine with Malik Moss.

THE COURT: So I take it that if he is taking the position that he's got a Fifth Amendment right, then the government can supersede and charge with him other offenses?

MR. IBRAHIM: We could, yes.

THE COURT: Does the government intend to do that?

MR. IBRAHIM: Probably not, Your Honor, only because what he had pled guilty to allows for a 20-year stat max, and we believe we have plenty of leeway to ask for a very significant sentence against Mr. Alfaro.

But to be honest with you, Your Honor, the government was so focused on this evidentiary hearing. It wasn't thinking about Mr. Alfaro, what to do about him, other than he made proffer statements to a room full of agents. We believe they are admissible. He also had plenty of conversations with Mr. Moss that we were going

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to admit and were exhibits at the evidentiary hearing. So that's where the government was coming from.

THE COURT: All right. You mentioned that his counsel is here. Is there any explanation in the letter for why he is no longer cooperating? In other words, is there any suggestion he's been threatened by anybody?

MR. IBRAHIM: No, Your Honor. We did inquire as to that. And I don't believe that there is any suggestion of threats or pressure on Mr. Alfaro.

THE COURT: Why don't we hear from his counsel.

MR. IBRAHIM: Yes.

THE COURT: If she can tell us why he's not cooperating anymore.

MS. CINQUANTO: Good morning, Your Honor. May I approach, sir?

THE COURT: Yes, please. And just for the record, you want to put your name.

MS. CINQUANTO: Yes, sir. Good morning. Caroline Goldner Cinquanto on behalf of Jesus Alfaro.

Your Honor, I have spoken with Mr. Alfaro at length about this issue, and he has just maintained that he does not wish to go forward with his cooperation. I have prepared a statement that I had Mr. Alfaro sign stating that he understood the ramifications of this decision, that he was doing it voluntarily, and that he

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was not under any threat or pressure not to testify.

THE COURT: All right. Okay.

Anything else that I should ask in follow-up?

MR. IBRAHIM: I don't think so, Your Honor. You could -- you know, we'll obviously have a plan to deal with Mr. Alfaro later, but in terms of, you know, how that affects these proceedings, I think I've outlined the government's plan to the Court. I've outlined it to the defense. I think we are all on the same page.

Granted, however, that we can't proceed with the hearing today, I am not sure it is of very much moment how we decide to handle the issue.

THE COURT: All right. Okay. All right. Well, thank you very much.

MS. CINQUANTO: Your Honor, just so Your Honor is aware, I did advise him that he would not be receiving any of the benefits listed in Attachment A to the Memorandum of the Plea Agreement, including that the government -- for the government moving for departure from the Sentencing Guidelines pursuant to 5K1.1 and 3553(e).

He also understands that, as a result of his decision not to testify, the government may invoke the penalties set forth in Paragraph 2 of Attachment A of the Memorandum of Plea Agreement.

And in summary, I advised Mr. Alfaro that those

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penalties include prosecution for any federal crime the government learned of during the course of his cooperation. The government's decision to decline to the file 5K1 and 3553 motion for departure, as well as the fact that the government could be relieved of any obligations under the Plea Agreement regarding recommendations as to sentence or stipulations including drug weight.

THE COURT: All right. Thank you.

MS. CINQUANTO: Thank you, Your Honor. May I step back?

THE COURT: Yes, you may. Thank you very much. Anything from the defense?

MS. GRASSO: No, Your Honor.

On that issue the only thing is, obviously, if the government intends to introduce any proffer statements, we would just ask for the 302s regarding the statements, which I'm sure the government intended to provide anyway.

THE COURT: I would imagine, or DEA6s.

MR. IBRAHIM: Yes, Your Honor.

THE COURT: Or whatever they are.

MR. IBRAHIM: That's correct, Your Honor. They are DEA6s.

MS. CINQUANTO: And they have already been

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produced. I will give you the Bates numbers.

THE COURT: I guess you want to talk a date? I mean, this was so -- it's not easy to orchestrate all the participants. I guess it got easier just now. At least one participant is gone.

MR. IBRAHIM: Yes, Your Honor.

If I may, there was some conversation among the attorneys before the Court took the bench that if we could try to get this done before Christmas, there is a desire to do it.

THE COURT: Wow.

MR. IBRAHIM: We don't know, of course, what the Court's schedule is like.

THE COURT: Well, I also need to talk to the Marshals. I mean, I just -- they probably have a fairly significant amount of juggling to do.

So my understanding is he needs some days in quarantine. We cannot do this week. So the question is, can we do it next week?

Do you envision post-hearing briefing? What do you think? I mean, you had some pretty extensive briefs, but, you know, it's --

MR. IBRAHIM: Well, we had considered it, Your Honor. We were planning on leaving it to the Court's discretion as to whether the Court thought it would be

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helpful to have post-hearing briefing. I would hope the Court thought that our prehearing briefing was fairly straightforward in terms of understanding what's going on. And, obviously, the evidence was going to prove that all up, so to speak, today, Your Honor.

THE COURT: All right. How long do you think the hearing will go?

MR. IBRAHIM: Your Honor, I think that we need two-and-a-half hours for direct examinations of our witnesses.

THE COURT: Do either of you, and I'm speaking to the government at this point, are either of you -- let me strike that and try again.

^Do either of you happen to be the assigned prosecutors to the United States against Pereira Gonzalez?

MR. IBRAHIM: No, Your Honor.

THE COURT: How about 10:00 on December 21st? Does that work for defense counsel?

MR. BRESLIN: That will would be for me, Your Honor.

MS. GRASSO: That works, Your Honor.

THE COURT: It's Wednesday. Just so you all know, it's next Wednesday, December 21st. I mean, basically, I have to move stuff. I have a 9:00 hearing, which I will just make a point to get it done, and we will

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try to go right at 10:00.

MR. IBRAHIM: That would work for the government, Your Honor. We just asked our testifying witnesses. They are free as well.

THE COURT: All right. And then we do have a change of plea hearing scheduled for 2:30, which I don't think we'll be done. If we start at 10:00, we are not going to be done by 2:30 would be my guess. So I need to work with the Marshals about that.

MR. IBRAHIM: Your Honor, I would just note for the record. It's a good time to mention it. The government and the defense did have a plan, an agreement on exhibits. The defense has some exhibits. The government has reviewed them all, agrees they are all admissible. The defense has reviewed all the government's exhibits, agrees that they are admissible.

90 percent of them are the ones that have already been attached with the same numbers as what we already filed with the Court, so our plan was to really expedite the admission of evidence by basically asking for -- offering our exhibit sets and just moving them into evidence. And that way, with each of the testifying witnesses not needing to offer evidence piecemeal but just immediately getting into the evidence, setting a foundation, and asking questions, just to streamline the

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questioning. So I do think with that, Your Honor, we would --

THE COURT: What do you think? Do you have any ideas? I read your letter. Do you have any ideas, what do you think would be the most efficient manner in which to address the issues?

In other words, you could tee it up, you could say, on November, let's deal with the November 10 situation. Does that quantity get added or not? We could do it during the hearing would be one way. What do you all think?

MS. GRASSO: Well, Your Honor, I'm not sure how the government intended to present their evidence, so, you know, I certainly had a plan to deal with each event chronologically. And then at the end of the hearing make argument as to what I believe the quantity was for whatever transaction we are talking about, say October 27, October 28, and go that way. I don't know that I would be doing it at the time of each event.

THE COURT: No, no. I don't mean at the time during testimony.

MS. GRASSO: Right.

THE COURT: What I meant is, I do think it would be helpful if we just said, look, here's the decisions that I have to make, November 10, November 11.

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1 I don't remember all the dates off the top of my head,
2 but, clearly, you know, your letter --

3 **MS. GRASSO:** Yes.

4 **THE COURT:** -- for instance, had -- I know what
5 you're going to be focusing on, what it looks like. We
6 could try to do that at the end of hearing. I could rule
7 from the bench because I will have seen the witnesses, I
8 will have read the papers, it will be, you know, in my
9 brain. And then you could leave the hearing and then go,
10 okay, well, what is the resulting math if I rule a certain
11 way. I mean, is that how we should do it?

12 **MR. IBRAHIM:** I think it is possible, Your
13 Honor. From the government's perspective, obviously, the
14 largest amount of weight is the amount that's bought, and
15 then everything that's resold, all that evidence we are
16 bringing in about drug sales is really to prove that the
17 amounts we argue were bought are correct, are real.

18 You know, you have to buy enough to satisfy
19 your customers, so if we can prove you sold close to
20 10 pounds, then, we basically have proven you bought
21 10 pounds. But it all comes back to that same issue is,
22 you know, how much did you buy?

23 **THE COURT:** Okay.

24 **MR. IBRAHIM:** So I see a world in which we
25 could get there, Your Honor, but I don't see a world in

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1 which the defense would necessarily agree with the
2 government about those calculations.

3 **THE COURT:** All right. Well, then, we will
4 just see what happens. Treat it like just a normal
5 hearing. You will present your case, they will cross, and
6 then we can have argument.

7 **MR. IBRAHIM:** Understood, Your Honor.

8 **THE COURT:** All right. So let's do 10:00 on
9 December 21st, and, hopefully, Mr. Santiago gets cleared.
10 Obviously, all of this is contingent on that. We are not
11 going to have a hearing without both defendants present.

12 **MR. IBRAHIM:** Right, Your Honor.

13 **THE COURT:** Okay. All right. Thank you,
14 everybody.

15 (The proceedings concluded at 9:16 a.m.)

16
17
18 CERTIFICATE OF COURT REPORTER

19
20 I hereby certify that the foregoing is a true and
21 accurate transcript from my stenographic notes in the
22 proceeding.

23 /s/ Bonnie R. Archer
24 Bonnie R. Archer
25 Official Court Reporter
U.S. District Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,))
) No. 22-24-CFC
v.))
MALIK MOSS AND JACOB))
SANTIAGO,))
))
Defendants.))

Wednesday, December 21, 2022
10:05 a.m.
Evidentiary Hearing

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE COLM F. CONNOLLY
United States District Court Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
BY: RUTH MANDELBAUM, ESQ.
BY: ALEXANDER IBRAHIM, ESQ.
Counsel for the Government

APPEARANCES CONTINUED:

BY: DANIEL BRESLIN, ESQ.
Counsel for the Defendant, Malik
Moss

BY: MARGARET GRASSO, ESQ.
Counsel for the Defendant, Jacob
Santiago

P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at
10:05 a.m.)

MR. IBRAHIM: Good morning, Your Honor.
Alexander Ibrahim and Ruth Mandelbaum for the
United States. Now is the time that the Court has set
aside for an evidentiary hearing in the matter of the
United States vs. Malik Moss and Jacob Santiago. That's

Case Number 22-24.

Mr. Moss is present with his counsel,
Dan Breslin. Mr. Santiago is present with his counsel,
Ms. Margaret Grasso.

Your Honor, we are ready to proceed.

A couple of introductory matters, if I may have
the Court's indulgence.

THE COURT: Please.

MR. IBRAHIM: The first is, at the original
hearing that was scheduled, Your Honor mentioned to the
parties about whether they could come up with a
straightforward path to a drug weight that they felt was
appropriate in the case.

The Government has, in response to that,
streamlined its evidence, Your Honor. As the Court knows,
there are basically three general buckets of evidence that
the Government has. They're bulk purchases of
methamphetamine sales -- specifically in Reading,
Pennsylvania -- evidence about drug sales generally, and
then evidence regarding seizures and the amounts of
methamphetamine that were seized on the day of the search
warrants.

So that middle bucket, Your Honor, evidence of
the drug sales generally, while that's relevant and
important, the Government believes it's not very effective

in trying to determine the drug weight because there's
just so many calls to try to add up piecemeal.

So instead what the Government plans to do is
to make an argument that there are two ways to calculate a
base offense level 36, and either one is appropriate here.

The first, Your Honor, is that --

THE COURT: Hold on one second.

MR. IBRAHIM: Sure.

THE COURT: Sorry, go ahead.

MR. IBRAHIM: No problem, Your Honor.

That there was conspiracy to obtain at least
10 pounds of at least 60 percent pure methamphetamine from
Reading. And, Your Honor, as you know, from the
methamphetamine guidelines, both the quantity and the
purity matter. So that's why I mentioned the purity
levels.

The other way to determine a base offense level
36 is to simply find that the 3.4 pounds of
methamphetamine that's 86 percent pure, seized from
Tyrell Pankins, was part of this drug conspiracy.

So those are the two arguments that the
Government is going to be making today.

Evidence about drug sales will only be to show
that the amounts that they sold generally support buying a
bulk amount. And that is it. So those are the two

arguments that the Government is going to be pursuing.

The defense's position on that is fairly straightforward, and that's simply that the Government can't meet its burden.

So that is as teed up as we can make it for the Court today. But all the evidence will be about those two topics.

And then, Your Honor, I have a Government exhibit list. It basically matches what we've already provided the Court in the filing, that there's three additional line sheets, and that's some search warrant photos. So I would like to hand that up, Your Honor, along with two sets of defense exhibits.

There is no objections on either side as to the admissibility of either. So the Government would just offer into evidence its Exhibits 1 through 16 without objection.

THE COURT: Your 1 through 16. And the defense?

MR. IBRAHIM: Yes. I can certainly offer the defense's as well.

THE COURT: Oh, I see. But you're handing them up, the defense as well?

MR. IBRAHIM: Yes, Your Honor, just to make things simple.

THE COURT: Okay. That is good. Yep. Thank you very much.

MR. IBRAHIM: Thank you.

If the Court is ready, we are ready to call our first witness.

THE COURT: All right. Go ahead.

MR. IBRAHIM: Okay. The Government would call Task Force Officer Trevor Riccobon, Your Honor.

MS. GRASSO: Your Honor, I move for sequestration. I know it is just an evidentiary hearing, but...

MS. MANDELBAUM: Excuse me. Special Agent Jerwon Bethel is our case agent on this case, from the DEA and both at trial. And generally, in evidentiary hearings, the Court typically permits the Government to keep one case agent in the courtroom.

THE COURT: Okay.

MS. GRASSO: I understand that's the custom. I have no objection. If they're purporting him to be the case agent, then I don't think I have a valid objection.

THE COURT: All right. But if there are other agents that are going to testify or officers, then they're going to be -- they're sequestered. I guess, they're not going to be, right?

MS. MANDELBAUM: Correct, Your Honor, we only

Riccobon - Direct

plan to call Officer Riccobon and Special Agent Bethel.

THE COURT: All right. Thank you very much.

MR. IBRAHIM: Your Honor, I'm handing Officer Riccobon just a copy of the same exhibit list just for convenience.

THE COURT: All right. Thank you very much.

THE CLERK: Please raise your hand and state and spell your name for the record.

THE WITNESS: Sure. It's Trevor, T-R-E-V-O-R. Last name Riccobon, R-I-C-C-O-B-O-N.

TREVOR RICCOBON, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MS. MANDELBAUM:

Q. Good morning, Officer Riccobon.

A. Good morning.

MS. MANDELBAUM: Is this microphone working?

THE COURT: Yes.

BY MS. MANDELBAUM:

Q. Where do you work, Officer Riccobon?

A. I currently work for New Castle County Police Department.

Q. And what is your role at New Castle County Police

Riccobon - Direct

Department?

A. I'm currently assigned to the patrol division, the C Squad.

Q. And how long have you worked at New Castle County Police Department?

A. I am in my 17th year.

Q. Where did you work previously -- or during your time at New Castle County Police Department? Did you work anywhere else?

A. Yeah, that's fine.

I have worked patrol and I had stints within our drug unit, and then also within the DEA Task Force as a task force officer.

Q. How long were you in the DEA Task Force?

A. For three years.

Q. And what, generally, years was that?

A. So it was to, obviously, investigate drug-related offenses throughout the State of Delaware, particularly New Castle County. But also my main goal and objective in there was to investigate overdose investigations.

Q. And during what time period were you with the DEA?

A. It was from 2018 to 2021-ish.

Q. Have you had training and experience, in addition to what you just mentioned at the DEA, involving drug investigations?

1 A. Yes.

2 Q. Can you briefly describe some of that?

3 A. Sure.

4 So I teach down at our police academy, New Castle

5 County Police Academy as the lead drug course investigator

6 for both the academy. I also help out with the Citizens

7 Police Academy, if anybody wants to sign up.

8 And then, also, I have several trainings, such as

9 marijuana eradication training, vehicle interdiction

10 training, overdose investigation training.

11 I'm a recognized drug expert at the state and federal

12 level, testified in court on multiple occasions.

13 So just a brief highlight of some of the things that

14 I do.

15 Q. And for about how long have you been a drug

16 investigator?

17 A. So I would say nine years in total, that's including

18 my time on our mobile enforcement team, which is our

19 street crimes unit that would go out and target high crime

20 areas involving violence, drugs, weapons. Things of that

21 nature.

22 Q. Is it fair to say, then, you have some experience and

23 expertise with the nomenclature of the drug trade?

24 A. Yes.

25 Q. So that's what different drug dealers and people

1 A. So I was one of lead case agents for that

2 investigation.

3 Q. Who was the initial target of the investigation?

4 A. That would be Mr. Malik Moss.

5 Q. So I want to take you back to the summer of 2021.

6 Can you tell the Court about some of the initial

7 investigative steps you took in that investigation?

8 A. Sure.

9 We started the investigation by acquiring two

10 confidential informants, which we used to do multiple

11 purchases of heroin and crystal methamphetamines from

12 Mr. Moss.

13 Q. And can you generally describe to the Court how you

14 would conduct those purchases with the confidential

15 informants?

16 A. Yes.

17 So we would meet with the individual prior to setting

18 up the transaction. We could debrief them as far as how

19 they were going to do the transaction. We would give our

20 input as far as how we wanted them to do it to keep safety

21 concerns in mind for the individual, and also for the

22 officers that were going to be involved.

23 We would provide them with funds that were allocated

24 to the purchase of those narcotics. We would search the

25 people for the presence of guns, weapons, or other drugs

1 involved in the drug trade call certain things, right?

2 A. Yes. So during those years that I did narcotics

3 investigations, in particular, I got to interview many

4 individuals that we investigated, but also a lot of people

5 who were addicted to the types of drugs that we would

6 concentrate on.

7 So during that course, it would be evident -- or it

8 would be required of me to be familiar with how things are

9 worded on the street to help disguise drug lingo, I guess

10 you could say. But also it was required of me so I could

11 do undercover purchases myself, which I did several.

12 So yeah, I'm familiar with that nomenclature, as you

13 referred to.

14 Q. Is it fair, also, to say that you're familiar with

15 the general means and methods of drug trafficking?

16 A. Yes.

17 Q. Have you ever participated in a wiretap

18 investigation?

19 A. I have.

20 Q. Were you involved in the investigation of Malik Moss

21 and Jacob Santiago?

22 A. Yes.

23 Q. Did that eventually become a wiretap investigation?

24 A. Yes, it did.

25 Q. What was your role in that investigation?

1 prior to.

2 And then we would, ultimately, do the -- set up the

3 deal. So we would have them contact whoever it was we

4 were going to try and buy drugs from. And sometimes it

5 would be recorded, sometimes not, depending on the

6 circumstances.

7 But we would ultimately have them do that

8 transaction. They would be under surveillance from the

9 beginning to the end. And then at the end, they would be

10 directed to bring the drugs directly to us without meeting

11 with any other people. And we would then check them again

12 for the presence of drugs, weapons or money, as we did

13 before, and weapons.

14 And we would -- you know, at the end of the day, that

15 would be it. Then that would require -- that would be the

16 purchase.

17 Q. And did you follow those procedures in each

18 circumstance in this case?

19 A. Yes.

20 Q. You mentioned that you purchased methamphetamine

21 using some of the confidential informants, correct?

22 A. Yes.

23 Q. How many times did you -- at the beginning of the

24 investigation, did you purchase methamphetamine using the

25 confidential informants?

1 A. Three.

2 Q. And about how much did you purchase each time?

3 A. So on the first two transactions, we purchased an

4 ounce of crystal methamphetamine. Just to help out, I'll

5 do crystal meth, from here on out.

6 So we did two purchases of 1 ounce crystal meth, and

7 then another purchase of 2 ounces of crystal meth.

8 Q. And how much did the confidential informant pay for

9 those ounces of meth?

10 A. The first two was \$500 and the second one was a

11 thousand.

12 Q. Were the drugs purchased sent out to be tested?

13 A. Yes.

14 Q. And did you receive those results?

15 A. We did.

16 Q. Can I ask you to flip in your binder to Exhibit 9 to

17 pages 2 through 5.

18 A. Sure.

19 Q. If you can just flip through those pages quickly and

20 take a look at them.

21 A. Okay.

22 Q. Are those the results of the drugs you sent out for

23 testing that were acquired during the -- or during the

24 controlled purchases?

25 A. Yes.

1 of which came with a sample of fentanyl, who were those

2 purchased directly from?

3 A. Mr. Moss.

4 MS. MANDELBAUM: Thank you, Ms. Dorfman. You

5 can take that down.

6 BY MS. MANDELBAUM:

7 Q. In addition to the controlled purchases, what other

8 investigative steps did you take before going up on the

9 wiretap?

10 A. So we did a lot of -- I guess you would classify it

11 as homework.

12 So we did a lot of investigative research as far as

13 previous information or intel that was acquired through

14 other investigations through police departments, or if it

15 was passed along to federal agencies, about Mr. Moss.

16 Also, we did a lot of surveillance that we had ideas

17 on some of the locations that they were utilizing. But we

18 also went out there and put eyes on those as well to

19 confirm or deny those -- that information.

20 And then, also -- yeah, that helped out with

21 identifying other people that were possibly related within

22 this organization. Also identifying cars that were being

23 utilized as well. So we had -- kind of had a heads-up on

24 those. And, yeah, that was about it.

25 Q. When did you begin intercepting communications over

1 Q. What was the purity of the meth that was bought by

2 the confidential informant?

3 A. All three, it was 94 to 95 percent pure.

4 Q. I also see your reference there to a test for

5 fentanyl.

6 Do you see that?

7 A. Yes.

8 Q. When was that fentanyl acquired?

9 A. So during one of the transactions for crystal meth,

10 it was actually provided by Mr. Moss as a sample for the

11 CI, or the confidential informant, to test.

12 So we -- that was included in the deal itself. We

13 did not pay for it.

14 Q. I see, also, that the results mention xylazine.

15 A. Yes.

16 Q. Do you know what xylazine is?

17 A. I do, unfortunately.

18 Q. What is xylazine?

19 A. So xylazine became popular as a cutting agent that

20 individuals who are selling heroin use to intensify the

21 affects of the heroin.

22 So it's actually a horse tranquilizer. And it's

23 become popular nowadays, unfortunately, leading to a lot

24 of overdoses.

25 Q. And for these three purchases of methamphetamine, one

1 Mr. Moss' telephone?

2 A. That was at the end of September, after we were

3 granted permission to.

4 Q. And was that September 2021?

5 A. That's correct.

6 Q. Did you personally participate in the wiretap?

7 A. Yes, I did.

8 Q. Did you listen to the audio of the calls as they were

9 coming in?

10 A. Yes.

11 Q. Did you review line sheet transcripts of the calls

12 and of the text messages?

13 A. Yes.

14 Q. Were the calls that we are going to discuss today,

15 can you confirm that you have listened to the audio and

16 compared it with the line sheets we'll be looking at?

17 A. That's correct.

18 Q. And if at any point during today I bring up a call

19 where you haven't listened to the audio, can you just let

20 me and the Court know that?

21 A. Sure.

22 Q. During the wiretap did you also engage in physical

23 surveillance of Mr. Moss and Mr. Santiago and others?

24 A. Yes, I did.

25 Q. Did you face any challenges in that physical

surveillance?

A. Yes.

Q. Can you describe some of those for the Court, please?

A. Sure.

There are actually two main challenges, ultimately. One was the driving habits of Mr. Moss and those related to the organization that he was part of. They did a lot of -- we deemed those countersurveillance.

It ultimately was, you know, just very difficult for us to maintain an eye on them using undercover vehicles, undercover officers without exposing ourselves.

They would vary speeds on roadways. They would do random U-turns. They would do maneuvers with --

MS. GRASSO: Your Honor, I'm going to object at this point to the -- the use of "they" and "this organization." And we -- I understand the rules of evidence are relaxed at this point, but we have no idea with whom he's speaking of or even speaking of individuals that are in this room. And there's no foundation laid with regard to the connection, Your Honor.

THE COURT: All right. Why don't you lay some foundation.

BY MS. MANDELBAUM:

Q. Can you describe for the Court, when you said "they were conducting countersurveillance measures," which

individuals who were driving have you seen conduct countersurveillance measures?

A. Sure.

Mr. Moss, who is sitting over there in the green jumpsuit. Mr. Santiago, who is sitting over there in the green jumpsuit. And then other members of their organization, Mr. Rodriguez, Mr. Pankins.

And those were mainly the ones that we'll concentrate on.

Q. And we -- you generally mentioned a wiretap on Mr. Moss' telephone, correct?

A. Yes.

Q. Did you, at some point, learn that Mr. Santiago was involved with Mr. Moss?

A. Yes.

Q. When did you learn that?

A. Through listening to information being shared over the wire, as well as through physical surveillance as well, and during the course of transactions.

Q. Did you become aware of that before or after you went up on the wiretap?

A. Before.

Q. Did you monitor the location of any cell phones during the wiretap?

A. Yes.

Q. Let's start with Mr. Moss. Did you monitor the location of his cell phone at any point in time?

A. Yes.

Q. When?

A. It was after we went up on the wire.

Q. And what type of location data did you get from Mr. Moss' cell phone?

A. So we used two types. It's called "ping information" and "pen register information."

Q. And what is "ping information"?

A. So "ping information" is ultimately, from many years of doing this, is -- gives you the area of where the actual device is located when it is being used.

And, typically, we get signals that would be relayed to us through the phone company every 15 minutes or so.

Q. And are those signals dependent on whether the phone is making a call or a text?

A. No.

Q. So do they come at a --

A. They come as long as the phone is on, is operable and receiving a signal.

Q. You also mentioned pen data?

A. That's correct.

Q. What location data would you get from a pen -- from pen data?

A. So a pen register is going to be your incoming and outgoing telephone calls to the actual device that you're monitoring. And it will give you a latitude and longitude of the tower that it is actually hitting off of when it is getting those -- or making those calls.

Q. Is that also sometimes referred to as "cell site data"?

A. Yes.

Q. And is the ping data you're referring to also sometimes referred to as "E911 data"?

A. Yes.

Q. Which one of those types of data is more precise?

A. A ping.

Q. We've already briefly talked about some of the people involved with Mr. Moss, but I want to give the Court a brief overview.

MS. MANDELBAUM: Ms. Dorfman, can you please pull up Exhibit 16.

BY MS. MANDELBAUM:

Q. And you can feel free to turn to that in your binder as well, Officer.

A. Okay.

Q. I want to go through this chart briefly.

During your time, prior to the wiretap and on the wiretap, did you become familiar with an individual named

1 Malik Moss?

2 A. Yes.

3 Q. Was there any indication over the wiretap that you

4 could find that he had a legitimate job during the course

5 of the wire?

6 A. No.

7 Q. Was there any indication over the wiretap that he

8 used any drugs?

9 A. Yes.

10 Q. What drugs?

11 A. Marijuana.

12 Q. Any other drugs?

13 A. No.

14 Q. Do you see Mr. Moss in the courtroom today?

15 A. Yes.

16 Q. Can you please identify him?

17 A. Yes. He's the gentleman sitting at the defense

18 table, next to Mr. Breslin, with the green jumpsuit on.

19 MS. MANDELBAUM: Let the record reflect that

20 Officer Riccobon has identified Defendant Malik Moss.

21 THE COURT: All right.

22 BY MS. MANDELBAUM:

23 Q. I see on this chart a phone number (856)271-1632.

24 Do you see that?

25 A. Yes.

1 Q. How was -- at all was that associated with Mr. Moss?

2 A. That was Mr. Moss' primary vehicle.

3 Q. And how do you know that?

4 A. Again, through the controlled purchases, through

5 surveillance. That was it. It was also registered to

6 him.

7 Q. Did Mr. Moss go by any names other than Malik or

8 Moss?

9 A. Just, his nickname was Bleek.

10 Q. And how did you know that was his nickname?

11 A. Same thing. Through controlled purchases and

12 through, just, intel that we previously had from other

13 investigations.

14 Q. I'm going to move down to Jacob Santiago, who's next

15 on the list.

16 A. Okay.

17 Q. Did you become familiar with him during the course of

18 the wiretap?

19 A. Yes.

20 Q. He is in the courtroom today?

21 A. He is.

22 Q. Can you please describe where he is in the courtroom?

23 A. Sure.

24 He's sitting at the other defense table in the green

25 jumpsuit.

1 Q. How, if at all, was that associated with Mr. Moss?

2 A. That was the number that we went up on the wire on.

3 That was his primary number.

4 Q. And how did you learn that it was his number?

5 A. Through the use of the previously discussed drug

6 transactions, the controlled buys that we did, as well as

7 intel that was provided to us.

8 Q. Did you hear him on that number on the wiretap?

9 A. Many times, yes.

10 Q. At the end of the wiretap, were you able to find the

11 phone associated with that number?

12 A. Yes.

13 Q. Where was it?

14 A. It was at the location where he was taken into

15 custody.

16 Q. And what was that location?

17 A. That was on the list here at 19 Kullen Drive.

18 Q. And what did you determine that location to be?

19 A. That was the residence that he lived at, that he

20 stayed at majority of the nights and would be found there

21 late at night or early in the morning.

22 Q. I also see a reference here to a 2017 black Dodge

23 Challenger.

24 Do you see that?

25 A. Yes.

1 MS. MANDELBAUM: Let the record reflect that

2 Officer Riccobon has identified Defendant Jacob Santiago.

3 THE COURT: All right.

4 BY MS. MANDELBAUM:

5 Q. During the wiretap, you mentioned earlier that you

6 were able to determine that Mr. Santiago and Mr. Moss had

7 some sort of relationship, correct?

8 A. Yes.

9 Q. Can you briefly describe the relationship you

10 discovered over the course of the wiretap?

11 A. Sure.

12 They were ultimately involved in purchasing crystal

13 meth together.

14 Q. We'll go a little more into detail about that in a

15 bit.

16 Over the course of the wiretap, were you able to

17 determine whether Mr. Santiago had a regular job?

18 A. Yes.

19 Q. Did he?

20 A. No.

21 Q. And were you able to determine whether he used any

22 drugs?

23 A. Yes.

24 Q. Did he?

25 A. Yes.

1 Q. What drugs?

2 A. Marijuana.

3 Q. Anything else?

4 A. That was it.

5 Q. Were you able to figure out what phone number

6 Mr. Santiago was using for the course of the wire --

7 throughout the course of the wiretap?

8 A. Yes.

9 Q. Is that the number on the chart here?

10 A. That is correct, the 267 number.

11 Q. And how do you know that's his number?

12 A. Again, through -- mainly being up on the wire, paired

13 with doing surveillance based on the actions of what the

14 wire was dictating of where Mr. Santiago was and Mr. Moss

15 were and their conversations with each other.

16 Q. Did you ultimately seize that phone?

17 A. Yes.

18 Q. Where was it found?

19 A. It was at the same location as where Mr. Santiago was

20 taken into custody at 23 Highland Boulevard, Apartment B.

21 Q. And how was Mr. Santiago related to that location?

22 A. That's where he, again, lived. He stayed majority of

23 the nights. He was there in the morning as well.

24 Q. At the end of the wiretap investigation, did you

25 execute a search warrant at 23 Highland Boulevard?

1 Q. -- or, excuse me, Page 8 of Exhibit 9. It may also

2 be on the screen in front of you, Officer.

3 A. Yep. Yes. There was meth -- crystal meth that was

4 seized there in the amount of 1.6 grams, give or take a

5 few grams.

6 Q. And generally, can you show the Court about how much

7 meth that is?

8 A. Like a little bit.

9 MS. MANDELBAUM: So for the record,

10 Officer Riccobon is holding his fingers about 1 inch

11 apart? Maybe three-quarters of an inch?

12 THE WITNESS: I'd say less -- less than that.

13 BY MS. MANDELBAUM:

14 Q. Less than an inch? A small bag?

15 A. That's correct.

16 Q. How pure was that meth?

17 A. It was 94 percent.

18 Q. You also mentioned some cash, right?

19 A. Yes.

20 MS. MANDELBAUM: Ms. Dorfman, can you pull up

21 Exhibit 4A -- or, excuse me, 14A.

22 BY MS. MANDELBAUM:

23 Q. What is shown in this image, Officer Riccobon?

24 A. It's stacks of U.S. currency.

25 Q. And where was this currency found?

1 A. Yes, we did.

2 Q. What, if anything, of interest did you find there?

3 A. We found some crystal meth there, and then we also

4 found a large amount of U.S. currency in the amount of

5 \$20,000.

6 Q. Let's first talk about the crystal meth. Did you

7 have that meth sent out for testing?

8 A. Yes.

9 Q. And did you get those results back?

10 A. Yes, we did.

11 Q. Are those results on -- in Exhibit 9, Page 8.

12 THE COURT: Do you have a date for this?

13 BY MS. MANDELBAUM:

14 Q. Do you recall Officer Riccobon what day the search

15 occurred?

16 A. I believe it was December 14th.

17 Q. And that's of 2021?

18 A. That's correct.

19 Q. And was that the last day you were on the wiretap?

20 A. Yes. It was shut down that morning.

21 Q. About how much meth was seized from Mr. Santiago's

22 house?

23 A. Which page is that? I'm sorry.

24 Q. It is Page 9 --

25 A. That's right.

1 A. It was found at the residence of Mr. Santiago.

2 MS. MANDELBAUM: Can you flip to Page 2,

3 please, Ms. Dorfman.

4 BY MS. MANDELBAUM:

5 Q. And what is showing in Page 2, Officer Riccobon?

6 A. Same thing, stacks of cash.

7 Q. And where were those stacks of cash found?

8 A. At Mr. Santiago's residence.

9 MS. MANDELBAUM: Can you please go back to

10 Exhibit 16, Ms. Dorfman.

11 BY MS. MANDELBAUM:

12 Q. I see under Mr. Santiago, that there are two cars

13 listed.

14 Do you see that?

15 A. Yes.

16 Q. Can you describe for the Court how, if at all, those

17 two cars are associated with Mr. Santiago?

18 A. Sure.

19 The black Cadillac SRX, that was his primary vehicle

20 he would drive around in most of the time, that we'd see

21 during surveillance.

22 And then the white Ford Taurus actually belonged to

23 his girlfriend, which he would also use from time to time.

24 Q. Let's move along to Gerardo Rodriguez, the next name

25 on that list.

1 During the investigation, did you determine that
 2 Mr. Rodriguez was involved with Mr. Moss and/or
 3 Mr. Santiago?
 4 **A.** Yes.
 5 **Q.** In what ways?
 6 **A.** He --
 7 **Q.** And please tell me whether he was involved with
 8 Mr. Moss or Mr. Santiago when you describe it.
 9 **A.** Sure. He was a contact of Mr. Moss', and he was
 10 involved with heroin sales.
 11 **Q.** Did you -- were you able to determine whether he went
 12 by any nicknames?
 13 **A.** Yes. It's Snapper.
 14 **Q.** Did he have a -- any legitimate employment during the
 15 course of the investigation?
 16 **A.** Not that we are aware of, no.
 17 **Q.** Were you able to determine what phone number he was
 18 using over the course of the investigation?
 19 **A.** Yes.
 20 **Q.** Is that the number on the screen now, ending 9791?
 21 **A.** That's correct.
 22 **Q.** And how were you able to determine that was his phone
 23 number?
 24 **A.** Again, through telephone and text conversations, and
 25 then also the surveillance that was paired with those --

1 because he primarily used an application called WhatsApp
 2 through the -- his cell phone.
 3 But primarily, like I said, it was them meeting up.
 4 And, also, there was some drug talk, as well as there was
 5 a -- some talk about possible firearms at one point in
 6 time.
 7 **Q.** So you mentioned this application WhatsApp.
 8 **A.** Yes.
 9 **Q.** Are you able to intercept communications over
 10 WhatsApp?
 11 **A.** Live communication, no.
 12 **Q.** Could you do that even if you had a Title III on a
 13 WhatsApp phone?
 14 **A.** No.
 15 **Q.** Were you able to get any information from WhatsApp
 16 about Mr. Pankins' communication over WhatsApp?
 17 **A.** Just incoming/outgoing calls, but no content.
 18 **Q.** Just the fact that the calls were happening?
 19 **A.** Correct.
 20 **Q.** Talk to me about the two cars that are mentioned at
 21 the -- the white Dodge Charger and the Chevrolet Impala,
 22 how were you able to determine that those were associated
 23 with Mr. Pankins, if at all?
 24 **A.** The white Dodge Charger, 2016, was the one that he
 25 primarily used. And then the Chevy Impala would come into

1 with that line of information that would come through the
 2 wire.
 3 **Q.** Were you able to determine what vehicles he was
 4 driving over the course of the wiretap investigation?
 5 **A.** Yes.
 6 **Q.** And what are those?
 7 **A.** That was the 2005 black Mercedes Benz and the 2003
 8 white Cadillac Escalade.
 9 **Q.** And how were you able to figure that out?
 10 **A.** Again, through surveillance and pairing that with
 11 communications that were being received through the wire.
 12 **Q.** So when you say "surveillance," did you actually see
 13 him driving these cars?
 14 **A.** Yes.
 15 **Q.** Let's move along to Tyrell Pankins.
 16 Were you able to determine whether he was associated
 17 with Mr. Moss and Mr. Santiago at all over the course of
 18 the wiretap?
 19 **A.** Yes.
 20 **Q.** How was he associated with either or both of them?
 21 **A.** He was a contact for both of them.
 22 **Q.** Okay. And what was he in contact with them about?
 23 **A.** Few different things. But he, as you can see, had
 24 two cell phone numbers that were associated with him. And
 25 it was difficult to catch interactions between them

1 play every once in a while. That also was a car
 2 associated with him as well.
 3 **Q.** How were they associated with him?
 4 **A.** He would use both of them and they were parked at his
 5 residence constantly.
 6 **Q.** Did you or your colleagues see him driving either or
 7 both of them?
 8 **A.** Yes.
 9 **Q.** What about his residence, were you able to figure out
 10 where he lived?
 11 **A.** Yes. 1700 Helen Drive, Apartment 107, the Emblem
 12 Apartments.
 13 **Q.** And how do you know he lived there?
 14 **A.** The apartment was in his name, and also through
 15 various courses of surveillance and watching him just on a
 16 constant basis.
 17 **Q.** About how frequently did Mr. Pankins communicate with
 18 Mr. Moss using the WhatsApp application?
 19 **A.** A lot.
 20 **Q.** When you say "a lot," was it --
 21 **A.** It was on an everyday basis, multiple times on an
 22 everyday basis.
 23 **MS. MANDELBAUM:** Can we move down in the chart
 24 to the next person on the chart, please.
 25

1 BY MS. MANDELBAUM:

2 Q. Over the course of the wire, did you become familiar
3 with a gentleman name Jesus Alfaro?

4 A. Yes.

5 Q. What, if anything, did you learn he went by on the
6 street?

7 A. Chewy.

8 Q. How, if at all, was he involved with Mr. Moss and/or
9 Mr. Santiago?

10 A. He was a customer of Mr. Moss'.

11 Q. A customer for what?

12 A. For purchasing crystal meth.

13 Q. Is there any indication that Mr. Alfaro was a drug
14 user?

15 A. No, not that we're aware of.

16 Q. Any indication that he was using the crystal meth
17 that he was purchasing?

18 A. Not that we're aware of, no.

19 Q. Were you able to figure out what phone he was using?

20 A. Yes.

21 Q. How?

22 A. Through conversations through the wire, and pair that
23 with surveillance of Mr. Alfaro and us being able to
24 locate locations where he was staying.

25 Q. Let's talk about Christina Chamberlain.

1 A. Okay.

2 Q. Did you become familiar with her over the course of
3 your investigation?

4 A. Yes, we did.

5 Q. What nicknames, if any, did she go by?

6 A. Either Tina, short for Christina, or Bean.

7 Q. What relationship, if any, did she have with Mr. Moss
8 and Mr. Santiago?

9 A. So her location, or where her residence was, the
10 1305 Coventry Lane in the Elm Apartments, that was the
11 primary location that they would hang out and do most of
12 their drug transactions through this location. And they
13 would use it as a stash house from time to time.

14 Q. When you say "they," who are you referring to?

15 A. I'm sorry. That would be Mr. Moss and Mr. Santiago.

16 Q. So you learned over the course of the investigation
17 that both Mr. Moss and Mr. Santiago used her house as a
18 place to conduct drug transactions?

19 A. That's correct.

20 Q. Were you able to figure out what phone she was using?

21 A. Yes.

22 Q. Is that the number on the screen ending 6742?

23 A. That's correct.

24 Q. And how did you determine that was her phone?

25 A. Again, through surveillance and constant chatter over

1 the phone. It was on an everyday basis between her and
2 Mr. Moss.

3 Q. When you say that Mr. Moss and Mr. Santiago would
4 conduct drug sales using her house, what drugs were they
5 selling out of her house?

6 A. Crystal meth and heroin.

7 Q. Who was selling the crystal meth and who was selling
8 the heroin?

9 A. They -- I mean, they both were. Mr. Santiago leaned
10 more toward doing the crystal meth. But Mr. Moss was
11 definitely doing crystal meth and heroin.

12 Q. And when you say "heroin," do you -- did you know at
13 the time whether the drug they were selling was heroin or
14 perhaps a different opioid?

15 A. It was presumed to be heroin.

16 Q. Later, did you determine what drug they were actually
17 selling?

18 A. Yes.

19 Q. And what was that?

20 A. It actually came back as fentanyl after drug testing.

21 Q. Did you find any drugs -- or, first, did you search
22 Ms. Chamberlain's apartment on December 14 at the end of
23 the wire?

24 A. Yes.

25 Q. What, if anything, of interest did you find in her

1 apartment?

2 A. We located heroin, which later tested for fentanyl,
3 and then we also located a firearm.

4 Q. Can you turn to Pages 9 and 10 of Exhibit 9.

5 A. Sure.

6 Okay.

7 Q. Are those results of tests of the suspected heroin
8 that was found at Ms. Chamberlain house?

9 A. Yes.

10 Q. What did it actually contain?

11 A. Again, it was fentanyl, as I stated. And then also
12 had that cutting agent in there, xylazine. Which, again,
13 as I alluded to before, is the horse tranquilizer they
14 were using.

15 Q. Did you find meth in Ms. Chamberlain's house when you
16 searched it?

17 A. No.

18 Q. Are you aware whether Mr. Moss and/or Mr. Santiago
19 stored meth at her house previously?

20 A. Yes.

21 Q. Which of them stored meth at her house previously?

22 A. Both of them.

23 Q. Do you know based on your investigation why there was
24 no meth in her house on December 14?

25 A. Yes.

1 Q. And how did you learn -- or what did you learn about
2 why there was no meth in her house on December 14?
3 A. It was moved.
4 Q. Why was it moved?
5 A. There was a dispute that was raised by Mr. Santiago
6 about possibly missing amounts of meth, based upon their
7 telephone conversation.
8 Again, that was conversations between Mr. Moss and
9 Mr. Santiago, and then also Mr. Moss and Ms. Chamberlain.
10 And due to that, it ended up being relocated. I
11 guess because of -- there was a trust issue there.
12 Q. And what day was that?
13 A. Particularly --
14 Q. Do you recall?
15 A. There's a few -- it was a few days before we actually
16 executed the search warrants at that residence.
17 Q. If I showed you one of the line sheets from that day,
18 would that refresh your recollection as to what day it
19 was?
20 A. Yes.
21 Q. Can you turn to Exhibit 6K.
22 A. Okay.
23 Q. Let me know if that refreshes your recollection.
24 A. It does.
25 Q. What day would -- did that dispute you described

1 communication?
2 A. Yes. So each communication that comes in.
3 That was the word I was looking for. Thank you.
4 Every communication that comes in gets a session
5 number assigned to it. So that would be for this call in
6 particular on this day.
7 Off to the far right is the direction. So this is an
8 incoming telephone call, which is coming into the target
9 number, which is the 856, Mr. Moss' number.
10 And then, lastly, on the left-hand side, you have the
11 date 12/12, which is under the session. And then the
12 start time and stop time of the call, as well as the
13 duration of it.
14 MS. MANDELBAUM: Thank you. You can zoom out
15 from that, Ms. Dorfman.
16 BY MS. MANDELBAUM:
17 Q. I see on this line sheet, there are a few individuals
18 mentioned. I see Chamberlain, Moss, and Santiago.
19 Do you see that?
20 A. Yes.
21 Q. How do you know that Chamberlain is the person who is
22 saying what is said on this line sheet?
23 A. The --
24 Q. Or that's attributed to her, let's say that?
25 A. Right. So it's an incoming call from her telephone

1 happen?
2 A. That happened on December 12th of 2021.
3 Q. And how many days before the execution of the search
4 warrant was that?
5 A. Two.
6 Q. I actually want to talk about one of the calls that
7 day. Can you turn to Page 4 of Exhibit 6K.
8 MS. MANDELBAUM: Can you zoom in on the header
9 of this line sheet, Ms. Dorfman.
10 BY MS. MANDELBAUM:
11 Q. Can you help describe for the Court what information
12 is included on this header, Officer Riccobon?
13 A. Sure.
14 So in the top left is the actual case number, which
15 was through the DEA resident office. Target speaks for
16 itself. That's the line we were up on Mr. Moss, as well
17 as the telephone number that was associated with him.
18 The session number is just the number call that we
19 were up to, or the -- not call, but any type of
20 information that came across the call or text, that's what
21 we were up to.
22 Q. So when you say "up to," is this unique for this
23 communication?
24 A. Yes.
25 Q. So there's a different session number for each

1 number, and we just, by this time, knew her voice very
2 well.
3 Q. What about Mr. Moss, how do you know he said that's
4 attributed to him?
5 A. Same thing. We knew his voice very, very well. And
6 also, this is a call coming to his particular cell phone.
7 Q. What about Mr. Santiago?
8 A. So Mr. Santiago was heard in the background. You
9 could hear him on Mr. Moss' side. Because when you heard
10 Mr. Moss speaking, you could hear Santiago's voice in the
11 back.
12 But that was picked up by the transcribers, as well
13 as us when we were listening to it for review, indicating
14 that they were both together.
15 Q. Mr. Santiago was with whom on that day?
16 A. Mr. Moss.
17 Q. I'm going to play the call. If your recollection
18 changes based on the call, just please let the Court know.
19 Okay?
20 A. Okay.
21 MS. MANDELBAUM: Ms. Dorfman, can you please
22 play Session 27457.
23 (Video played.)
24 "CHAMBERLAIN: Yo.
25 "MOSS: Yo.

1 "CHAMBERLAIN: There ain't no way it's 4 ounces
2 of ice missing, yo. Come on, man.
3 "MOSS: Yeah, I don't know, what the fuck.
4 "CHAMBERLAIN: Come on Bleek, man.
5 "MOSS: He just now told me that.
6 "CHAMBERLAIN: Like, he does this shit all the
7 time, yo. There ain't no way it ain't open his fucking
8 drawer Bleek. I been in my room, I was in my room all day
9 yesterday, all day, and it has not moved from this fucking
10 drawer.
11 "MOSS: I know.
12 "CHAMBERLAIN: 4 ounces, man. [U/I].
13 "MOSS: That's what I'm saying, that's a lot.
14 "SANTIAGO: Where the fuck is my ice at, yo?
15 "CHAMBERLAIN: Like, come on.
16 "SANTIAGO: How the fuck I only got one fucking
17 zone? He said he took one zone.
18 "MOSS: Yeah, I took one [U/I].
19 "SANTIAGO: [U/I] I am not fucking playing,
20 man.
21 "MOSS: I already...
22 "CHAMBERLAIN: There ain't 3 ounces missing.
23 Nobody's takes anything.
24 "SANTIAGO: [U/I] One fucking out of there
25 [U/I]. Eight ounces in there.

1 "CHAMBERLAIN: Did you put it anywhere else?
2 "SANTIAGO: [U/I].
3 "CHAMBERLAIN: Did you move it? Nobody was the
4 fuck in here, it was me and fucking Flea in here. It was
5 me and Flea in here.
6 "MOSS: I am ready to come there, now."
7 (Video ends.)
8 **BY MS. MANDELBAUM:**
9 **Q.** Based on that call, are you aware where Mr. Santiago
10 was at that time?
11 **A.** Yeah. So Mr. Santiago actually showed up at
12 Ms. Chamberlain's house. Sorry, there's a few calls.
13 But, yeah, he showed up. So you can hear him in the
14 background, because Ms. Chamberlain and him are actually
15 having an argument. And then at the end of the call when
16 he said -- Mr. Moss, who was at his residence -- that
17 says, "I'm coming there now" to help the dispute settle
18 it, so...
19 **Q.** I'm going to ask you in this call and some future
20 calls about some of the terms that are used.
21 **A.** Okay.
22 **Q.** And when I ask you what they mean, I'm asking what
23 they mean based on your training and experience generally
24 with drug nomenclature and based on your experience as
25 case agent in this particular investigation. Okay?

1 **A.** Okay.
2 **Q.** If there are particular reasons you think a term
3 means something, please let the Court know. Okay?
4 **A.** Yes.
5 **Q.** I see back up on Page 1, towards the top,
6 Ms. Chamberlain says, "There ain't no way it's 4 ounces of
7 ice missing, yo."
8 Do you see that in the third line?
9 **A.** Yes, I do.
10 **Q.** What, if anything, does "ice" mean based on your
11 training and experience?
12 **A.** So ice is a street slang lingo that they put in for
13 crystal meth since crystal meth appearance, it looks
14 like -- looks like chunks of ice.
15 **Q.** And is that something you know generally based on
16 your training and experience, or from this investigation
17 in particular, or both?
18 **A.** Generally. Well, both. But, yes, generally, overall
19 it's been that way for a while.
20 **Q.** Down in the bottom corner of page -- quarter of this
21 page, Mr. Santiago says, "How the fuck I got -- only got
22 one fucking zone."
23 He said he took one zone. Do you see that?
24 **A.** That's correct.
25 **Q.** What, if anything, does "zone" mean to you?

1 **A.** "Zone," for this group that we investigated,
2 including Mr. Moss and Mr. Santiago, they use the word
3 "zone" to indicate ounce. That was what they were talking
4 about.
5 **Q.** So what, if anything, did you conclude based on this
6 and some other calls over the wiretap about what happened
7 that morning?
8 **A.** So ultimately, Mr. Santiago was indicating that there
9 was product or crystal meth that was missing. And he was
10 ultimately indicating that possibly it was Ms. Chamberlain
11 who herself had quite an addiction. That she actually
12 took or possibly moved it to somewhere else.
13 She indicates that when she says it to him about it
14 not being in a drawer, indicating that there were
15 different spots within her apartment where this ice or
16 this crystal meth would have been located. She's saying,
17 "I didn't even go into that -- I didn't go into that
18 drawer."
19 So Mr. Moss is kind of neutral at this point in time.
20 And he's saying, "All right. Well, listen, I'll come down
21 there. We'll try and figure this out."
22 But that's what the whole dispute was about.
23 **Q.** You mentioned that Ms. Chamberlain was a drug user?
24 **A.** That's correct.
25 **Q.** What, if any, drugs did you learn she used over the

1 course of the investigation?

2 **A.** She was a heavy heroin user.

3 **MS. MANDELBAUM:** Ms. Dorfman, can we flip back

4 to Exhibit 16, please. Can we zoom in on the last two on

5 the bottom there.

6 **BY MS. MANDELBAUM:**

7 **Q.** Over the course of the investigation, did you become

8 familiar with someone one known as Roland Lapointe?

9 **A.** Yes.

10 **Q.** What, if anything, was Mr. Lapointe's relationship

11 with Mr. Moss or with Mr. Santiago?

12 **A.** His residence was used as a place that they would

13 hang out over at 201 Bluefield Road in Newark, but also as

14 a place that they would occasionally stash their product

15 as well.

16 **Q.** When you say "they," who are you referring to?

17 **A.** Mr. Moss and Mr. Santiago.

18 **Q.** And when you say "product," what product are you

19 referring to?

20 **A.** Crystal meth.

21 **Q.** How did you learn that they would stash their product

22 over at Mr. Lapointe's house?

23 **A.** Just through, again, the communications we were

24 receiving over the wire, as well as pairing that with

25 surveillance, ultimately.

1 **Q.** What, if anything, of interest did you find in that

2 residence?

3 **A.** We found approximately 9 ounces of crystal meth, and

4 we also found fentanyl and xylazine.

5 **Q.** Can you -- did you test those drugs that were found

6 at his home?

7 **A.** We did.

8 **Q.** Can you turn to Exhibit 9, Page 11, please.

9 Are these the test results for the -- sorry.

10 **A.** Yes.

11 **Q.** -- for the crystal meth that was found at

12 Mr. Lapointe's house?

13 **A.** Yes.

14 **Q.** How pure was that meth?

15 **A.** It was 98 percent pure.

16 **Q.** And where was that meth found?

17 **A.** At 201 Bluefield.

18 **Q.** Do you recall where in the home it was found?

19 **A.** The meth was actually in a jacket that was in a

20 back -- I guess it was called a storage room or extra

21 room. It was back there.

22 **Q.** You also mentioned that you found some heroin at the

23 house, or fentanyl?

24 **A.** It was presumed to be heroin with -- tested for

25 fentanyl.

1 **Q.** During your investigation, did you see any evidence

2 that Mr. Lapointe was a drug user?

3 **A.** Yes.

4 **Q.** What, if any, drugs did you determine that he used?

5 **A.** He used heroin.

6 **Q.** I see a phone number there associated with him that

7 ends 8364.

8 Do you see that?

9 **A.** Yes.

10 **Q.** How did you determine that was Mr. Lapointe's phone

11 number?

12 **A.** Again, through communications over the wire and

13 pairing that with actions that were happening based upon

14 what we were receiving over the wire.

15 **Q.** You mentioned that Mr. Moss and Mr. Santiago would go

16 to Mr. Lapointe's residence to hang out and also used it

17 as a stash house, right?

18 **A.** Yes.

19 **Q.** Where was his residence?

20 **A.** It was within --

21 **Q.** What was the address of his residence?

22 **A.** I'm sorry. It was 201 Bluefield Road.

23 **Q.** And did you also search that residence on

24 December 14?

25 **A.** We did.

1 **Q.** And are those test results included in Exhibit 9,

2 Pages 12 through 15?

3 **A.** Yes, that's correct.

4 **Q.** Based on the investigation, were you able to

5 determine whose methamphetamine was found at

6 Mr. Lapointe's house?

7 **A.** Yes.

8 **Q.** Whose was it?

9 **A.** It was Mr. Santiago's.

10 **Q.** How are you able to determine that?

11 **A.** Mr. Lapointe said it during his post-Miranda

12 interview.

13 **Q.** How else were you able to determine that?

14 **MS. GRASSO:** Your Honor, I'm going to object at

15 this point in time to the ultimate conclusion. He can

16 testify to the facts from which he may formulate an

17 opinion, but I don't think he can testify as to a final

18 ultimate conclusion even at this stage. That's for the

19 Court's determination.

20 **THE COURT:** Just so I understand it, though, I

21 mean, he's being asked -- your objection is that it

22 wasn't -- that the question was not framed as in your

23 opinion?

24 **MS. GRASSO:** Correct.

25 **THE COURT:** Oh, okay. Well --

BY MS. MANDELBAUM:

Q. In your opinion --

THE COURT: Well, hold on.

MS. GRASSO: And I also don't think -- and I think that there's been no proper foundation laid as to how he formulated that opinion. I'm assuming she's getting there.

THE COURT: Well, I thought she was getting there, actually, because I thought she said "how is it you know that?" But we'll -- just so you'll know, too, I assume anything that a witness says, where they're asked to draw inference, is -- I'm going to take it as an opinion, so you'll note.

MS. GRASSO: Opinion. Understood.

THE COURT: But you're right to object. I just wanted to --

MS. GRASSO: I appreciate.

THE COURT: Go ahead, Ms. Mandelbaum.

BY MS. MANDELBAUM:

Q. Were you able to determine -- and don't tell me who is it was -- were you able to determine whose meth was in Mr. Lapointe's home?

A. Yeah.

Q. How were you able to figure that out?

A. It was during an interview with Mr. Lapointe after he

was arrested that day.

Q. And what did he do during that interview?

A. He indicated that it belonged to Mr. Santiago.

Q. Were there any other ways you were able to determine whose meth that was that day?

A. It was paired with the conversations that we had on the phone.

Q. I want to draw your attention to one of those conversations. It's Exhibit 6K on Page 7.

And is this a line sheet from a call, Session 27485, between Mr. Moss and Mr. Santiago on December 12, 2021, at about 1:18 p.m.?

A. That's correct.

Q. Did this call happen later in the day after that call we heard between Mr. Moss and Ms. Chamberlain earlier?

A. That is correct.

Q. Can you briefly look over the first page of this call, on Page 7, and on the second page on Page 8. And look up when you are finished.

A. Okay.

Q. Did this call help you, in your opinion, determine what happened to the meth that you believed Mr. Santiago took out of Ms. Chamberlain's home?

A. It did.

Q. And what, if anything, did it tell you?

A. That the meth was no longer at the Elms.

Q. Did it help you figure out where the meth went?

A. Yes.

Q. Where did it go?

A. As stated by Mr. Santiago, about a quarter of the way down, he indicates that he felt --

Q. Is this on Page 8?

A. It's on page 7.

Q. On Page 7 or Page 8?

A. Page 7.

Q. Okay. This is Page 7.

A. He says he's about to go over to Ro's crib, which is Roland Lapointe's residence at Bluefield.

Q. Just to be clear, Officer Riccobon, is this where Mr. Santiago said, "I went to Ro's crib. I was like, yo, I just snapped," or is this somewhere else? I'm having trouble finding it.

A. I am on Page 7. I'll just base it off of here, if you want. That's fine.

Q. Is it on this page that's on the screen?

A. No.

Q. No? It is on the prior page?

A. Yeah. It was on a different page. It might just be misnumbered, but that's fine. I can look at this.

Yes, so --

THE COURT: Wait, wait. Let's just clear this up.

THE WITNESS: Sure. No problem.

THE COURT: So I'm looking at Page 8 where it says, "I went to Ro's crib." Let's just make sure we're all on the same.

MS. MANDELBAUM: I agree, Your Honor.

THE COURT: This is Exhibit 6K?

MS. MANDELBAUM: This is Exhibit 6K Page 8.

THE WITNESS: I gotcha.

BY MS. MANDELBAUM:

Q. I just want to make sure this is what --

A. Yep, we're fine.

Q. -- you were referring to, Officer Riccobon?

A. Yes, I gotcha. Okay.

THE COURT: Well, wait.

THE WITNESS: I'm on -- I am on the same page as what this is on, Your Honor. It was -- I was on a previous exhibit, so...

THE COURT: Gotcha.

BY MS. MANDELBAUM:

Q. So let's talk about this exhibit, and take as much time as you need, Officer, to review this exhibit.

A. Okay.

Q. And let me know whether this exhibit helped clarify

1 for you where -- in your opinion, where the meth was moved
2 that day.
3 A. Uh-huh.
4 Okay. Gotcha.
5 Q. Would you like to draw the Court's attention to any
6 part of Exhibit 6K?
7 A. Yes. So now from 6K.
8 Q. And what page are we on?
9 A. We're on 6K, Page 8.
10 Q. Okay.
11 A. Thank you.
12 Q. And what is informing your opinion here?
13 A. So at the very top where Mr. Santiago's saying that
14 he just snapped, this was indicating -- or alluding to the
15 prior conversation where it was the dispute over the
16 missing product, or crystal meth in this case.
17 He ultimately advises that he -- tells Mr. Moss he
18 just snapped. "Promise you, bro, I put on the scale and
19 that shit said 226."
20 Q. What, if anything, does the number 226 signal to you
21 as --
22 A. That's -- yeah. That's indicative to the amount of
23 grams.
24 So he says that he -- the second one down --
25 Mr. Santiago, he said that he went to Ro's crib again.

1 A. Yeah.
2 Q. What does "hold my shit" mean to you, based on your
3 training and experience as a drug investigator?
4 A. That he's asking Ro, or Mr. Lapointe, to hold on to
5 the actual product himself at his residence.
6 Q. And, again, how many today's before the search
7 warrant was executed was this?
8 A. Based on the top from the previous page, it was
9 two days prior to, around 1:00 in the afternoon.
10 MS. MANDELBAUM: Thank you, Ms. Dorfman. Can
11 you go back to Exhibit 16 and zoom in on the last person,
12 finally, we have on this chart.
13 BY MS. MANDELBAUM:
14 Q. Were you able to determine who Mr. Meadow was over
15 the course of your investigation?
16 A. Yes, we were.
17 Q. Who is Mr. Meadow?
18 A. Mr. Meadow lived the next building -- connected to,
19 but lived the next apartment over from Ms. Chamberlain.
20 He, himself, was a heroin addict, but also would assist
21 with helping out at times with any type of drug
22 transactions that were occurring down at the Elms.
23 Q. So if he lived near Ms. Chamberlain, was he also in
24 the Elms apartment complex?
25 A. Yes, he was.

1 Q. And who -- were you able to determine throughout the
2 investigation who Ro is?
3 A. Yes. It's Mr. Lapointe.
4 Q. Okay.
5 A. He went to Ro's crib and that he ended up,
6 ultimately, telling him that there was some zones missing.
7 Which we already said "zones" is what this group used for
8 "ounces."
9 And that it was put on the scale, and it ultimately
10 was -- the scale was off that the amount of crystal meth
11 was initially weighed on. That's where he said that there
12 was 100-gram difference. And that's what led to the
13 dispute, ultimately, so...
14 Q. So based on these calls, were you able to determine
15 whether there was actually any meth missing?
16 A. There wasn't any meth missing. There was the scale
17 itself, which they -- people who distribute drugs for
18 financial profit, they use digital scales. Obviously,
19 after they purchase from whoever their source of supply
20 is, they will weigh it out to make sure they are getting
21 what they're actually paying for.
22 Q. I see in the second time Mr. Santiago speaks on the
23 sheet, that he says, "Yeah, dog. Can you hold my shit
24 real quick."
25 Do you see that?

1 Q. How did you know that this number on the screen
2 ending 1406 was Mr. Meadow's number?
3 A. Again, we did it through conversations, and also
4 pairing it with surveillance that we did as well.
5 MS. MANDELBAUM: Thank you, Ms. Dorfman. You
6 can take down the chart.
7 BY MS. MANDELBAUM:
8 Q. All right. So we have a baseline of who some of
9 these people are.
10 Let's talk about, over the course of the
11 investigation, whether you were able to determine -- were
12 you able to determine where Mr. Moss and/or Mr. Santiago
13 purchased their meth from?
14 A. Yes.
15 Q. Where?
16 A. It was from a source of supply up in Reading,
17 Pennsylvania.
18 Q. And just generally, about how many times were you
19 able to figure out that either Mr. Moss or Mr. Santiago
20 went to Reading?
21 A. Four, that we know of.
22 Q. I want to talk about a few of those times, and we'll
23 talk about who you believe went up on those occasions --
24 A. Okay.
25 Q. -- and whether it was Mr. Moss or Mr. Santiago.

1 I'm going to take you to October 21st, and this is an
2 intercept in Exhibit 6B, Page 9.

3 A. You said 6D, as in David?

4 Q. 6B, as in boy.

5 A. B, as in boy. I'll make sure I'm on the right page.

6 Q. I'm going to read out the session number, we'll make
7 sure we're on the same page.

8 Session Number 7044 looks like an incoming call from
9 Mr. Santiago to Mr. Moss on October 21, 2021, at about
10 1:24 p.m.

11 A. This is 6B, as in boy; is that correct?

12 Q. 6B, as in boy, Number 9.

13 A. What number?

14 Q. Page 9.

15 A. Nine. Thank you. There you go.

16 Q. At the beginning of this call, I see that Moss asks
17 Mr. Santiago if he has 4 ounces over there. And Santiago
18 says, "I'm going to bust one open."

19 Do you see that?

20 A. Yes.

21 Q. What, if anything, does "bust one open" to you --
22 mean to you, based on your training and experience?

23 A. It ultimately meant that Mr. Santiago was going to go
24 to another bulk supply that he had in order to be able to
25 accommodate whatever this amount was, or the amount that

1 was being requested.

2 Q. So what does "bust one open" mean?

3 A. Meaning that they're going to -- he's going to dip it
4 into whatever that bulk is, if there's a larger supply
5 somewhere. Because it's not uncommon for people who
6 distribute drugs to keep large quantities or bulk supplies
7 of things in different locations. Just in case there was
8 an issue as far as police or a competitor tried to access
9 their stuff, they don't lose out, ultimately, on
10 everything at once.

11 So if there is another supply somewhere else, they
12 would say, hey, you know, I'm about to access that, or go
13 into that, or bust it open, I guess you could say.

14 Q. Moss then responds, "I got two 4-zip traps." Do you
15 see that?

16 A. That's correct.

17 Q. Do you know what "two 4-zip traps" are based on your
18 training and experience?

19 A. Yes.

20 Q. What are they?

21 A. So he -- again, based on lingo that was being used by
22 Moss and Santiago and those involved with this
23 organization, "two 4," so obviously four speaks for
24 itself. "Zip," again, we established that's ounces. And
25 then "traps." So "traps" is a slang terms for ultimately

1 deals or transactions that they have set up, that they're
2 ready to make. So they say, I'm going to, you know, bust
3 a trap, meaning that they're going to make a deal real
4 quick.

5 Q. So Moss is saying he has two 4-ounce deals?

6 A. Correct.

7 Q. And then when Mr. Santiago says, "Goddamn, bro.
8 Ready, I got one."

9 What, if anything, does that mean to you?

10 A. Yes. So Mr. Santiago is saying that's great,
11 ultimately -- Goddamn.

12 And then he's saying, "I got one," which in this
13 case, based on how he said it, it could mean that he has a
14 deal set up himself, or he's saying, I have one 4-ounce
15 quantity on me.

16 So it could be one or the other.

17 Q. Let's turn to the next page of this call, which is
18 Page 10 of Exhibit 6B --

19 A. Yep.

20 Q. -- as in boy. I want to zoom in on the middle
21 starting where Moss says, "Yeah, fucking Duke need the
22 four."

23 Moss says, "You can bust a plate to Duke real quick
24 for me."

25 Do you see that?

1 A. Yes.

2 Q. What does "bust a plate to Duke" mean, based on your
3 training and experience in this investigation?

4 A. So, again, based on previous conversations and
5 interpretation of what they were talking about with other
6 people -- or, excuse me, Mr. Moss over the phone, and how
7 Mr. Moss and Mr. Santiago would talk amongst each other.

8 So plate was a specific term related, again, to this
9 group of individuals, that they were using for to disguise
10 pounds.

11 Q. And when he said "bust a plate," what does that mean?

12 A. Bust a plate, meaning that they're going to, you
13 know, get a pound or access a pound, for -- it looks like,
14 Duke is actually -- Duke ended up being just a contact for
15 them, for Mr. Moss.

16 Q. Can you please turn to the next page, to Page 11 of
17 Exhibit 6B, as in boy.

18 A. Sure.

19 Q. At the top, Moss says he has the four for Duke and
20 other four for Chewy.

21 What, if anything, did that mean to you based on the
22 investigation?

23 A. So just the four for Duke, based on how they were
24 speaking, the four or 4 ounces is going to Duke. And then
25 the other four are going to Chewy who we identified as

Mr. Alfaro. And that says he might want more than four as well. So just in case it was going to be more than 4 ounces.

Q. During this investigation, were you able to tell what types of drugs Moss and Santiago were talking about?

A. Yes.

Q. What are they talking about?

A. Crystal meth.

Q. And how do you know that?

A. Just pricewise, and also what they were buying beforehand. Mr. Alfaro was primarily a -- he didn't ask for anything other than crystal meth from Mr. Moss when he would do transactions with him.

Q. Moss a few lines down says, "We need to start buying these plates together and running through all of them shits together."

Do you see that?

A. Yes.

Q. What, if anything, did that mean to you?

A. So at this point in time, we kind of figured that they had the same source of supply, but they were still keeping their -- their amounts separate from each other and not combining the product to sell, crystal meth itself.

So they were still trying to -- keeping their own

customer list, as well as their own stashes, whatever location they were going to be using, or whatever locations they were using.

So ultimately, Moss is proposing, hey, let's -- we should go in on this together and try to get a better deal for buying more product, getting a better price, and buying more bulk product.

That's usually the way it works.

Q. And, again, "these plates" means what?

A. "Plates" is referring to pounds.

Q. Santiago then says, "Boul said we grab 20 of them shits. We get them for 22."

Do you see that?

A. Yes.

Q. Based on your training and experience, what, if anything, did that mean?

A. So again, basing on the -- everything that they had spoken about to this point and us learning about it, "Grab 20 of them shits," a 20, meaning 20 pounds, and getting them for 22. So 2200 a piece, which at that point in time during this investigation, that was not out of the realm of what the standard price was for pounds coming from a source of supply if you were buying it within bulk.

Q. So if you were getting 20 pounds of something for 2200, how much would that cost?

A. Doing common core math, that would be 44, 44,000.

Q. Did Mr. Moss and Mr. Santiago ever use the term "plate" to refer to anything other than pounds of crystal meth?

A. No.

Q. Other than, I assume -- any drug other than crystal meth, let's put it that way?

A. No.

MS. MANDELBAUM: Can you zoom in, Ms. Dorfman, to the bottom of the page, the last, maybe, seven or eight lines "for the ten."

BY MS. MANDELBAUM:

Q. When Mr. Santiago says, "for the ten" and Moss responds, "22 grand."

What, if anything, do you think they're discussing there?

A. They're just discussing the actual quantities. So "ten," 10 pounds, 22 grand. So, again, going with 2200 a piece. That's what they're kind of bouncing back and forth to each other during this conversation at this point in time.

Q. So based on this call, what quantities generally are they discussing buying?

A. They're talking about pounds.

Q. And about how many pounds?

A. They're talking up to 20, but now they're bringing it back down to ten.

And, again, they're basing the prices on 44 grand, which would be your 2200 per pound, or 22 grand, which is your 2200 per pound.

Q. I want to go forward about six days to October 27th. Okay?

A. Okay.

Q. And this is Exhibit 6F, as in Fred. It's Page 2.

A. I see that.

Q. And what I have here is Session 8764, an incoming call from Mr. Santiago to Mr. Moss on October 27, 2021, at about 8:39 a.m.

Is that what you see as well, Officer?

A. Yes.

Q. In this call, Mr. Santiago talks about the "N words up top."

A. Yes.

Q. Do you see that?

What does "N word up top," if anything, mean to you?

A. So when he brings up "the niggas up top," that said they might -- ultimately, when we learned the totality of it, is the individuals who were at the top of -- above where Mr. Santiago was within the distribution chain.

So when they're saying "up top," it's no different

1 than you saying "the big man up top," you know, within
2 your company or something like that.

3 So that's what he was referring to, as whoever is
4 above him or related to the source of supply.

5 Q. And when he says, "I'ma get my paper ready" towards
6 the bottom of this call, what does that mean?

7 A. "Get my paper ready." So "paper," again, is a street
8 slang term for money or currency.

9 So when he saying, "I'm going to get my paper ready,"
10 he means we're going to get our money together -- or
11 Mr. Santiago is saying, "I'm going to get my money
12 together," so we're ready to go and meet this person up
13 top or whoever it may be.

14 Q. Can you turn to the next page of this call. This is
15 Page 3 of Exhibit 6F, as in Fred.

16 A. Sure.

17 Q. And the second time Mr. Santiago speaks on this page,
18 he says, "He said ten for 24, but we only going to get
19 five because I ain't trying to get the whole ten, for
20 real."

21 Do you see that?

22 A. Yes.

23 Q. What, if anything, does that mean to you as an
24 investigator?

25 A. So Mr. Santiago is telling them that he's being told

1 by whoever this next person up the ladder is, is that
2 ten -- so 10 pounds -- is going to be for 2400 per pound.
3 But he's saying, but I'm just going to try and get five,
4 as opposed to the whole ten.

5 And that's probably related to either money issues
6 or, I don't know, supply and demand. It could be a few
7 different things there.

8 Q. And down a little bit further on this page, he says,
9 "Nickel, I'm like, yo, can I get a nickel for the 24?"

10 What, if anything, does that mean to you?

11 A. Where are you at?

12 Q. It's starts "book bag," I had them all yesterday."

13 A. Yep.

14 Q. Do you know what "nickel" means?

15 A. Yes, a nickel is referring to -- it's breaking it
16 down from ten to five. So a nickel, five, five cents. So
17 5 pounds.

18 Q. So this says nickel for the 24?

19 A. Yeah, for the 24. So again, 24, 2400.

20 Q. And is that for all 5 pounds or is that per pound?

21 A. That's for -- no, that would be per pound.

22 Q. So again, this is October 27 at about 8:30 a.m.,
23 correct -- or, it's 8:39 a.m., right?

24 A. That is correct.

25 Q. I want to take you forward about 40 minutes.

1 Unfortunately, I have you flipping through the binder to
2 Exhibit 13. And this is Session 8794. Call from Mr. Moss
3 to Mr. Santiago on October 27, 2021, at about 9:10 a.m.

4 A. Okay.

5 Q. About half an hour later.

6 A. Yes.

7 Q. I actually want to turn your attention to the second
8 page of this call, Page 2, and I'd like you to read
9 what -- to yourself, what Mr. Santiago says at the bottom
10 of Page 2, beginning, "Yeah, I just got out of the shower
11 and shit." And then on the top of Page 3, he talks and
12 says, "My fault," and talks some more.

13 If you could read through that and look up when
14 you're ready.

15 A. Okay.

16 Q. What, if anything, does what Mr. Santiago is saying
17 at the bottom of Page 2 and top of Page 3 mean to you
18 based on your investigative experience?

19 A. So the word "boul," that's just a term that they
20 would use -- excuse me, Mr. Moss and Mr. Santiago would
21 use to refer to whoever they were speaking about. It's
22 not anybody's actual name. It's just boul, as opposed to,
23 you know, friend or buddy or pal, whatever, maybe. So
24 boul.

25 So ultimately, Santiago is relaying to Mr. Moss a

1 conversation that he had with boul or whoever, in this
2 case is, this boul person he's speaking of is actually the
3 middleman to the source up in Reading, Pennsylvania.

4 So he's relaying what the substance of that
5 conversation was. Telling him that, you know, "I spoke to
6 boul." He said that, you know, "You better be ready,
7 ultimately, to come up here if I am going to make this
8 phone call to set up this transaction up with you because,
9 you know, it had me looking crazy. It's going to have you
10 looking crazy if you're not ready when I set this all up."
11 Because, obviously, it's a, you know, larger amount of
12 product that's looking to be purchased here.

13 So when you go to the top of the third page, or
14 Page 3, he starts discussing, like, "Hey, yeah, man. I'm
15 coming up there with my paper. I'm not waiting on nobody.
16 I'm just going to grab five."

17 But he's ultimately saying that they're going to go
18 half, so -- when he's saying to boul -- so to
19 Mr. Santiago's talking to boul and saying we're going to
20 go half. That's indicating that he's going half with five
21 and then Mr. Moss is going, getting the other five.

22 Because then he indicates, the next time he comes up,
23 "I'm just going to grab the ten myself." Saying all ten
24 that they're going to be looking for, well, Mr. Santiago's
25 just going to buy that himself next time, kind of make it

worth it. If he can work with him and negotiate this price, this -- or Boul, with the source of supply, if he can negotiate, get the five for 24 a piece because it's a smaller quantity. So that way, you know, sometimes the price will go up if it's a smaller bulk quantity as opposed to a big.

Q. And 24, again, is 2400 a pound?

A. Twenty four -- 2400 a piece.

Q. And then he ends, "I can come heading your way around 11," right?

A. Yes. He's going to head through then -- Santiago is saying that he'd be able to go and, you know, start heading up there to Reading by 11 -- around 11:00.

MS. MANDELBAUM: Thank you, Ms. Dorfman.

BY MS. MANDELBAUM:

Q. What, if anything, did your investigative team do in response to these calls between Mr. Moss and Mr. Santiago on the morning of October 27?

A. Right. So after this happened, we sent surveillance out to Mr. Moss' house and set up surveillance at Kullen Drive.

During the course of surveillance, we ended up seeing Mr. Santiago show up in the Ford Taurus, that we discussed earlier. And he actually picks up Mr. Moss and they begin heading in the direction of Wilmington and kind out of the

state of Delaware.

And we ultimately end up losing sight of them in the Wilmington area due to, you know, their driving habits and then also there was a lot of traffic and stuff like that.

So bottom line is, we lost sight of them when they were heading northbound out of the Wilmington area.

Q. Were you able to figure out where Mr. Moss' cell phone went that day, even though you lost surveillance on him?

A. Yes.

Q. Is that cell phone data included in Exhibit 10C, as in Charlie?

A. Yes, it is.

Q. Where did Mr. Moss' cell phone end up going that day?

A. So at the very bottom of the page in the blue box, you'll see October 27, 9:29 a.m. Again, this is a ping hit. Based on this hit, I can tell from you seeing it so much during the course of wire, this is right in the area of where Kullen Drive was -- is located.

And then you can see, as you start traveling up from that, then the next box at 10:27 and 10:30, that's when it is hitting in the area of West Chester, Pennsylvania, which, again, is coming north out of the city of Wilmington and Northern Delaware.

And then by 11:45, it is now up in the area of

Reading, Pennsylvania.

THE COURT: So I think you mean 1:45, right?

THE WITNESS: Excuse me, 1:00? No, around --

THE COURT: Or, no, 11:45. Apologize. It's good. All right.

THE WITNESS: No problem, Your Honor.

THE COURT: So it's 11:45 a.m. All right. And that's in the upper left-hand corner.

THE WITNESS: That's correct.

THE COURT: All right.

MS. MANDELBAUM: And thank you, Ms. Dorfman.

BY MS. MANDELBAUM:

Q. Let's take you to the next morning, October 28. And I want to talk about some phone calls that were intercepted then.

We'll go back to Exhibit 6F, as in Fred, Page 6.

And are these a series of text messages between Mr. Moss and Mr. Santiago, Sessions 9176 and 77, sent on October 28, 2021, around 11:20 to 11:30 a.m.?

A. Yes.

Q. Following these text messages, were there any other communications between Mr. Moss and Mr. Santiago intercepted over the next few hours on October 28?

A. No. Between those two specifically.

Q. Between -- right.

A. Yes.

Q. Exactly.

A. No.

Q. Between Mr. Moss and Mr. Santiago.

Let's talk about where Mr. Moss' phone went that day. Can you turn to Exhibit 10D, please, as in David.

Are these Mr. Moss' cell phone ping hits or E911 data for October 28, 2021?

A. Yes.

Q. Can you describe generally where he traveled and at what time?

A. Yes. So, again, very bottom of the page in the blue box, around 12:23 -- or 12:13, excuse me, on October 28, it's in the same area around the Christiana area where Mr. Moss was.

And then travels northbound out of the city. Next blue box, up around 12:43, we get a ping hit around the Glen Mills-Concordville area, which is pretty much the same path as the day before. 1:13, in the area of Glenmoor. And then, finally, up by 1:59-ish up in the area of Reading, Pennsylvania.

And then comes directly back after an hour or so.

Q. Can you please turn to Exhibit 11A.

What is shown in Exhibit 11A?

A. This is for Mr. Santiago's phone. This is historical

1 cell site data, which was obtained after the conclusion of
2 the wire.

3 Q. So why does it look different than Mr. Moss' data?

4 A. It's put in through a different program. That's why
5 it's not showing up the same. And, also, this cell site
6 data, as opposed to ping data.

7 Q. Does it show where Mr. Santiago was in Reading on
8 October 28, 2021?

9 A. Yes, it does.

10 Q. And around what time was he there?

11 A. It was around three -- well, that's military time --
12 is around 3:24.

13 MS. MANDELBAUM: One moment, Your Honor.

14 THE COURT: Ms. Mandelbaum, you want to think
15 about -- we need to take a break for the court reporter in
16 the next few minutes.

17 MS. MANDELBAUM: Yes.

18 THE COURT: So think about when is a good time.

19 MS. MANDELBAUM: I think we could do -- are we
20 good for ten more minutes?

21 THE REPORTER: Yes.

22 MS. MANDELBAUM: Okay. We'll do ten more
23 minutes.

24 BY MS. MANDELBAUM:

25 Q. Which one of these two types of data is more precise,

1 Mr. Moss' data we saw on 11-David or Mr. Santiago's data
2 we saw -- or sorry, 10-David and Mr. Santiago data we saw
3 in 11-Alpha?

4 A. It's going to be the ping E911 data from Mr. Moss'
5 phone.

6 Q. After Mr. Moss returned from Reading that day on
7 October 28, do you know whether he had any meth for sale?

8 A. Yes.

9 Q. How do you know that?

10 A. Based on information that was being broadcasted by
11 Mr. Moss to contacts within his phone.

12 Q. Can you please turn to Exhibit 6F, as in Fred, and
13 Pages 7 through 9.

14 Are these a series of text messages ranging from
15 Session Number 9365 to 9403 all outgoing from Mr. Moss'
16 phone, sent on October 28, between 5:45 p.m. and
17 6:26 p.m.?

18 A. Yes.

19 Q. What, if anything, is Mr. Moss saying in these text
20 messages?

21 A. So the boxes at the top right, as I explained
22 earlier, is showing that these are outgoing. So that's
23 Mr. Moss sending these out to contacts within his contact
24 list and his cell phone.

25 So he's pretty much broadcasting that he has ice and

1 ice cream. So both of these terms were interchangeable.

2 So "ice," again, as I stated, was referring to
3 crystal meth. But also "ice cream," as well, was used to
4 ultimately disguise that what they were saying as far as
5 the product itself.

6 And then, also, you have some of the other familiar
7 terms. The "zips," so ounces. Some of these other ones
8 say directly "ounces" in them, or "oz," the abbreviation
9 for ounce. As well prices go, which, again, fell in line
10 with the price for an ounce of crystal meth around that
11 time of the investigation.

12 So 450 is referring to the actual amounts of \$450 per
13 ounce.

14 Q. How frequently during the wiretap investigation did
15 you see Mr. Moss send out text messages like this, nine
16 text messages, advertising crystal meth for sale?

17 A. Not often.

18 Q. Based on your training and experience, why might have
19 Mr. Moss and Mr. Santiago gone up to Reading two days in a
20 row?

21 A. So it was to meet with the source of supply and
22 complete a transaction, but it could be for a few
23 different reasons.

24 So if it's just to do a money drop or money to be
25 turned over, if the product of the full amount is not

1 ready at that point in time, if there was a conversation
2 when they got there about different -- you know, maybe
3 they wanted to go higher or lower as far as weight goes.

4 It also could be if there was any type of disruption,
5 not necessarily on their end, but also on the end of
6 source of supply, if there was, you know, something about
7 where that location was where they were supposed to meet
8 and there was -- could have been police activity around
9 there. I mean, there's a bunch of different things that
10 could mess up a transaction.

11 Ultimately, it's not uncommon for a deal of a bigger
12 magnitude of product to necessarily -- it may not go
13 through that exact day. There may be hiccups along the
14 way.

15 Q. Do you know what happened this time?

16 A. We do not.

17 MS. MANDELBAUM: I'm going to play one more
18 call and then we can take a break, Your Honor.

19 BY MS. MANDELBAUM:

20 Q. Were you able to figure out about how much meth they
21 bought that day?

22 A. We were.

23 Q. How?

24 A. Mr. Moss said it to one of his contacts,
25 Mr. Rodriguez.

Q. And I'm going to turn your attention to Exhibit 6F, as in Fred, pages -- starting on Page 10.

Is this the phone call you were discussing, which is Session 11242, on November 3, 2021, a call from Mr. Rodriguez to Mr. Moss, beginning at about 8:36 a.m.?

A. Yes.

Q. This is a bit of a longer call, so I'm just going to play an excerpt of it.

MS. MANDELBAUM: Beginning, Ms. Dorfman, at four minutes and 40 seconds, please.

(Video playing.)

"MOSS: Yo, what about those niggas in Reading bro, Reading, PA?

"RODRIGUEZ: Yeah, I got a bunch of people out there.

"MOSS: Bro, that's where the ice is, bro, I don't know if you know that.

"RODRIGUEZ: I swear to God.

"MOSS: I guess. Nigga, look, listen.

"RODRIGUEZ: That shit is in Kennett, bro.

"MOSS: Bro, listen, I promise you on my mom, bro, I just went up there, right? And I went and saw the house was nothing but Dominicans and Mexicans, bro, these motherfuckers had the steel door, the motherfucking camera set up, bro, it was a garage that looked like a house.

"RODRIGUEZ: Hum...

"MOSS: But, it's a fucking trap bro. You hear me?

"RODRIGUEZ: Yeah.

"MOSS: And no bullshit, we bought 10 pounds of ice off these niggas, bro. They got it, bro, I promise you, they all, and look, my boys is all down there hustling right now, you feel me?

"RODRIGUEZ: Yeah.

"MOSS: But one of them is like a millionaire though, bro.

"RODRIGUEZ: Yeah. See...

"MOSS: What I'm telling you is, what I'm telling you is, bro --

(Voices overlap.)

"RODRIGUEZ: It's too bulky.

"MOSS: Huh?

"RODRIGUEZ: That shit is too bulky.

"MOSS: It is, but, bro, I swear to you [U/I] it's like a dope flip, bro, you ain't gonna lose, I swear you're not, ain't no motherfucking way you can lose, bro, you hear me?

"RODRIGUEZ: Yeah.

"MOSS: Because motherfuckers don't got it like that out here. You feel me?

"RODRIGUEZ: Yeah.

"MOSS: Motherfuckers don't got no real plugs on it.

"RODRIGUEZ: Yeah.

"MOSS: I promise you bro, that's where the bread is at. Swear to you. Like on some side trap shit, like, you feel me?

"RODRIGUEZ: Yeah.

"MOSS: That's how I be staying afloat nigga, how you think I be staying afloat?

"RODRIGUEZ: Yeah.

"MOSS: Times like this, the ice money be coming through bro, I'm telling you, that shit save me every time."

(Video ends.)

MS. MANDELBAUM: And just for the record, where did we stop in the call? 6:39. I had 6:40 in my notes, so we were close.

BY MS. MANDELBAUM:

Q. Officer Riccobon, what, if anything, did this call tell you about how -- what and how much Mr. Moss was saying he bought in Reading?

A. It told us a lot. It told us that he went up there and purchased 10 pounds of ice or crystal meth.

Q. And where do you see that?

A. It's on Page 11, second line down, after Mr. Rodriguez says "Yeah."

Q. And Mr. Moss says, "We bought 10 pounds of ice"?

A. That's correct.

He also goes on to further describe in detail the location that they went to, which has every indication of what sounds like a stash location with a steel door, obviously countersurveillance with cameras, and also, you know, other individuals that were there, that he deemed as Dominicans or Mexicans, which at the time, crystal meth was very big coming out of the south.

Q. And can you remind the Court what Mr. Moss' relationship at this time was with Mr. Rodriguez, in your opinion?

A. They primarily were involved with heroin sales together, transactions. But he's on the phone with him about -- again, telling him about this crystal meth, bulk amount of crystal meth that they just purchased up in Reading.

MS. MANDELBAUM: One minute, Your Honor.

I think this would be a good time for a brief recess, Your Honor.

THE COURT: Okay. We'll take a break. You can step down, then, sir.

And then, can I just see counsel up here.

(Whereupon, a recess was taken.)

THE COURT: Please be seated.

MS. MANDELBAUM: So for the record, the witness has retaken the witness stand. And we are going to move forward.

BY MS. MANDELBAUM:

Q. We were just discussing a call on November 3. So I'd like to move forward to November 11, 2021. Okay?

And I want to talk about some text messages intercepted over the wire that are included in Exhibit 6G, as in George, on Page 6.

Is this Session Number 14153, a text message from Mr. Moss to someone identified as ^Christie Eckenrod on November 11, 2021, at about 3:20 p.m.?

A. Yes.

Q. What, if anything, does it mean to you when Mr. Moss says, "I'm trying to grab this ice"?

A. It means that he is going to purchase or pick up ice or crystal meth.

Q. And what does "grab" mean to you?

A. Purchase or pick up.

Q. Did Moss go anywhere that evening after this text message exchange?

A. Yes.

Q. Where did he go?

A. Up to a location in Reading, Pennsylvania.

Q. I want to turn to Exhibit 10-F, as in Fred.

Does this show Mr. Moss' cell phone location data for November 11, 2021, in the evening?

A. Yes.

Q. About what time did he leave the Christiana area?

A. Approximately 7:22 p.m.

Q. Where was Moss at around 7:53 p.m.?

A. Up in the area of Glenmoor, which is just north of -- or northwest of West Chester.

Q. I want to talk about some text messages around that time. Can you flip back to Exhibit 6G, as in George, on Page 7.

Are these two text messages, Session 14234 and 35, for Mr. Moss to Mr. Pankins, on November 11, 2021 at approximately 7:51 p.m.?

A. Yes.

Q. And can you just read these text messages into the record, please?

A. Yes. The first one is an outgoing text from Mr. Moss to Mr. Pankins, giving the address of "535 Carroll Street, Reading, Pennsylvania."

And the next one is an outgoing text as well from Mr. Moss to Mr. Pankins, saying, "You passed the exit, bro."

Q. Let's talk about Mr. Santiago.

Did you have cell site data for Mr. Santiago around this time?

A. Not at the time, no.

Q. But did you subsequently get it?

A. Yes, afterward.

Q. Is that included in Exhibit 11B, as in boy?

A. Yes, it is.

Q. Where was Mr. Santiago at approximately 7:53 p.m.?

A. At approximately 7:53 p.m., the device was hitting in the area of -- pretty much in that same area of Glenmoor.

Q. And when you say "same area," same area as what?

A. As Mr. Moss' cell phone device.

Q. 7:56 p.m.

A. Yes.

Q. I might have misstated and said 7:53.

A. Yes.

Q. I want you to flip back to Mr. Moss' cell phone data for that day, which is in, again, Exhibit 10F, as in Fred.

A. Okay.

Q. Did Mr. Moss end up in the area of Reading, Pennsylvania, that day?

A. Yes.

Q. In terms of comparing where his cell phone hit to the address that he texted Mr. Pankins, were you able to do

that?

A. Afterward, yes.

Q. About how far away were they?

A. Not far at all.

Q. Would you say within miles, within --

A. No, meters.

Q. They were within meters? Mr. -- where Mr. Moss hits --

A. Yes.

Q. -- from where Mr. -- that address that he texted Mr. Pankins?

A. Oh, yeah. It wasn't far at all.

Q. What time -- about what time did he hit for the last time in Reading, Pennsylvania?

A. 8:53 p.m.

Q. I want to talk about some text messages Mr. Moss received while he was in Reading. And I apologize for this flipping, but we're going to flip to Exhibit 15.

A. Okay.

Q. And these are two text messages, Session 14251 and 52, between Mr. Moss and Ms. Chamberlain that same night, November 11, 2021, at about 8:39 p.m.; is that correct?

A. That's correct.

Q. What did Ms. Chamberlain text to Mr. Moss?

A. Ms. Chamberlain, again, was incoming from

1 Ms. Chamberlain to Mr. Moss, saying, "K. Yeah, I'm cool.
2 Just wanted to check on you. Did you go up already?"
3 Q. And what did Mr. Moss respond?
4 A. Mr. Moss replies...
5 Q. It's on the next page.
6 A. Shortly thereafter replies back to Ms. Chamberlain in
7 outgoing, "Yeah. OMW" -- which is an acronym for "on my
8 way back." And "BCK" back. So "on my way back."
9 Q. And let's talk about where Mr. Moss went after he
10 left Reading. Can you turn to Exhibit 10G, as in George.
11 Does this show Mr. Moss' ping hits for later that
12 evening of November 11, 2021?
13 A. Yes.
14 Q. Can you walk the Court through where he traveled
15 after returning from Reading, Pennsylvania?
16 A. Sure.
17 They came -- Mr. Moss came back from above Delaware,
18 down to, around 9:55 p.m., in the area of Toughkenamon,
19 Pennsylvania.
20 And then traveled into Delaware. And around
21 10:25 p.m., there was a hit in the immediate area of the
22 Emblem Apartments.
23 Q. And how do you know that that hits in the area of the
24 Emblem Apartments?
25 A. Just through -- through the hit itself, plus having

1 got -- I, myself, went out there on several occasions when
2 we would get ping hits throughout the course of the
3 investigation and see where, in general, the device was in
4 reference to where the hit was.
5 So it became evident that when we would get certain
6 ping hits, I could tell you exactly where they were -- or,
7 excuse me, where the device was.
8 Q. And who, if anyone, of interest lived at the Emblem
9 Apartments?
10 A. That would be Mr. Tyrell Pankins.
11 Q. Where did Mr. Moss go after visiting the Emblem
12 Apartments?
13 A. After going to the Emblem, he went to -- at 10:40, in
14 the area of Bluefield Road, which is where Mr. Lapointe
15 lives.
16 Q. Let's talk about the day after this trip to Reading.
17 Can you turn to Exhibit 6B, as in boy, Page 16, one-six.
18 And this Session 14388 an incoming call from
19 Mr. Santiago to Mr. Moss on November 12, 2021 at about
20 8:54 in the morning?
21 A. That's correct.
22 Q. I want to ask you -- and we may have already gone
23 over this.
24 The second thing Mr. Santiago says, he says that he
25 had a couple of pound traps.

1 Do you see that?
2 A. Yes.
3 Q. What does couple of pound traps mean to you?
4 A. Couple of pound traps are transactions or deals.
5 Q. And what drugs would Mr. Santiago have been selling?
6 A. Crystal meth.
7 Q. Can you turn to Page 18. And if you could zoom in
8 on, kind of, the middle of the page where Mr. Santiago
9 says, "I still got like a couple of ounces."
10 What, if anything, does this conversation mean to you
11 as an investigator?
12 A. Mr. Santiago is revealing to -- or telling Mr. Moss
13 what he has located over at Bean's crib, which "Bean" was
14 the nickname of Ms. Chamberlain who lives at the Elms.
15 And he was saying that he had a couple of ounces over
16 there, probably like 4 ounces or 5 ounces of crystal meth.
17 Q. And I want to go a little bit even further in this
18 call to Page 21. And can you read over this page quickly
19 and look up when you're finished.
20 A. Okay.
21 Q. What, if anything, did you determine that Mr. Moss
22 and Mr. Santiago were discussing in this portion of the
23 phone call?
24 A. They are discussing selling a pound of crystal meth
25 to a potential buyer and then comparing prices, as far as

1 what they feel the price should be for that pound taking
2 into account just profit and, at that time, probably
3 inflation.
4 And then also, Mr. Santiago revealing --
5 Q. Briefly, Officer, what prices are they discussing
6 charging for a pound?
7 A. Sure. So initially, Mr. Santiago says to "Tell that
8 nigga four," as in 4,000 for the pound. Which, again,
9 would not be out of the ordinary for that time for a pound
10 of crystal meth.
11 So then, Mr. -- then it's revealed that they --
12 actually, they want to change it to 45, so 4500. And then
13 Santiago is saying that he only told -- that he had Greg,
14 another buyer -- that he did it for 37-five. So 3,750 for
15 the pound.
16 And when the math is done, "I was supposed to sell
17 him a two and a quarter for seven grand. You feel me."
18 Moss acknowledges, "Yes."
19 And Santiago says, "I'm actually charging -- now I'm
20 charging 8500. You feel me."
21 So Santiago adjusted his pricing so he could make
22 more profit off of what he initially was going to sell the
23 two and a quarter for, as opposed to two pounds and
24 quarter pound for. So instead of making the seven,
25 instead we're going to make 8500.

1 Q. How often did Mr. Moss and Mr. Santiago have
2 discussions about selling meth or pricing of meth during
3 the wire interception from end of September through
4 mid-September?
5 A. Several.
6 Q. Was it on a weekly basis? A monthly basis? A daily
7 basis?
8 A. I would say on a daily basis throughout the week.
9 MS. MANDELBAUM: Thank you, Ms. Dorfman.
10 BY MS. MANDELBAUM:
11 Q. So we discussed some trips to Reading in late
12 October, the one on November 11th.
13 You mentioned that there were some other times that
14 you believe Mr. Moss traveled to Reading; is that correct?
15 A. Yes.
16 Q. Was that based on cell phone ping data?
17 A. Yes.
18 Q. And is that data included in Exhibit 10A, alpha, and
19 10B, as in boy?
20 A. Yes, it is.
21 Q. And what dates are those showing Mr. Moss' phone
22 traveling to Reading?
23 A. October 9 of 2021. And the other one would be in
24 Exhibit 10B, as in boy, October 16 of 2021.
25 MS. MANDELBAUM: Thank you, Ms. Dorfman.

1 MS. MANDELBAUM: Ms. Dorfman, can you pull up
2 Exhibit 14B, as in boy, please.
3 BY MS. MANDELBAUM:
4 Q. What is shown in Exhibit 14B, Officer Riccobon?
5 A. That is crystal meth.
6 Q. And where was this crystal meth found?
7 A. That was actually located in a laundry hamper within
8 the apartment in the laundry room that is actually
9 attached to the residence itself.
10 Q. Just so we're clear, whose apartment was this?
11 A. This Tyrell Pankins' apartment.
12 Q. Did you test and weigh that methamphetamine?
13 A. Yes, we did.
14 Q. Are those results shown in Exhibit 9, Page 7?
15 A. Yes.
16 Q. How much did that meth weigh?
17 A. Let me see. Approximately 1500 grams.
18 Q. And what was the purity of that meth?
19 A. 86 percent.
20 Q. On the morning you executed the search warrant at
21 Mr. Pankins' house, was he planning to travel anywhere?
22 A. He was.
23 Q. Where?
24 A. He was supposed to be heading to Puerto Rico.
25 Q. And how do you know that?

1 BY MS. MANDELBAUM:
2 Q. Okay. Shifting gears, let's talk about the end of
3 the investigation.
4 You've already talked about a few different search
5 warrants you executed at that time, right?
6 A. That's correct.
7 Q. Did you execute a search warrant at Mr. Pankins'
8 house at that time?
9 A. We did.
10 Q. Why did you apply for a warrant for his house?
11 A. That was deemed to be a potential stash location for
12 the crystal meth.
13 Q. And what did you find at his house?
14 A. We ended up finding several firearms, we ended up
15 finding over 40 pounds of marijuana, and we ended up
16 finding approximately 3 pounds of crystal meth.
17 Q. Let's talk about the marijuana. Where was the
18 marijuana stored?
19 A. The marijuana was located -- there's a garage that,
20 living in an apartment complex, you can pay extra, get a
21 garage for you to store your car or personal property.
22 That's where the marijuana was located.
23 It was in that detached portion. It's not actually
24 attached to the apartment. It's in the same building, but
25 not to the apartment itself.

1 A. It was told there to Mr. Moss.
2 Q. By whom? When? How, generally?
3 A. I was just -- we intercepted it over the
4 communications that that's where he was going to be headed
5 during the course of the wire.
6 Q. So I want to talk some more about Mr. Pankins. We
7 just discussed a purchase of suspected meth from Reading
8 on November 11 that Mr. Pankins went to, right?
9 A. Uh-huh.
10 Q. And you also mentioned that Mr. Moss went to
11 Mr. Pankins' house directly after that purchase, right?
12 A. That's correct.
13 Q. You also talked previously about using confidential
14 informants back in the summer of 2021 before the wire,
15 right?
16 A. That's correct.
17 Q. Did you use any confidential informants to do
18 controlled purchases during the pendency of the wire?
19 A. Yes, we did.
20 Q. When?
21 A. It was in November, I believe.
22 Q. And why did you decide to use a confidential
23 informant during the wire?
24 A. To -- it helps us with revealing more information
25 about where maybe the stash is at that point in time, or

where the product is being kept at that point in time, or whatever location it's being kept at.

But it also helps out with substantiating the validity of the amount of weight that can be purchased from Mr. Moss or Mr. Santiago so, you know, we know that we're on the correct path, I guess you could say.

Q. So who did the confidential informant approach about purchasing meth?

A. Mr. Moss.

Q. How much did he ask for?

A. He asked for half a pound of crystal meth.

Q. And did Mr. Moss agree to sell it to the confidential informant?

A. Yes, he did.

Q. Did they -- so after they agreed to sell it, what happened?

A. We established surveillance on Mr. Moss' residence, at which time during the surveillance a white Dodge Charger, which was identified as Mr. Pankins', ended up showing up at his residence ended up picking him up from his residence.

Q. What happened after that?

A. We followed the Dodge Charger to the area of Bear, Delaware, which is right off of Route 40, which point we lost sight of the Dodge Charger for a few minutes.

One of the individuals who was out on surveillance ended up picking up not only the Dodge Charger, but also the silver -- or excuse me, the Chevy Impala that was related to Mr. Pankins as well, and they were riding in tandem together.

So that was followed to a gas station, which was right in that immediate area, at which time the occupants exited, and we confirmed that Mr. Pankins was driving the white Dodge Charger and Mr. Moss was driving the Chevy Impala.

We later found out that that car was supposed to be picked up and brought back to Mr. Pankins' residence because his girlfriend needed it to go and do something down in Washington, D.C., which was all captured over the -- the course of this whole thing.

We followed those vehicles to the area of Route 95 and 273 at which time, again, just due to traffic and the driving habits of everybody involved, we lost sight of them. We started checking the common areas of where -- in that immediate section. We sent surveillance units down to the Elms, and we also sent surveillance units to check some of the locations we already knew about at that point.

We ended up locating, coming from the immediate area of the Elms, the white Dodge Charger by itself without the Chevy Impala at that point.

Q. One moment, Officer Riccobon, when you -- the Charger was coming from the Elms apartment complex?

A. Excuse me, the Emblem. The Emblem -- the Emblem.

Q. And who lived at the Emblem apartment complex?

A. That was Mr. Pankins.

Q. Okay. So the Charger was coming from the Emblem?

A. Yes. It was coming from the immediate area of that, just that white Dodge Charger. We then let it go down to the area of 273. Again, sight was lost of that. But very shortly after, it was observed showing up at the Elms, which was the designated meet location for this drug transaction.

At which point in time, Mr. Moss, upon their arrival, exited the front passenger's seat and Mr. Pankins was determined to actually be the driver of that car. And at that point, Mr. Moss completed the half-pound transaction with the informant.

Q. Did Mr. Moss go into the Elms apartment, the -- Christina Chamberlain's apartment before completing the transaction?

A. No.

Q. So where had he come directly from before completing the transaction?

A. He came directly out of Mr. Pankins' vehicle.

Q. And where was that vehicle before driving to the

Elms?

A. Coming from the immediate area of the Emblem.

Q. Were the drugs that were bought during that controlled purchase tested?

A. Yes.

Q. Are those test results on -- in Exhibit 9, Page 6?

A. Pull them up there. Yep.

Q. How much meth was purchased?

A. It was approximately 213 grams, and the purity of 62 percent.

Q. How does this purity compare to the purity of all the other meth you saw during the course of this investigation?

A. It was lower than the other meth.

MS. MANDELBAUM: Thank you, Ms. Dorfman.

BY MS. MANDELBAUM:

Q. You've mentioned the Elms on a few occasions, right?

And you mentioned one occasion where Mr. Santiago moved meth out of the Elms.

Do you recall that?

A. Yes.

Q. Were there any other times, you're aware, that either Mr. Moss or Mr. Santiago moved drugs out of the Elms?

A. Yes.

Q. Why would they do that, if you know?

A. Yes. It was actually our fault.

During surveillance, we put ourselves in a bad position that ultimately led Mr. Moss to believe that police were down in the area of the Elms, which led to one of the issues with -- some of the difficulties with this organization and the locations they chose. It was very difficult for officers to do physical surveillance in these spots. So the Elms being one of those.

We -- after Mr. Moss was told about a vehicle and then saw a vehicle that was out there that looked like it could be a police car -- it had heavy tint on it and all that good stuff -- that caused a chain reaction of a phone call being placed to Ms. Chamberlain, who was actually in the Elms, at which point he started directing her to hide all of the product that was in there at the time and also start deleting messages on her phone in the event police hit that location or executed a search warrant, all of that evidence would be compromised at that point in time.

So it also led to Mr. Moss deciding to move the product that was in there at the time from there to Mr. Lapointe's residence via the assistance of Mr. Meadow.

Q. Was it Mr. Lapointe's residence?

Let's talk about that day.

A. Excuse me.

Q. I'll withdraw that, and let's talk about that day.

So let's turn to Exhibit 6I, as in Irving.

A. Yeah. It's a good one.

Q. Is this a series of communications held on November 7, 2021?

A. Yes.

Q. Let's start talking about some of these text messages on the first page. I see a text message from Mr. Moss to Ms. Chamberlain saying, "Yo, tuck everything and erase all your messages, Bean."

A. Yes.

Q. Is that one of the messages you were talking about?

A. That's correct.

Q. And what is he telling her in that message?

A. To tuck everything, to hide everything that's in the apartment and the residence at that time. And then also to delete all messages on her cell phone.

Q. If could you turn to Page 7 of Exhibit 6I.

Is this session, 13036, a call from Mr. Moss to Ms. Chamberlain on November 7, 2021, at approximately 8:13?

A. Yes.

Q. P.m.?

A. Yes.

Q. I see that Mr. Moss is giving Ms. Chamberlain some directions.

Do you see that?

A. Yes.

Q. What, if anything, did those directions mean to you?

A. So he's ultimately telling her to tuck the -- whatever's there at the apartment, away and hide that, but also giving her individual instructions that the one bag with the whole block in it, to ultimately put that in a separate bag and set that aside.

Q. Did he, then, later call someone you knew as Christopher Meadow?

A. Yes.

Q. Is that included -- is that call transcribed on Page 9 of the Exhibit 6I?

A. Yes.

Q. And is this session, 13040, a call -- oh, it's actually a call from Mr. Meadow to Mr. Moss on November 7, 2021, approximately 8:38 p.m.?

A. Yes.

Q. What, if anything, did you get from this call when you listened to it?

A. Sure.

Mr. Moss was directing Mr. Meadows to -- Mr. Meadow to go over to Ms. Chamberlain's residence, which was directly next door in the next building, and to ultimately grab that bag that she put aside and to bring it to a meet

location, which was actually in a very familiar area where we did transactions prior to, at the intersection of the 273 and Harmony Road. There's a gas station that's right there off of 273.

Q. When Mr. Moss then says, "I'll give you a whole -- I'll give you a whole B."

What, if anything, does that mean to you?

A. So Mr. Meadow being a heroin addict, a B refers to a bundle of heroin.

So in Delaware, most of the time, it's 13 bags of heroin wrapped -- secured by a rubber band. It could differ outside of Delaware. The majority of the time that's what it is here.

So ultimately, he's saying, hey, listen, this is what's going to be your payment. Get this bag, bring this to this location, I'll give you a whole B or a whole bundle of heroin as a payment for that for helping me out with this.

Q. Were you able to determine whether Mr. Meadow went to meet Mr. Moss at that location?

A. Yes.

Q. Do you know about what time that was?

A. It was shortly after. I know Mr. Meadow was -- he needed to get a ride down there, because Mr. Meadow didn't have a car. So yeah, he was going to initially use his

1 bike, but he needed to get a ride down there to meet him.
2 So it was shortly after.
3 Q. Can I ask to you flip to Exhibit 6I, the bottom of
4 Page 5.
5 A. Six?
6 Q. I, as in Irving?
7 A. Yes.
8 Okay.
9 Q. What is the last text message on that page?
10 A. He's asking if he left yet.
11 Q. And who is Mr. Moss texting?
12 A. He's texting Ms. Chamberlain.
13 Q. He's texting Ms. Chamberlain?
14 A. Oh, excuse me. He's texting Mr. Meadow. Mr. Meadow
15 could not bring his phone with him because his phone
16 didn't operate off of Wi-Fi. So he couldn't -- that area.
17 Q. And what time did he send that message?
18 A. That was 21:20 military, or 9:20 p.m.
19 Q. Can you turn to the next page.
20 Is this -- and this text message, 13067, what time is
21 that sent?
22 A. That's 21:29 p.m.
23 Q. And what does that text message, if anything, mean to
24 you?
25 A. Ultimately, it's indicating that Mr. Meadow came

1 of the Emblem apartments right before that buy, right?
2 A. Yes.
3 Q. What was that based on?
4 A. Surveillance.
5 Q. Did you have pings on his phone at that time?
6 A. We did.
7 Q. What did the pings tell you, if anything?
8 A. That it was in the area of that location.
9 MS. MANDELBAUM: May I have one moment,
10 Your Honor?
11 BY MS. MANDELBAUM:
12 Q. All right, Officer Riccobon, in your opinion, and
13 based on your investigation --
14 MS. MANDELBAUM: You can take this down,
15 Ms. Dorfman.
16 BY MS. MANDELBAUM:
17 Q. In your opinion and based on your investigation, were
18 you able to determine who the 1,549 grams of 86 percent
19 pure methamphetamine found at Mr. Pankins' house belonged
20 to?
21 A. Yes.
22 Q. Who?
23 A. Mr. Moss and Mr. Santiago.
24 Q. Based on your investigation, were you able to
25 determine, generally, how much meth Mr. Moss and

1 back, because he's saying -- asking if he can grab -- or
2 excuse me. Yeah, Mr. Meadow is saying, hey, can I grab
3 that bundle that you asked me from Tina, who is next door.
4 And he's saying, yeah, go ahead. And she's going to give
5 you a B to give him -- give to Mr. Meadow as payment for
6 what he did.
7 Q. I want to talk about where Mr. Moss' phone was that
8 day. Can you turn to Exhibit 10E, as in Edward.
9 Does this show ping data for Mr. Moss on November 7,
10 2021, in the 9:00 hour at night?
11 A. Yes.
12 Q. Around -- does it show him in the area that -- at any
13 time where he was -- told Mr. Meadow to meet him?
14 A. Yes.
15 Q. About what time?
16 A. 9:22 p.m.
17 Q. Where is the next place, 50 minutes later, the ping
18 data shows him?
19 A. Up in the immediate area of the Emblem apartments,
20 Mr. Pankins' residence.
21 Q. And who lives -- you said Mr. Pankins' residence.
22 I want to take you back to that controlled buy -- I'm
23 shifting gears again -- the one we just discussed in
24 November.
25 You mentioned knowing that Mr. Moss was in the area

1 Mr. Santiago would purchase when they went to Reading?
2 A. Yes.
3 Q. About how much?
4 A. At least 10 pounds.
5 Q. Is that consistent with the amount of meth you
6 determined that they were selling over the course of the
7 investigation?
8 A. Yes.
9 Q. Based on your investigation, about how pure was the
10 meth they were generally selling?
11 A. At least 80 percent.
12 Q. You've been a drug cop for nine years, right?
13 A. Yes.
14 Q. In all the investigations you've done, how frequently
15 have you investigated people who were selling the quantity
16 of meth in Delaware that Mr. Moss and Mr. Santiago were
17 selling?
18 A. Not often.
19 MS. MANDELBAUM: I have no further questions,
20 Your Honor.
21 THE COURT: All right. Thank you.
22 All right. Cross.
23 CROSS EXAMINATION
24 BY MR. BRESLIN:
25 Q. Good afternoon, Officer Riccobon. How are you?

1 A. How are you, sir?

2 Q. I just want to start, generally, about the ping data

3 for Mr. Moss' cell phone data.

4 A. Okay.

5 Q. I believe on direct you indicated that the ping data

6 would show about a meter?

7 A. Yeah.

8 Q. Give or take a meter from where the phone would be?

9 A. The meters could vary.

10 Q. Okay.

11 A. It was -- and that's still kind of debate on -- as

12 far as what varies them, whether it be the strength of the

13 signal, the type of tower, the type of carrier that they

14 have. So it's -- the meter -- you could have a really

15 small hit; you could have a really big hit.

16 Q. All right. And during your direct, you indicated

17 that you believe that Mr. Moss took approximately four

18 trips to Reading, Pennsylvania?

19 A. Yes.

20 Q. And one of those trips occurred on October 9th?

21 A. Yes.

22 Q. Is it correct that there was no physical surveillance

23 performed on Mr. Moss on October 9th?

24 A. October 9th, no.

25 Q. So no law enforcement officer physically observed

1 A. Related to him, no.

2 Q. No preliminary weight could be obtained, correct?

3 A. Correct.

4 Q. And no chemical analysis could be performed on,

5 because no drugs were seized, correct?

6 A. Correct.

7 Q. And then I'm going to jump forward to October 16. I

8 believe that was the second, quote, alleged trip to

9 Reading?

10 A. Yes, sir.

11 Q. How many days between October 9th and October 16 were

12 there in between trips?

13 A. How many days are there between the 9th and the 16th?

14 Q. That's correct.

15 A. Seven.

16 Q. Was there any physical surveillance performed on

17 October 16 of Mr. Moss going up to Reading?

18 A. Going up to Reading, no.

19 Q. So again, no law enforcement officer physically

20 observed Mr. Moss in Reading, correct?

21 A. Not to my knowledge, no.

22 Q. And the only information showing Mr. Moss going up to

23 Reading would be his ping data?

24 A. Correct.

25 Q. Mr. Moss wasn't stopped on October 16, correct?

1 Mr. Moss in Reading, Pennsylvania; is that correct?

2 A. That's correct.

3 Q. So the only information that you could point to

4 Mr. Moss being in Reading is his ping data?

5 A. Right. Coupled with any communications over the

6 wire.

7 Q. Was Mr. Moss stopped by law enforcement on

8 October 9th?

9 A. No, not that I'm aware of.

10 Q. There was no search of Mr. Moss' person, on

11 October 9th, that took place, correct?

12 A. That's correct.

13 Q. Mr. Moss' residence was not searched on October 9th,

14 correct?

15 A. That's correct.

16 Q. None of the alleged stash houses that you've talked

17 about during your direct were searched on October 9th,

18 correct?

19 A. That's correct.

20 Q. So no controlled substances were seized on

21 October 9th, correct?

22 A. From him, no, that's correct.

23 Q. So no -- since no controlled substances were seized

24 from Mr. Moss or his residence, no controlled substances

25 were field tested on October 9th, correct?

1 A. Not to my knowledge, no.

2 Q. No search of his person was performed on October 16,

3 correct?

4 A. No.

5 Q. Mr. Moss' residence wasn't searched on October 16,

6 correct?

7 A. Correct.

8 Q. To your knowledge, no alleged stash houses were

9 searched on October 16, correct?

10 A. Correct.

11 Q. No controlled substances were seized from Mr. Moss on

12 October 16, correct?

13 A. Correct.

14 Q. And because no controlled substances were seized, no

15 field testing could be performed, correct?

16 A. Correct.

17 Q. No preliminary weight could be performed, correct?

18 A. That's correct.

19 Q. And no chemical analysis could be performed, correct?

20 A. That's correct.

21 Q. Okay. Now, I'm going to -- there was the two trips,

22 October 27 and October 28, correct?

23 A. Yes.

24 Q. All right. So let's deal with October 27 first.

25 A. Okay.

1 Q. There -- this time, there was some form of physical
2 surveillance of Mr. Moss on October 27, correct?
3 A. That's correct.
4 Q. But you lost -- essentially, he was lost in
5 Wilmington?
6 A. Yes.
7 Q. Okay. So again, no physical surveillance of Mr. Moss
8 in Reading, Pennsylvania?
9 A. That's correct.
10 Q. Okay. Only thing showing him in Reading,
11 Pennsylvania, is his phone data?
12 A. Well, yes, but couple that with Mr. Santiago's data
13 as well. But, yes, two of them.
14 Q. He -- Mr. Moss was not stopped by law enforcement on
15 October 27, correct?
16 A. Not that I'm aware of, no.
17 Q. Okay. And no search of his person was performed on
18 October 27?
19 A. No.
20 Q. What about his house, no search of his house?
21 A. No, sir.
22 Q. Okay. Any of the alleged stash houses, they were not
23 searched on October 27, correct?
24 A. That's correct.
25 Q. Okay. So no controlled substances were seized from

1 Mr. Moss or his residence on October 27?
2 A. Correct.
3 Q. So because no substances were seized, no preliminary
4 testing -- or no field testing, I mean?
5 A. Correct.
6 Q. No preliminary weight?
7 A. Correct.
8 Q. And no chemical analysis, correct?
9 A. Yeah. Correct.
10 Q. So now, October 28, we have this -- I guess, the
11 fourth, technically. I guess that would be fourth trip.
12 A. Okay.
13 Q. No physical surveillance?
14 A. That's correct.
15 Q. Okay.
16 A. The trip up.
17 Q. Correct.
18 A. Right.
19 Q. Mr. Moss wasn't physically observed in Reading,
20 Pennsylvania?
21 A. Correct.
22 Q. So again, the only information would be his ping data
23 showing him in Reading, Pennsylvania?
24 A. Yes, the two, yes.
25 Q. Mr. Moss wasn't stopped on October 28, was he?

1 A. Not to my knowledge.
2 Q. Okay. No search of his person?
3 A. That's correct.
4 Q. No search of his residence?
5 A. That's correct.
6 Q. None of the alleged stash houses were searched on
7 October 28?
8 A. That's correct.
9 Q. No controlled substances were seized from Mr. Moss or
10 his residence, correct?
11 A. That's correct.
12 Q. So because no substances were seized, no field
13 testing, no preliminary weight, and no chemical analysis,
14 correct?
15 A. Yes.
16 **MR. BRESLIN:** One second, Your Honor.
17 Ms. Dorfman, would you be able to pull up, I
18 believe it's 6G, the line sheet 13177. Perfect. Thank
19 you very much.
20 **BY MR. BRESLIN:**
21 Q. So I want to direct your attention to the
22 Government's Exhibit 6G. It's specifically line sheet
23 13177. Let me see if I can find the page, the specific
24 page.
25 So we are talking about -- it would be Page 2 and

1 Page 3. If you could take a look at that and let -- just
2 pick your head up when you're done reading through that.
3 A. Sure.
4 Okay.
5 Q. So after reviewing this, am I correct, that this is a
6 conversation between Mr. Moss and Mr. Rodriguez?
7 A. Yes.
8 Q. Okay. And during this phone call, am I correct that
9 Mr. Moss and Mr. Rodriguez are discussing the quality of,
10 I would say in quotes, "ice"?
11 A. Yes.
12 Q. Okay. Is it also correct that Mr. Rodriguez is
13 expressing some dissatisfaction?
14 A. Yes.
15 Q. Uh-huh. And on Page 3, does Mr. Rodriguez say, "They
16 said it was sandy or something wrong with it or
17 something"?
18 A. Yes, Mr. Rodriguez says that, yes.
19 Q. All right. So now, we're going to jump back. We're
20 going to go back to the ping data.
21 A. Okay.
22 Q. So we have -- November 11, we have Mr. Moss' cell
23 phone data pinging in Reading, Pennsylvania; is that
24 correct?
25 A. Yes.

1 Q. Okay. Was any physical surveillance performed on
2 that date?
3 A. November 11?
4 Q. Yes. Of the trip going up to Reading?
5 A. No.
6 Q. So Mr. Moss wasn't physically observed in Reading,
7 Pennsylvania?
8 A. Correct.
9 Q. And the only thing we have Mr. Moss in Reading is his
10 ping data and some phone calls that may indicate going up?
11 A. Yes.
12 Q. Okay. Mr. Moss wasn't stopped on November 11, was
13 he?
14 A. Not to my knowledge, no.
15 Q. Okay. And a search of his person was not performed
16 on November 11, correct?
17 A. That's correct.
18 Q. Okay. His residence wasn't searched on November 11?
19 A. No, sir.
20 Q. And none of the alleged stash houses were searched on
21 November 11, correct?
22 A. That's correct.
23 Q. Okay. So no controlled substances were seized from
24 Mr. Moss or his person, correct?
25 A. That's correct.

1 Mr. Lapointe's residence took place?
2 A. Well, I think we hit everything on the 14th, I
3 believe.
4 Q. So two days later?
5 A. Yes.
6 Q. Okay. And when interviewing Mr. Lapointe, is it
7 correct that he said that meth in the residence actually
8 belonged to Mr. Santiago?
9 A. That's what he said, yes.
10 MR. BRESLIN: One second, Your Honor.
11 THE COURT: Uh-huh.
12 BY MR. BRESLIN:
13 Q. The methamphetamine that was found in Mr. Lapointe's
14 residence, that was chemically analyzed, correct?
15 A. Yes.
16 Q. Do you recall what the purity level of it that was?
17 A. Do you, by chance, recall the pages that they had the
18 analysis on?
19 Q. Give me one second.
20 A. Thank you.
21 Q. It is -- that's nine, Page 14? Page 11?
22 A. Yep.
23 Okay. Yes. So it was 98 percent pure.
24 Q. Okay. And that's give or take 6 percent, correct?
25 A. That's -- yes.

1 Q. So no field substances -- or field tests on
2 November 11, correct?
3 A. Correct.
4 Q. Preliminary weight, correct?
5 A. Correct.
6 Q. And chemically analyzed, correct?
7 A. Correct.
8 Q. Now, Officer Riccobon, after -- now, once the
9 investigation kind of comes to a head, people are arrested
10 and residences searched.
11 You were part of the group that interviewed
12 Mr. Lapointe; is that correct?
13 A. Mr. Lapointe, yes.
14 Q. Uh-huh. And during his interview, it was discussed
15 with Mr. Lapointe that methamphetamine was found inside
16 his residence, correct?
17 A. That's correct.
18 Q. And that was inside a jacket, correct?
19 A. Yes.
20 Q. Okay. And how many days -- cycling back, there
21 was -- testified on direct that, on -- I believe it was
22 December 12, drugs were moved out of the Elms apartments;
23 is that correct?
24 A. Yes.
25 Q. And do you recall what date the search of

1 Q. Okay. And what was the weight of the methamphetamine
2 that was found in his residence?
3 A. The net weight, approximately 296 grams.
4 Q. Now, you were also part of the group that interviewed
5 Tyrell Pankins, correct?
6 A. That's correct.
7 Q. Okay. And during this interview, you discussed with
8 Mr. Pankins the methamphetamine that was found inside the
9 residence; is that correct?
10 A. That's correct.
11 Q. Okay. Do you recall what Mr. Pankins told you about
12 the methamphetamine and who that belonged to?
13 A. He said he was holding it for somebody else, that it
14 was not his.
15 Q. Okay. Was the methamphetamine in Mr. Pankins' house
16 chemically analyzed?
17 A. Yes.
18 Q. Do you recall what purity level that was?
19 A. Yes. It was 86 percent, give or take; plus or minus
20 6 percent.
21 Q. Thank you.
22 Now, Officer Riccobon, what is Mr. Pankins' address?
23 A. He was over at the Emblem apartments. And it was --
24 it's been a minute since I've been over there. The
25 1700 Helen Drive, Apartment 107.

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Riccobon - Cross

1 Q. Are you familiar with the area where Mr. Pankins' residence is?

2

3 A. Yes.

4 Q. It's incredibly close to the Christiana Mall; am I correct?

5

6 A. That's correct.

7 Q. Okay. Would you say it's within walking distance?

8 A. It's -- well, you could walk it.

9 Q. All right. I want to direct your attention to Exhibit 10E.

10

11 A. Was it ten?

12 Q. Ten-Edward.

13 A. Edward. Thank you.

14 Q. Uh-huh.

15 And this is Mr. Moss' ping data on November 7; am I correct?

16

17 A. Yes.

18 Q. And at 9:22 p.m., the ping data appears to be putting -- the ping data appears to be showing Mr. Moss on the ramp of, what I would say, is I-95?

19

20

21 A. In the area of 95.

22 Q. In the area. Okay.

23 And then at 9:37 p.m., at 9:53, am I correct that the ping data appears to be somewhere in between I-95 and Eagle Run Road?

24

25

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Riccobon - Cross

1 far, correct? Based on --

2

3 A. Yes.

4 Q. What is Mr. Lapointe's address?

5

6 A. That's 201 Bluefield.

7 Q. Okay. And would I be correct to say that that is off of Route 273?

8

9 A. It's off of Route 273 down on -- well, it's -- yeah, it's -- by the intersection of 273 and Harmony Road, in that neighborhood.

10

11 Q. So -- what is this, 10G? So 10G, essentially what you've done here is mapped out the ping signals?

12

13 A. For 10G.

14 Q. Yep.

15 A. Yes.

16 Q. And this exhibit shows that at 10:25, Mr. Moss' cell phone is pinging off Mr. Pankins' residence/the Christiana Mall, am I correct?

17

18 A. By this. Correct, by it.

19 Q. But then at 10:40 p.m., it's now near Mr. Lapointe's residence?

20

21 A. Okay. Yes.

22 Q. So essentially what this is saying is that Mr. Moss came down from Reading, went to Mr. Pankins', or the Christiana Mall, and then doubled back to Mr. Lapointe's residence, correct?

23

24

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Riccobon - Cross

1 A. That's correct.

2

3 Q. Okay. Now turning to 10G.

4

5 A. Yep. 10G.

6 Q. And this is Mr. Moss' ping data on November 11; am I correct?

7

8 A. Yes.

9 Q. And this is between -- approximately between 9:55 p.m. and 10:40 p.m.?

10

11 A. Yes.

12 Q. On November 11?

13

14 A. Correct.

15 Q. At 10:25, the ping data would put Mr. Moss in the area of Pankins' residence?

16

17 A. Yes.

18 Q. Correct.

19 A. Yes.

20 Q. But as you testified just a few minutes ago, that's incredibly close to the Christiana Mall; am I correct?

21

22 A. Yes. So it's on the other side of, so you have Route 7. And then you have the Christiana Mall on one side, and then you cross over Route 7/Route 1 there -- they're right there with each other. And then his apartment complex is on the other side of that.

23

24 Q. And you testified that -- very beginning of cross, that the ping data can be really close, it can be very

25

120

Riccobon - Cross

1 A. Based on the timing, yes.

2

3 Q. Okay. Now, a few minutes ago, we talked about Mr. Lapointe's interview. And he indicated that, essentially, his house was being used as a stash house; am I correct?

4

5

6 A. So his house would -- it was a hangout for them, by his own admission as well. And it would be used on and off as a place that they could stash, if they needed to. It wasn't a primary.

7

8

9

10 So dealers are not going to use one specific location, again because if a police raid happens or competition comes after them, they're going to have separate locations to keep a lot of their products. So that way, if they get hit there, it's not going to -- they're not going to lose out on all that money or all that product.

11

12

13

14

15

16

17 So we did note that his place was being used as a potential stash location, they would keep stuff on and off. He himself is an addict, though, so...

18

19

20 Q. But turning to 10G --

21

22 A. Yes.

23 Q. -- essentially what this is saying is that Mr. Moss would have driven past Mr. Lapointe's house, but then double backed later on, correct?

24

25

26 A. I don't know, because, I mean, these come in

15-minute intervals --

Q. Okay.

A. -- so a lot can happen in that 15 minutes. I don't know if this ping is happening on the front end or the back end of where there travels are. You know what I mean? So if, like, I get to a place and I just get there, but it hits, then I get that signal.

But then 15 minutes later, it shows me either still there or at somebody else's place or a transit like that, 15 minutes is a big, you know -- you could -- it could separate a few things.

And, also, depending on their course of travel, you know. That's all I'm ultimately saying. Like, it doesn't mean that it's like he's there -- right then, he could have just got there. He could have just left.

But if it's hitting off that area, that tower and giving that meter hit, then that's where it is.

Q. Okay. But did he prepare this Exhibit 10G?

A. I did not, no.

Q. You did not. But you've reviewed this?

A. Yes.

Q. Okay. And am I correct that the blue line that is on this is showing that Mr. Moss, coming south from Reading, Pennsylvania --

A. Correct.

BY MR. BRESLIN:

Q. Now, I want to go back a little bit, and I want to direct your attention to, it would be Exhibit 6F --

A. Okay.

Q. -- line sheet, it is 8764, which is page -- it's the very first page. So Page 2 and Page 3.

And I believe you went over this line sheet with the Government during your direct; am I correct?

A. Yes.

Q. Okay. And this is a conversation between Mr. Moss and Mr. Santiago; is that correct?

A. Yes.

Q. And during this, Mr. Moss and Mr. Santiago are talking about a purchase of a controlled substance from, quote, "up top"?

A. Yes.

Q. Now, isn't it correct that Mr. Santiago informed Mr. Moss -- and I believe this is on Page 3, towards the top -- that "we're only going to get five, because I ain't trying to get the whole ten"?

A. That's what he says.

Q. Okay. And I believe you testified on direct that this is indicative of only purchasing 5 pounds?

A. Correct.

Q. Okay. Jumping back forward, you were part of the

Q. -- driving past Mr. Lapointe's residence --

A. Yes.

Q. -- going to the area of Mr. Pankins' residence or the Christiana Mall --

A. Right.

Q. -- and then going back toward Mr. Lapointe's residence?

A. Yeah. It's just ultimately a highlighted -- I mean, there's a bunch of different routes that he could have taken. It's a highlighted for the path of travel as far as the locations that it's hitting off of, yeah.

Q. Okay.

A. Because he could have taken down 7, it could have taken him down 1, it could have taken him a few different areas.

Q. Now, when Mr. Moss was arrested and his house was searched, was he found in possession of any keys to any residence other than his own?

A. Not that I am aware of.

Q. Okay. So he didn't have a key to Mr. Pankins' residence?

A. No.

MR. BRESLIN: One moment, Your Honor.

THE COURT: Sure.

team that interviewed Christopher Meadow; am I correct?

A. Christopher Meadow, I did not interview.

Q. But did you review his statement?

A. I'd have to review it again. I was actually not even working that day that he got --

MR. BRESLIN: Could I have one moment, Your Honor.

Thank you, Your Honor. Give me one second.

BY MR. BRESLIN:

Q. Officer Riccobon, if I can direct your attention to Government's Exhibit 3.

A. Three.

Q. And I think on direct you testified regarding an interaction between Mr. Meadow and Mr. Moss in -- coming from the Elms apartment; am I correct?

A. Run that by me again. I'm sorry.

Q. There was an interaction between Mr. Meadow and Mr. Moss that essentially, he was picking up something from the Elms apartments at the request of Mr. Moss; am I correct?

A. Yes.

Q. Okay. And do you recall where Mr. Meadow took the bag that he picked up from the Elms apartments?

A. From the -- yes, he went down to the area of -- so 273, there's a gas station that Mr. Moss directed him to.

1 It's like a tobacco shop. And then right next to that is
2 a 7-Eleven. So it was right in that general area.
3 South Gerald Drive and 273.
4 Q. So it's either at an intersection or just off 273?
5 A. It's right there in that -- yeah, 95 interchange is
6 right there. So it's right by -- right there.
7 Q. And you testified a few minutes ago that
8 Mr. Lapointe's residence is actually in the area of 273?
9 A. Yes, it's across the street. It's on the other side
10 of the road in a neighborhood.
11 Q. So where Mr. Meadow met Mr. Moss was in the area of
12 Mr. Lapointe's residence; am I correct?
13 A. No, not where he directed him. It's -- no. So
14 Mr. Meadow's house -- or excuse me, Mr. Lapointe is in the
15 neighborhood. Further down, there's like a -- it's off of
16 Harmony Road, which is on the other side of 273. And then
17 the opposite side, there's a hotel that's there.
18 So I mean, it's on the other side of a major roadway.
19 The route -- the county route, I guess you could say.
20 MR. BRESLIN: Just one minute, Your Honor.
21 Thank you, Your Honor. Just a few more
22 questions.
23 BY MR. BRESLIN:
24 Q. Officer Riccobon, you testified about the chain of
25 events that occurred when there was a half-pound sale with

1 a confidential informant.
2 A. Yes.
3 Q. Did you ever see Mr. Moss enter Mr. Pankins'
4 residence on that day?
5 A. I did not specifically, no.
6 Q. Did any law enforcement officer see him enter
7 Mr. Pankins' residence?
8 A. Not that I'm aware of.
9 Q. Okay. Now, I believe your testimony was that the car
10 was parked at Mr. Pankins' residence; am I correct?
11 A. It was coming from the immediate area of where the
12 Emblem is.
13 Q. Okay. So Mr. Moss wasn't seen with any bag leaving
14 Mr. Pankins' residence; am I correct?
15 A. That's correct. Not to my knowledge, anybody saw
16 that.
17 MR. BRESLIN: No further questions, Your Honor.
18 THE COURT: All right. Thank you.
19 MS. GRASSO: Thank you, Your Honor.
20 May I have a moment with the Government,
21 Your Honor?
22 THE COURT: Sure.
23 MS. GRASSO: Thank you.
24 BY MS. GRASSO:
25 Q. Good afternoon.

1 A. How are you doing?
2 Q. Good. How are you?
3 A. Good.
4 Q. So we talked a little bit about, on cross, the cell
5 site information --
6 A. Okay.
7 Q. -- and perhaps we could just go over that a little
8 bit.
9 A. Sure.
10 Q. You're not an expert on cell site data, right?
11 A. No.
12 Q. Okay. And, in fact, in these big investigations,
13 Federal investigations, the FBI usually has a cell -- a
14 cellular analysis survey team, CAST.
15 You've heard that name before, right?
16 A. Yeah, a lot. Well, it wasn't through the FBI or the
17 DEA. But we didn't -- not to my knowledge, we didn't use
18 CAST.
19 Q. Okay. And that's somebody who's really -- the
20 expertise is really cell site data analysis, correct?
21 A. There are experts -- not. I'm not an expert, yeah.
22 Q. Okay. And you didn't prepare the exhibits in this
23 case that refer to the cell site data for both
24 Mr. Santiago and Mr. Moss, correct?
25 A. I didn't prepare.

1 Q. Okay. And they were prepared by the Government, as
2 far as you know, correct?
3 A. They were prepared by whoever reviewed them.
4 Q. Okay. And as far as you know, they were not prepared
5 by an expert on cell site data as well, correct?
6 A. I would assume that they would have been, but they
7 compared to what I saw and reviewed. So I mean, it
8 matches what I reviewed, I guess you could say.
9 Q. Okay. And what you reviewed it's just raw data; is
10 that correct?
11 A. It's raw data, yes.
12 Q. Okay. And generally speaking, though, you're not
13 familiar with -- you don't normally analyze raw data and
14 plot on a chart the pings of areas, that's not something
15 you normally do in the course of your --
16 A. I have. I just -- that's not my area of expertise,
17 but I have, yes.
18 Q. All right. And we were talking about -- with regard
19 to Mr. Moss, we had ping data, but with Mr. Santiago, we
20 had pen register data, correct?
21 A. That's correct.
22 Q. Okay. And with regard to both actually, the ping and
23 the pen register data, it cannot give you a particular
24 location, correct? It cannot pinpoint an exact location?
25 A. The lowest I've ever had was 1 meter, that's about

1 it.

2 Q. When you say --

3 A. A 1-meter hit for where a device was located.

4 Q. Okay. And that hit meant that the cell phone, you

5 physically --

6 A. The device.

7 Q. -- able to confirm that it was within --

8 (Court reporter clarification.)

9 Q. Sorry.

10 A. Oh. Sorry about that.

11 Q. You were physically able to confirm that that cell

12 phone was within 1 meter of the tower?

13 A. No, it was within -- it was -- well, if it was within

14 that tower. So there's so many towers that are up, right.

15 So when the cell phone goes and does its ping, it's going

16 to pull off of whatever the strongest signal it's going to

17 get from whatever tower.

18 That's why you get that varying different amount of

19 meter hits, because it kind of -- now, again, we don't

20 know yet if it's about just like the strength of the

21 tower, if it's about the carrier. I mean, there's a lot

22 of different things that come into play.

23 But I'm saying as far as when reviewing E911 or ping

24 data, I've gotten hits as low as 1 meter, and couple that

25 with surveillance that somebody is legitimately directly

1 or, hey, this -- it's this location, or, hey, if it's a

2 hit in a city, it's always going to be a lot closer

3 than -- as opposed to somebody out in the middle of

4 nowhere that that hit's going to be larger hit just

5 because there's not a lot of towers around.

6 Like, it's just -- it's been a lot of varying things

7 as far as --

8 Q. And that's something that you don't even know about,

9 but -- not only do you, not as an expert, but the experts,

10 themselves, don't even know about that, correct? They

11 can't give you specifics on that.

12 A. Oh, I don't know. I mean, I'm just speaking on my

13 behalf of what I've heard from experts. I don't --

14 Q. Okay. And so the phones will, in both situations --

15 whether it's ping, which is live or pen, which is

16 historical, right -- they're going to hit off of the tower

17 that the phone goes to, not necessarily the closest one,

18 correct?

19 A. That's possible.

20 Q. And based upon -- and that happens frequently. And

21 it depends upon who the carrier is with the phone,

22 correct?

23 A. Well, again, not being an expert in the field, I'm

24 not saying how frequent it happens. I'm just saying that

25 that's the varying things that I've seen through other

1 right there where we are seeing them, as opposed to some

2 other times where we get like a larger hit, if somebody is

3 in the travels or something along those lines, I guess you

4 could say.

5 Q. Okay. So in other words, you've had instances where

6 you get the data that says where the phone is physically

7 located --

8 A. Right.

9 Q. -- in a roundabout area, you've traveled, or you've

10 had surveillance teams match that up and the person's been

11 as close as within 1 meter, correct?

12 A. That's where the device -- yes.

13 Q. Okay. But you've also had instances where they can

14 be several blocks, up to miles away, correct?

15 A. I mean, I would say I've had a meter hits within a

16 thousand meters. I'm not a numbers guy distance-wise.

17 But, I mean, you know that it's pretty --

18 Q. It's close to a mile?

19 A. Yeah.

20 Q. And that's not uncommon, correct?

21 A. It depends. It depends on, again, all those other

22 circumstances. And, again, we have -- a lot of the guys I

23 talk to, who they are experts in that field, they haven't

24 really been able to say whether it's definitely -- it's,

25 oh, this carrier is always going to give you the best hit,

1 investigations as well as this one, and coupling that with

2 the surveillance that we would see based upon when we were

3 out there and the meter hits served the pings that would

4 come in when we were viewing them. That's all.

5 Q. Okay. So it can depend on who the carrier is what

6 cell phone it hits --

7 A. There's a few different things.

8 Q. -- yes or no? Correct?

9 A. It could. I guess it could.

10 Q. Right. And it can depend on the traffic in the area

11 in terms of, if there's a lot of cell phone traffic -- if

12 I have T-Mobile, I may not hit a T-Mobile cell tower

13 because the traffic's too congested, so I may hit an AT&T

14 tower, correct?

15 A. That could happen.

16 Q. And that AT&T tower may not necessarily be as close

17 as that T-Mobile tower, correct?

18 A. Correct.

19 Q. Okay. And sometimes it's also based upon

20 obstructions. There's physical obstructions in the air,

21 on the roadway that can prevent a T-Mobile phone going to

22 the T-Mobile tower that may be closest. It may have to go

23 to another one depending upon what it picks up in the

24 airway, correct?

25 A. That's a possibility as well.

1 Q. And you never did any confirmation of any of the
2 actual hits in this instance, in this case with regards to
3 Mr. Santiago's pen register in terms of the determining --
4 you never physically found the phone and were able to
5 match that up with the location of the pen register data,
6 correct?
7 A. Not for Mr. Santiago's phone.
8 Q. Okay. And the instances that you talked about with
9 regard to trips to Reading --
10 A. Yeah.
11 Q. -- I think defense counsel -- cocounsel mentioned
12 four trips, but there were actually a total of five trips
13 to Reading that you talked about, whether they pertained
14 to Moss or Santiago, correct?
15 A. Yeah. Well, the four we talked about, yeah.
16 Q. Would there be -- 10/9, right?
17 A. The 9th, the 16th --
18 Q. Sixteenth, the 27th, the 28th, and the 11th; is that
19 right?
20 A. Well, I would count the 27th and 28th as one
21 instance. But, yes, if you want to count separate.
22 Q. Okay. But we're talking about five separate dates,
23 correct?
24 A. That's fine. Yep, five separate --
25 Q. The 9th, the 16th, the 27th, the 28th, and the 11th

1 of November, correct?
2 A. Yes, ma'am.
3 Q. All right. And the only day of those five days that
4 you have -- I'm sorry, the only two that you have any
5 information with regard to Mr. Santiago's historical cell
6 phone data is on October 28 and November 11; is that
7 correct?
8 A. That's what we have, yes.
9 Q. Okay. And with regard to 10/9, 10/16, 10/27, you
10 have no cell phone data indicating that Mr. Santiago was
11 anywhere near the Reading area, correct?
12 A. That we did, not that I'm aware of, no.
13 Q. And the same thing for those three dates: The 9th,
14 the 16th, the 27th, you have no physical surveillance of
15 Mr. Santiago in those areas, correct? In the area of
16 Reading, correct?
17 A. This the area of Reading.
18 Q. Okay. You have been -- you would tout yourself as a
19 drug expert. You've been qualified previously in the
20 state court and federal court, correct?
21 A. That's correct, ma'am.
22 Q. All right. And one of the things as a drug expert
23 that you do is testify regarding the difference between
24 personal use and distribution, correct?
25 A. Yes.

1 Q. Okay. And you obviously -- you're aware that there
2 was 1.6 grams recovered from Mr. Santiago's house on
3 December the 14th, correct?
4 A. That's correct.
5 Q. All right. And that 1.6 grams, aside from the other
6 information you know about this case, but that 1.6 grams
7 in and of itself would be indicative of personal use; is
8 that correct?
9 A. On any other day.
10 Q. Any other day. Aside -- putting aside all the other
11 information --
12 A. Take away the totality of circumstances, sure.
13 Q. Right. So if you just walked in on December 14 and
14 only recovered 1.6 grams from Mr. Santiago's home, not
15 having any of the other information that you supplied
16 here, you would indicate that that's personal use,
17 correct?
18 A. If that was the only thing? Then yes, if there was
19 nothing else to go along with it.
20 Q. Okay. And being a drug expert, you've dealt with
21 various types of drug organizations in different areas,
22 correct?
23 A. Yes, ma'am.
24 Q. All right. And is it fair to say that depending upon
25 the area, they use different terminology, but sometimes

1 they use overlapping terminology. Sometimes it's the
2 same, correct?
3 A. Yes.
4 Q. All right. And so some terminology can be very
5 specific and unique to a particular area, correct?
6 A. Yes.
7 Q. And --
8 A. I would say more a specific drug, as opposed to a
9 specific area, it could.
10 Q. Okay. So certain organizations or individuals, even,
11 use different terms for different drugs?
12 A. It could, yeah.
13 Q. Okay. And you've had situations where perhaps, I'm
14 sure you encountered the first time, a group of people or
15 an organization, if you will, use a term for a drug that
16 you're not familiar with?
17 A. I mean, not me specifically just because the main
18 amount of drugs that I've seen in this area are the
19 recurring ones.
20 Q. Okay. Well, not just -- I guess I should expand the
21 question. And not just drugs, but terminology that goes
22 along with drugs in terms of weights and that sort of
23 thing?
24 A. Well, there's new terms that come out every once in a
25 while.

Q. Okay. And I think you told us that -- and specifically in this case, that "plate" was something that was unique to these conversations that you heard in this case; is that correct?

A. For this group, yes.

Q. Okay. And so you, for the first time, never had experience with the word "plate" being used to describe quantities, correct?

A. I've never heard it on anything else, correct.

Q. Okay. And so you personally, along with your other investigating officers, I presume, had to come up with what you believed "plate" was equated with; is that right?

A. Well, when you tied it in with the totality of whatever was being discussed that day or --

Q. Sure. Based upon your experience and everything?

A. -- things like that.

Right. But, yes, when you start talking about like some of the discussions in here where "plate" comes into play, then yes.

Q. Okay. And at some point, you, as the lead investigator on this case, came up with the conclusion that "plate" equated with "pound"; is that correct?

A. Pounds, or potentially -- there was a point where it was kilos that were mentioned, but it wasn't brought in as kilos. It was plates.

Q. Okay. So "plates" had two --

A. It was only specific -- no. It was only specifically for the drug itself, which is the crystal meth, and that weight. And that was the term that was being used for it. It's just it was used in another portion where it was referred to as not a plate, but plates. But as far as that term itself, yeah, it was unique to just what you're saying.

Q. Okay. And in all your experience as a drug expert --

A. Yes, ma'am.

Q. -- you've never had to come across the word "plate" and equate it with the word "pound" before, correct?

A. I had not.

Q. Okay. Now, in terms of the lingo or the words that are used for the drugs themselves, we talked about the use of the word "ice" referring to "meth," correct?

A. Yes.

Q. And "ice" is slang for "meth," right?

A. That's correct.

Q. And you've come across that plenty of times prior to this investigation, I'm sure, right?

A. Yes.

Q. Okay. And when the word -- "ice" has a specific meaning under the law, would you agree with that, in terms of how it is codified in the quantities and the penalties,

would you agree with that?

A. I'd have to review it.

(Court reporter clarification.)

A. I'd have to review that before answering that, yes.

Q. Okay. Well, with regard to "ice" in the context of you interpreting it when it's being overheard in wiretaps, it's just simply a reference to meth, correct?

A. I haven't heard it used in any other drug other than crystal meth.

Q. Right. And it's not regarding the purity level of it or whether or not it's actual meth or anything like that, it's just referring to meth?

A. Crystal meth, yes.

Q. Okay. The wiretap in this case went up on October 1st; is that right?

A. I thought it was --

Q. I could be wrong.

A. I thought it was the end of September. Yeah, I thought it was the end of September.

Q. Okay. My notes say October 1st. I could be wrong. But it is -- the end of September, beginning of October?

A. Something like -- yeah, around that area.

Q. Okay. And the wire comes down, obviously, around the 12th or 13th, everything's busted, search warrant is executed on the 14th?

A. Yes, ma'am.

Q. Okay.

A. Well, it came -- it was done after the -- all the search warrants were executed, yes.

Q. And -- so it's about two and a half months --

A. Yes, ma'am.

Q. -- that the wire is up?

And you originally had the target of your investigation to be Mr. Moss, correct?

A. That's correct.

Q. And it only came through, you were listening to the wiretap, that you became aware of Mr. Santiago, correct?

A. Well, we knew of him ahead of time through other intel, other reports, other instances. Like, we knew that he was tied to Mr. Moss, it's just -- as far as his role, I guess you could say.

Q. Okay. So you --

A. That was undetermined at that point.

Q. So you didn't have any specifics on Mr. Santiago really until the wire went up, right?

A. Other than the fact he distributed drugs. Again, we didn't know what his role was with Mr. Moss.

Q. Okay. And you don't pick him up on the wire until -- I wrote it down here somewhere -- but it was, like, maybe two or three weeks into the beginning of wire, sometime in

October?

Second, third week of October, maybe?

A. I'd have to take a look at that. I don't know if I would say we didn't pick him up. Like, we didn't identify him. I would say there could have been stuff that preceded that as far as communications, it's just maybe not what his actual -- like identifying him as, okay, this is the person.

Q. Okay. And over the --

THE COURT: Can I just -- is there a good time to break?

MS. GRASSO: This is fine.

THE COURT: Are you sure?

MS. GRASSO: Yes, it's fine.

THE COURT: I don't want to interrupt. But can we go --

MS. GRASSO: I was trying not to go into a big area because I knew we were wrapping up.

THE COURT: We will go back on. So let's take an hour lunch break, okay? I've got to attend to another matter, but we'll plan on starting at 2:00. Thank you very much.

And then while you're on break, you can't talk about the substance of your testimony with the attorneys. All right. But enjoy the lunch.

could have been a sale, correct?

A. We never recovered any drugs, yeah. We didn't try to intervene on any type of sales or what we thought would have been a sale.

Q. Okay. And you never used a confidential source to purchase drugs from Santiago the way you did with Moss, correct?

A. That's correct.

Q. And you obviously have experience listening to wires and dealing with, you know, the lingo that drug dealers -- drug dealers use and, you know, the way that they talk to customers, the way that they talk to suppliers; is that fair?

A. Yes.

Q. Okay. And sometimes what they say isn't always true, correct?

A. I don't know, I mean...

Q. Well, in your experience.

A. Right.

Q. I mean, have you had situations where you're on a wiretap and a drug dealer says one thing or a drug buyer says one thing and it turns out that the other information --

(Court reporter clarification.)

Q. -- and the other information refutes that?

Okay. Thank you very much.

You may step down. I'm going to stay where I am.

(Whereupon, a recess is taken.)

THE COURT: Okay. Thank you.

MS. GRASSO: Thank you, Your Honor.

BY MS. GRASSO:

Q. I think when we took the break, we were talking about the beginning of the wire was end of September, beginning of October, right?

A. Yes.

Q. And wire's up for about two and a half months, correct?

A. Yes.

Q. And during the course of the wire, there isn't any surveillance that captures Mr. Santiago making any sales, correct?

A. I wouldn't say that. We didn't concentrate as heavy on Mr. Santiago as far as physically seeing him do sales. I wouldn't say that we didn't capture, that we didn't see something happen, but...

Q. Okay. You saw something you thought could be a sale, but you never recovered drugs, correct?

A. We didn't try to intervene on anything.

Q. So no drugs were ever recovered from what you thought

A. I would say that there is constant talk between whoever it may be and -- I wouldn't go as far as to say, like, they're not -- they're falsifying stuff.

But maybe if they say things and maybe they're not true necessarily later, or if it just got fabricated, or if it was something that got disrupted on what they were supposed to do.

I think it's a little convoluted, but --

Q. They embellish sometimes, correct?

A. Possibly.

Q. Okay. And as a drug dealer, sometimes they want to make it sound as if they have supply, when they may not even have -- in fact have that supply, correct?

A. I think it depends on who they're speaking with.

Q. Okay. And if it's a customer, they're going to want the customer to believe that they have whatever the customer may be seeking to buy?

A. With customers, yeah.

Q. Okay. And sometimes they'll say they have a supply that they don't actually really have; is that fair?

A. It's possible.

Q. Okay. Now, I think during the course of direct examination, some of the cross that you've already been through, you talked about conversations where "plates" are what you believe to be "pounds" through the word "plates"

1 were discussed, correct?

2 A. Yes.

3 Q. All right. And you've -- is it fair to say you've

4 listened to and read all the transcripts with regard to

5 this wiretap --

6 A. Yes.

7 Q. -- at some point in time?

8 A. Yes.

9 Q. Okay. And there are a fair amount of calls where the

10 reference to quantity is to zips or ounces or whatever

11 word they use, but it's a reference to ounces; is that

12 correct?

13 A. There was a lot of ounces, zips, yeah. A lot of

14 that, that did come up, yes.

15 Q. Okay. The investigation that started in the summer

16 of 2021 was using two confidential informants; is that

17 right?

18 A. That's correct.

19 Q. And those confidential informants did controlled buys

20 with Mr. Moss, correct?

21 A. That's correct.

22 Q. All right. And those -- and none of the confidential

23 informants did any controlled buys with Mr. Santiago,

24 correct?

25 A. That's correct.

1 Mr. Santiago, correct?

2 A. Yes.

3 Q. Okay. And Jesus Alfaro, he was a customer of

4 Mr. Moss', correct?

5 A. That's correct.

6 Q. All right. And Mr. Meadows was an associate or lived

7 by Tina at the Elm apartment, correct?

8 A. That is correct.

9 Q. All right. And his dealings were with Mr. Moss,

10 correct?

11 A. That -- yeah, that we know of.

12 Q. All right. And Ms. Chamberlain, Tina Chamberlain --

13 A. Uh-huh.

14 Q. -- you had indicated that she was the primary

15 location where drugs were stored, correct?

16 A. Not primary where they were stored. It was more

17 primary where a lot of transactions occurred there, but it

18 used to store as well.

19 Q. Okay.

20 A. Yeah.

21 Q. And fair to say, she was a junkie, she was an addict?

22 A. She was a heroin addict.

23 Q. Okay. And she -- you interviewed her after she was

24 arrested on December 14, correct?

25 A. That is correct.

1 Q. And those confidential -- or controlled buys, I

2 should say, they took place on the street; it's fair to

3 say, they didn't take place in front of or inside of any

4 of the residences that we've been discussing; is that

5 right?

6 A. Was this just -- this is just for the summer, right?

7 Q. Yes.

8 A. Before the wire?

9 They were --

10 Q. Before the wire goes up.

11 A. Right. They were in predetermined areas that were

12 not by a lot of these locations.

13 Q. Okay. And during your direct examination, I think

14 the Government went through, basically, a list of the

15 individuals that were, I guess, part of this, either

16 purchasers or suppliers or whatever you would have, and

17 one of them was Gerardo Rodriguez, correct?

18 A. Yes.

19 Q. All right. And he was a customer of Mr. Moss',

20 correct?

21 A. He wasn't a customer, no.

22 Q. He was a supplier?

23 A. He was an associate that was involved with heroin

24 distribution.

25 Q. Okay. And his dealings were with Mr. Moss, not

1 Q. All right. And --

2 A. Yeah, it was a while afterward, yes. It wasn't -- it

3 was -- we couldn't do it that day due to -- she was going

4 through withdrawal.

5 Q. Okay. And during the course of that interview, she

6 told you that she was only aware of ounce quantities being

7 sold in the residence, correct?

8 A. I don't remember exactly what the -- I'd have to take

9 a look at her interview again, if you have it.

10 But she said that there was both meth and heroin

11 being kept there at some point.

12 Q. Okay. But she didn't mention pounds, correct? Do

13 you remember that?

14 A. She -- from what I remember, but again, I'd have to

15 take a look at it. I don't think she touched on pounds.

16 I know she said that she was, kind of, not aware of the

17 full amount that was there, because it kind of was kept

18 from her. It was just -- her place was ultimately just

19 used for location purposes.

20 Q. Move on to another individual, but I will momentarily

21 probably bring you up her interview, if I can --

22 A. Okay. Yeah, that will be great. Thank you.

23 Q. -- and refresh your recollection, if I could, to the

24 ounce reference.

25 A. Yep.

1 Q. Now, Roland Lapointe, he lives on Bluefield, correct?

2 A. Mr. Lapointe, yes.

3 Q. Yeah, Lapointe.

4 And you indicated that was a place where both

5 Mr. Moss and Mr. Santiago, they would sometimes just

6 hangout there, correct?

7 A. Yeah. It was like a hangout, slash, they'd keep

8 stuff there at times, too.

9 Q. Okay. And the purposes of the hangout, as far as you

10 know, could have been for not illegal purposes, correct?

11 A. It could have been, yeah.

12 Q. Okay. And you have surveillance of Mr. Moss at

13 Mr. Lapointe's house, correct?

14 A. We surveilled him there, yes.

15 Q. Okay. But you had nothing with regard to

16 Mr. Santiago, correct?

17 A. No, we saw him go there too.

18 Q. Okay.

19 A. We saw him stop there, yes.

20 Q. All right. And the narcotics that were found in

21 Mr. Lapointe's house after the execution of search

22 warrants, that was found in a back room, correct?

23 A. It was a back room. It was kind of like a, I guess,

24 an extra guestroom, storage room, whatever he was deeming

25 it as.

1 he didn't know what was being kept there because he mainly

2 stayed in that front room.

3 Q. Okay. And you recall that -- I think you testified

4 on direct examination, and he told you this story in his

5 interview that the meth back there probably belonged to

6 Santiago; is that right?

7 A. That's what he said, yes.

8 Q. Okay. He used the word "probably," correct? He

9 didn't know because he doesn't go back in the room?

10 A. Again, I'd have to look again. I don't remember

11 exactly what he said. But the -- he just indicated that

12 it was Santiago's.

13 Q. Okay. And you accepted his word and that's how you

14 came to the conclusion, as you told us and the Court, that

15 that's -- that the meth there belonged to Santiago,

16 correct?

17 A. Well, it was also with the transcript that was read

18 with the -- what Santiago said about stuff getting moved

19 over to Roland's house.

20 Q. Based upon the transcript?

21 A. Correct, yes, ma'am.

22 Q. Okay. And Moss -- I'm sorry. Strike that.

23 Lapointe had told you that it was probably Santiago's

24 meth because Moss wasn't dealing with that anymore because

25 it was too hot.

1 Q. Okay. And you -- again, you interviewed -- post

2 arrest, you interviewed Mr. Lapointe, correct?

3 A. That's correct, yes.

4 Q. And it was a fairly lengthy interview, if you

5 remember, right?

6 A. Uh-huh.

7 Q. And he told you that he used the front room, and that

8 he didn't know what was in the back room, correct?

9 A. He said that, yes.

10 Q. And there were other people that -- besides Mr. Moss

11 and Mr. Santiago that would go to his house, correct?

12 A. There was another gentleman that was staying there,

13 yes.

14 Q. Okay. And they had other people that had slept over

15 at the house recent; meaning to the time of the execution

16 of the warrant, correct?

17 A. That, I don't know. We weren't constantly doing

18 surveillance on their house.

19 Q. Okay. But he told you that, in fact, people had

20 stayed over recently. Do you recall that from the

21 interview?

22 A. I have to look at it. Yeah, I'd have to look at it.

23 He -- I know he said that Mr. Moss and Santiago would

24 come to his house. They'd hangout. He knew they were

25 keeping stuff there. They'd primarily go to the back, but

1 Do you remember that?

2 A. It sounds familiar. Again, I'd like to take a look

3 at it before I fully give you a full commit, if you have

4 it.

5 Q. Okay. And if we could bring up Mr. Lapointe's

6 statement, which I believe is Government's Exhibit 4,

7 Page 4.

8 Are you there?

9 A. Yes, I'm there. Yep. Yes, ma'am.

10 Q. And it says, if you look -- your question, third line

11 down, "Okay. I'm asking whose meth it is."

12 And his answer was, "It's probably Jacob's," correct?

13 A. Let's see here.

14 Wait. I say, "Whose stash?"

15 He said, "Jacob. Jacob might have."

16 Q. Okay. Does that refresh your recollection that he

17 told you --

18 A. Yeah, that's what --

19 Q. -- it was probably Jacob?

20 A. If that's what he said -- well, he said, "Jacob might

21 have." But, yeah, he -- that's what he says, yes.

22 Q. Okay. And says --

23 A. He said, "Jacob might have."

24 Q. Do you disagree that it says, "It's probably

25 Jacob's"?

1 A. Up at the very top.
2 Q. Yeah.
3 A. I'm sorry. I was looking at -- halfway down, he
4 indicates it as well, as far as Jacob's, at the top. He
5 says, "It's probably Jacob's."
6 Q. Okay.
7 A. Jacob's, yeah.
8 Q. And if I can turn your attention to Page 18, at the
9 top.
10 A. Okay. Same section, right?
11 Q. Yeah. Same Exhibit 4.
12 A. Okay.
13 Q. And -- actually, if you turn to Page 17, at the very
14 bottom --
15 A. Yep.
16 Q. -- the question is:
17 "Question: Okay. So why you do you keep thinking that
18 the crystal meth is just going to Santiago?"
19 At the top of Page 18:
20 "Answer: From Mr. Lapointe, because I just -- because I
21 haven't -- Bleek told me he wasn't fucking with it no
22 more. It was too hot."
23 You asked him, "Too hot?"
24 And he said, "Too hot brings too much heat."
25 Do you remember that now?

1 A. Yep.
2 Q. And he's been a friend of Mr. Moss for years,
3 correct?
4 You know that?
5 A. I know that he's been with Mr. Moss, a friend of his.
6 Q. Okay. And contrary to what happened with
7 Mr. Lapointe, where you believe what he says with regard
8 to whose meth it is, Mr. Pankins, he told you that the
9 meth that he found in his house, which was 1.5 kilograms,
10 did not belong to Mr. Moss or Mr. Santiago, correct?
11 A. He said that it belonged to somebody that he was
12 holding it for.
13 Q. Okay. And you did not accept what he said as true,
14 but yet you accepted what Mr. Lapointe said was true,
15 correct?
16 A. We accepted his statement. I wouldn't say that we're
17 just saying that it's -- okay, that's true. That's --
18 Q. Okay. But you didn't accept Mr. Pankins' statement,
19 correct?
20 A. Well, at the end of day, we don't really accept
21 either statements because we're just basing it on what
22 they're saying because we already have the grand picture
23 of everything. We're just putting all the pieces
24 together --
25 Q. Okay.

1 A. Yes.
2 Q. Okay. And you knew that it wasn't true, that Moss
3 wasn't -- it wasn't true what Lapointe was saying, that
4 Moss wasn't dealing with meth, because in fact before this
5 interview took place, you actually had a confidential
6 source make a hand-to-hand transaction of meth with Moss,
7 correct?
8 A. That happened at the Elms.
9 Q. On November 13, correct?
10 A. Yes, yes.
11 Q. Prior to this interview, sometime after December 14,
12 correct?
13 A. Yes.
14 Q. Okay. And despite that, you accepted what
15 Mr. Lapointe told you to be true, or what he said was
16 probably true, that it was Santiago's correct?
17 A. I mean, that's what he stated. So that's what he
18 asked him. That was his answer.
19 Q. Okay. And -- so you base your conclusion that the
20 meth found in Lapointe's house was Santiago's, based upon
21 the conversation that you referred to earlier, the
22 transcript, and what Lapointe told you, correct?
23 A. When you couple those two together.
24 Q. Okay. And then we get to Tyrell Pankins, that you
25 were asked about earlier.

1 A. -- and interviews to confirm, you know, and take
2 statements and just pretty much, you know...
3 Q. Okay. So in your mind, you had already determined
4 that what's found at Pankins' house belongs to Moss and
5 Santiago, correct?
6 A. There was a strong possibility of it, yes.
7 Q. Okay. But yet you interviewed Pankins, so he tells
8 you that that's not the case, correct?
9 A. He says that he's holding it for somebody.
10 Q. Right. And he told you that he knew Moss for years,
11 correct?
12 A. He did.
13 Q. And he told you that they grew up together, correct?
14 A. I don't remember if he said they grew up together. I
15 know he's known him for a little bit.
16 Q. Okay. He considered him his best friend and his only
17 friend at some point, I believe, he said?
18 A. He did say that he -- that he doesn't have a lot of
19 friends. I remember that.
20 Q. Okay. And he smoked weed with Moss and Santiago,
21 correct?
22 A. Let me double-check here. I think he did say that
23 they were weed people. Marijuana people, I should say.
24 Q. All right. And this is Exhibit 5, if you want to
25 refer to his statement specifically.

1 A. Yep. Yep, I'm there right now. Yep.
 2 Q. And he said he didn't know about their drug dealings,
 3 correct? He didn't know what they were doing?
 4 A. That's what he said, yes.
 5 Q. Okay. And there's no calls between Santiago and
 6 Pankins at any point because you don't have a wire on
 7 Santiago's phone, correct?
 8 A. We did not.
 9 Q. Okay. And he said to you that -- with regard to
 10 whose -- when you asked him whose -- it belonged to, he
 11 said it belonged to a friend named Bass who lived in
 12 Maryland, right?
 13 A. He said it belonged to -- let me double-check the
 14 name. I know he did say it was somebody from Maryland
 15 that he was holding it for. Well, where in the transcript
 16 did you get that?
 17 Q. That would be page 11.
 18 A. Page 11, yep. Hold on a second.
 19 Okay.
 20 Q. Let's start at the bottom of Page 10.
 21 A. Okay.
 22 Q. It said -- if you, about three-quarters of the way
 23 down, Pankins says, "I was conspiring to, but I didn't. I
 24 can't get right with it. I couldn't. I couldn't get
 25 right with it. That's not really my thing. I stayed in

1 my lane."
 2 A. Yep.
 3 Q. And your -- Detective Miller's question was:
 4 "Who were you conspiring with?"
 5 He says, "Huh?"
 6 And Miller says, "You said you were conspiring to do
 7 it. Who were you conspiring with?"
 8 Pankins says, "When I say 'I was conspiring,' I mean
 9 I was thinking about doing -- you know what I'm saying?"
 10 Miller says, "Where did you get it from?"
 11 And he goes on further down -- or to the top of
 12 Page 11, he says, "From a friend's house."
 13 He's asked whose friend. He says he's locked up now.
 14 They call him Bass, right?
 15 A. Yes. I see that, yep.
 16 Q. Okay. And towards the middle of the page, he's even
 17 more specific. He says, "He's from Maryland, like, kind
 18 of Maryland. He got locked up over there for a charge or
 19 something like that. And I was told from another person
 20 that he stayed to come clean the house out. Go clean the
 21 house out, bring it to my house. And it's been sitting
 22 there."
 23 A. Gotcha. Yep.
 24 Q. And he's even more specific. He asked,
 25 Detective Miller, "Where's the house you cleaned out?"

1 And he says, "In Winding Brooks."
 2 A. Gotcha.
 3 Q. So very specific information from Mr. Pankins as to
 4 where that 1.5 kilograms of meth came from, correct?
 5 A. Right.
 6 Q. Based upon your investigation, you believe that there
 7 was a source of supply in Reading, correct?
 8 A. Yes.
 9 Q. Okay. And the source of supply was for meth, right?
 10 A. That's correct.
 11 Q. And there is -- correct me if I'm wrong, there's not
 12 one phone call where Santiago is talking to his source of
 13 supply; that, we know because he's not on the wire, right?
 14 A. Not on the wire.
 15 Q. All right. And -- but the same is true of Moss.
 16 He's on the wire, you're tapping his phone, and you don't
 17 have any calls that you would say are directly between
 18 Moss and his source of supply in Reading; is that correct?
 19 A. You're saying -- run it by me -- between and the
 20 source and supply in Reading?
 21 Q. Correct.
 22 A. Not between them, no.
 23 Q. Okay.
 24 THE COURT: Can you stop for a second?
 25 MS. GRASSO: Sure.

1 THE COURT: I want to make sure I understand
 2 what you meant when you said the source of supply is not
 3 on the wire.
 4 MS. GRASSO: Correct.
 5 THE COURT: You mean it's not an authorized
 6 interception --
 7 MS. GRASSO: Oh.
 8 THE COURT: -- you mean it was -- or do you
 9 mean --
 10 MS. GRASSO: I'm sorry.
 11 THE COURT: -- we don't have any phone calls?
 12 MS. GRASSO: No.
 13 THE COURT: Like, was there a limitation on the
 14 wire that precluded -- right?
 15 MS. GRASSO: I'll rephrase.
 16 THE COURT: No, no. I don't know you need to
 17 rephrase, but maybe just --
 18 MS. GRASSO: Flush it out.
 19 THE COURT: Flush that out.
 20 MS. GRASSO: Okay.
 21 BY MS. GRASSO:
 22 Q. I will ask a better question, I think.
 23 So when the wire was up from, say, the beginning of
 24 October through the middle of December --
 25 A. Yes.

1 Q. -- there is not any -- there are no calls that are
2 intercepted between Moss and an individual who you would
3 identify as a source of methamphetamine; is that correct?
4 A. No. I would say that's not correct.
5 Q. Okay. So who would that individual be, who you say
6 is the source of supply in Reading?
7 A. No. It has nothing to do with Reading. You're
8 asking if there was any conversation between Moss and a
9 source of supply for crystal meth.
10 Are you just talking about in Reading --
11 Q. I'm talking about the --
12 A. -- or other people he spoke to about being a source
13 of supply for him?
14 Q. Just in Reading.
15 A. Just in Reading.
16 Q. Yes.
17 A. Okay. In Reading, no.
18 Q. Okay. And the -- you believe at some point during
19 the interceptions between Moss and Pankins -- and I
20 believe it's a text message that you had an address as to
21 a location in Reading, correct, where there was a source
22 of supply?
23 A. Correct.
24 Q. Okay. And you've never identified an individual who
25 lived at that address, correct?

1 A. That's correct.
2 Q. All right. First off, there's no cell phone data
3 that connects Mr. Santiago with going to Reading on the
4 27th, correct?
5 A. Not that I saw, no.
6 Q. Okay. And the connection with Mr. Moss -- assuming
7 that, you basically believe that that's sufficient to say
8 that, okay, he was in Reading, right?
9 A. Run that by me again, I'm sorry. Because we saw him
10 that day.
11 Q. Yeah. Because of the surveillance, coupled with the
12 cell phone data, you believe Mr. Moss was in Reading that
13 day, correct?
14 A. That's correct.
15 Q. All right. But based upon everything else you know,
16 you have no idea what transpired in Reading on October 27,
17 correct?
18 A. We don't know what transpired.
19 Q. Okay. It could have been a money drop, it could have
20 been a pick up of products, it could have been somebody
21 was short, correct?
22 A. It could have been a variety of reasons, yes.
23 Q. Okay. He could have met up there to meet a woman,
24 correct?
25 A. I don't know.

1 A. We reached out to Reading, but that's a whole other
2 story. But as far as identifying an actual individual,
3 no.
4 Q. Okay. And you don't have anybody who could come in
5 here to say that they sold drugs to Mr. Moss, correct? Or
6 Mr. Santiago?
7 A. No.
8 Q. And there's never been any search warrants executed
9 on the specific address that Mr. Moss gave to Mr. Pankins
10 on that day through the text message, correct?
11 A. Up in Reading?
12 Q. In Reading.
13 A. Not to my knowledge, no.
14 Q. Okay. But yet, you believe that that's their source
15 of supply and that's where they obtained 10 pounds of
16 methamphetamine on October 28, correct?
17 A. That is correct.
18 Q. Okay. Now, there were -- you referred to it as one,
19 I think, but it's really two trips to Reading --
20 A. Yes.
21 Q. -- actually, the 27th and the 28th, correct?
22 A. Yes, ma'am.
23 Q. All right. And we talked about the 27th, and you
24 said that you don't know exactly what happened on the
25 27th?

1 Q. He could have met up -- went up there to meet a
2 friend, correct?
3 A. Maybe.
4 Q. Okay. And October 28, that is the -- one instance
5 where -- I'm sorry, the one of two instances where you
6 have some cell phone data with regard to Mr. Santiago,
7 correct?
8 A. On the 28th.
9 Q. In the area of Reading, correct?
10 A. Yes.
11 Q. All right. And, again, that's just a general
12 location based upon the cell phone information that you
13 have, correct?
14 A. From the historical raw, yes.
15 Q. And later that day, I believe, is when there's a
16 series of text messages from -- later that day, meaning
17 the 28th --
18 A. Yes.
19 Q. -- from Moss to potential customers; is that correct?
20 A. There were, yes.
21 Q. Okay. And I don't know how many there were in total.
22 Do you know?
23 A. There were a few. It looked like -- I mean, it's
24 definitely beyond, I'd say, like, five to ten, maybe.
25 Q. Okay.

1 A. But that's in here, at least.

2 Q. Okay. And I think that that was one of the things

3 that led to your conclusion that they did, in fact,

4 purchase -- the drugs were purchased on the October 28 in

5 Reading; is that right?

6 A. It would probably play into it.

7 Q. Okay. And is it fair to say that if drug dealers

8 have product for sale, they're going to put the word out

9 to multiple potential buyers, correct?

10 A. They would -- well, I mean, that kind of depends. I

11 mean, that's a dangerous play just with cell phone

12 technology and them knowing that we do cell dumps and look

13 at text messages, phone stuff, incoming/outgoings.

14 I mean, that's -- I would say that that's all the

15 time. But it's kind of brazen to put it out like that and

16 broadcast it.

17 Q. Well, they're going to put it out to people who've

18 maybe bought from them before or who they suspect are drug

19 users, correct?

20 A. I would say if they feel comfortable, but, yeah.

21 Q. All right. And not all of them are going to buy,

22 correct?

23 A. Not necessarily.

24 Q. Right. So you market to a lot of the people, but not

25 everybody is going to buy?

1 Q. November 13, I believe.

2 It's Exhibit 9, Page 6.

3 A. Yes, ma'am. Yep. I got it. Yes, it was 62 percent,

4 give or take 5 percent, for a total net weight of

5 213 grams, approximately.

6 Q. Okay. And I believe counsel brought up the fact that

7 there was a call, I believe it was November 8, between

8 Moss and Rodriguez where there was an indication that the

9 product was weak, the ice was weak.

10 Do you recall that?

11 A. Yes. The one that we went over, yes.

12 Q. Okay. That wasn't --

13 A. About it being sandy or had sand in it, yes, ma'am.

14 Q. Yes. Yes.

15 And that was not the only call in the course of

16 listening to this wire where there was some conversations

17 regarding the quality of the meth, correct?

18 A. Yeah. There were a few times where it was brought

19 up. Actually, Alfaro said something about it once.

20 Q. Okay. And there had been references to, like, "It's

21 got to be chunky," meaning that, chunky being the better?

22 A. Yeah. Usually with crystal meth, I mean, the shake

23 is just, like, kind of left over from the chunks. And

24 it's just a matter of how people sell it and how they

25 market it when they're doing that on the side as their own

1 A. Yeah. I actually think it's said in there. Like, he

2 said, you know, "If you know anybody that wants the ice,

3 here's what the price is per ounce." Like, he -- he

4 actually is directing the customers in his phone, or the

5 contacts in his phone to actually reach out to other

6 people and be like, "Hey, listen, I can get you

7 something."

8 Q. Moving on to November the 7th.

9 A. Okay.

10 Q. The context of those calls is basically Moss

11 believing that there's police surveillance in the area,

12 and he talks to Tina regarding moving it, correct?

13 A. Yeah. There was police surveillance in the area,

14 yes. Yes, that's correct.

15 Q. Okay. Right.

16 All right. And there's no interception of Moss in

17 that regard, correct -- I mean, there's no interception of

18 Santiago in that regard, correct?

19 A. Not during that whole transaction, no -- or that

20 whole event.

21 Q. On November 13, I think we touched on it before, but

22 that's the confidential source buys from Mr. Moss, and the

23 purity level of that is 62 percent, correct?

24 A. Yes. I believe it was. I think those were all 7 or

25 10 ounces. You said it was for the -- which date, ma'am?

1 enterprise, I guess, you could ultimately say.

2 Q. And in your experience, in -- as a drug expert --

3 A. Yes, ma'am.

4 Q. -- you've come across the fact that drug -- people

5 who sell drugs have different sources of supply, correct?

6 A. They can, yes.

7 Q. Okay. They can have different sources of supply in

8 different areas, correct?

9 A. They can, yes.

10 Q. So for example, there could be a source of supply in

11 Philadelphia; there could be two sources of supply in

12 Philadelphia, correct?

13 A. For?

14 Q. Different -- for meth, just in general.

15 A. Just in general?

16 Q. Yes.

17 A. Oh, in general, yeah.

18 Q. Okay. And that could be of any city. That could be

19 true of Reading as well, correct?

20 A. I mean, possibly, that's there.

21 Q. Right. And the individuals who are purchasing from a

22 supplier, they're not checking the levels of purity, per

23 se, correct?

24 A. Not necessarily.

25 Q. Right. The only way to know is necessarily sometimes

Riccobon - Redirect

1 it's the feedback that they may get from buyers, correct?

2 **A.** It's possible, yes.

3 **Q.** Okay. And would you agree that the purity level of

4 certain drugs, whether it's cocaine, heroin, meth, can

5 vary from one source of supply to the next, correct?

6 **A.** It can.

7 **Q.** Okay.

8 **MS. GRASSO:** Thank you. I have nothing else.

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

10 Any redirect?

11 **MS. MANDELBAUM:** Yes, Your Honor.

12 REDIRECT EXAMINATION

13 **BY MS. MANDELBAUM:**

14 **Q.** I just have a bit for you, Officer Riccobon.

15 During Mr. Breslin's cross-examination, he was asking

16 you about the distance between Mr. Pankins' apartment and

17 Christiana Mall.

18 Do you recall that?

19 **A.** Yes.

20 **Q.** Did you ever observe Mr. Moss at Mr. Pankins'

21 apartment?

22 **A.** Yes.

23 **Q.** Did you ever observe Mr. Moss as Mr. Pankins'

24 apartment when you received ping data from his cell phone?

25 **A.** Yes.

Riccobon - Redirect

1 **BY MS. MANDELBAUM:**

2 **Q.** Are you aware during this investigation whether

3 Mr. Moss had a valid driver's license?

4 **A.** He did not.

5 **Q.** Were you aware whether he was on any sort of

6 supervision or probation?

7 **A.** He was on probation at the time.

8 **Q.** What, if any, measures did he take that you observed

9 when he was driving with drugs in the car, that were

10 different from when he was driving without drugs in the

11 car?

12 **A.** It was different.

13 **Q.** Did he drive differently or do anything differently

14 when he had drugs with him?

15 **A.** It was -- well, I can say it wasn't often that he was

16 driving with drugs. Again, that's a -- with higher

17 quantity, that's a higher risk to take especially with

18 their daily -- the driving habits of these guys. But as

19 anybody, when they have something bad in the car, they're

20 going to be a little bit more of a law-abiding citizen as

21 far as traffic laws go, I guess you can say.

22 **Q.** So when you said he didn't frequently drive with

23 large quantities of drugs in the car, are you saying that

24 when he was transporting large quantities of drugs, he

25 went directly from point A to point B?

Riccobon - Redirect

1 **Q.** And where did those pings appear when you physically

2 surveilled Mr. Moss and got the ping data at the same

3 time, when he was at Mr. Pankins' apartment?

4 **A.** So they were right in that general area where it

5 would mark it on both maps, I mean, right there. And we

6 have one as low as, I think it was 1.6 meters.

7 **Q.** And was it consistent with the ping data that we saw

8 in Exhibit 10G, on November 11, after they returned from

9 Reading?

10 **A.** Just a second.

11 Yes.

12 **Q.** Was it also consistent with the ping data that we saw

13 in Exhibit 10E, as in Edward, on November 7, after he --

14 you testified he met with Mr. Meadow?

15 **A.** Yes. And if you -- like I said before, if you notice

16 on that exhibit, where the actual plot points are, they're

17 not right on top of each other.

18 So that's what I mean as far as when those meter hits

19 happen, it's not necessarily going to be exactly, but you

20 have a very idea the area that that person is within, or

21 that device -- that device, I should say, is within

22 because of the consistency of where those are going to

23 actually hit.

24 **MS. MANDELBAUM:** Thank you, Ms. Dorfman.

25

Riccobon - Redirect

1 **A.** Yeah. I mean, majority of the time. And that's -- I

2 mean, that's a common thing with a lot of people who

3 participate in this type of business.

4 **Q.** You testified earlier that Mr. Moss did not have any

5 keys on him to these various stash houses when he was

6 arrested, correct?

7 **A.** Correct.

8 **Q.** During the course of the investigation, were you able

9 to determine how he got into what you testified was a

10 stash house at the Elms apartments?

11 **A.** Ms. Chamberlain was there.

12 **Q.** And -- so how would he get in?

13 **A.** She would usually let him in. He let her know that

14 he was there, and he would come up, and she'd let him in.

15 **Q.** What about Mr. Lapointe's house, were you able to

16 determine how he got into Mr. Lapointe's house during the

17 course of the wire?

18 **A.** Same thing. He would give a call ahead of time, say,

19 you know, "I'm outside." I believe the term always was

20 "I'm outside, fat boy." A lot of calls had that.

21 And he would just let them know, "Hey, I'm outside.

22 Let me in."

23 **Q.** What about Mr. Pankins' house, do you know how he got

24 inside Mr. Pankins' over the course of the wire?

25 **A.** That, I don't know. Just had limited conversations.

1 Q. Do you recall the exact details of the first call
2 between Mr. Moss and Mr. Santiago that was picked up on
3 the wire?

4 A. No.

5 Q. If I showed you line sheets between Mr. Moss and
6 Mr. Santiago, would that refresh your recollection?

7 A. Yes.

8 MS. MANDELBAUM: Your Honor, may I approach the
9 witness?

10 THE COURT: Sure.

11 BY MS. MANDELBAUM:

12 Q. Officer, take a look at the binder and any
13 information in there. And if it refreshes your
14 recollection, just look up, and let me know.

15 A. Okay.

16 Q. Officer Riccobon, what was the date of the first
17 communication that -- between Mr. Moss and Mr. Santiago on
18 the wire?

19 A. It was on -- actually, this one -- looks like the
20 2nd, October 2nd.

21 Q. Is that the first communication generally or the
22 first substantive communication?

23 A. That has the first substance from it.

24 Q. When is the first time Mr. Santiago --

25 A. The first time was on the 30th, September 30 of 2021.

1 previous unrelated cases, we knew that he was involved
2 with the distribution of illegal drugs. And we knew that
3 some way, somehow had a connection with Mr. Moss.

4 Q. Ms. Grasso asked you about the interview you did of
5 Mr. Lapointe.

6 Do you remember that?

7 A. Yes.

8 Q. And what Mr. Lapointe -- or why Mr. Lapointe believed
9 that the methamphetamine was Mr. Santiago's, right?

10 A. Yes.

11 Q. Did Mr. Lapointe tell you anything else or any other
12 reasons he believed that the methamphetamine in that back
13 room was Mr. Santiago's?

14 A. Can I review his thing real quick?

15 Q. Yes. I might point you towards Exhibit 4, Page 12.

16 A. Yeah, that was when he covered that, I guess, when
17 Mr. Santiago stopped over the night before we executed the
18 search warrant.

19 Q. And what did he do? What did Mr. Lapointe tell you
20 he did when he stopped over?

21 A. He just ultimately said that -- he said, "Jacob
22 stopped over last night." Now, "last night" meaning that
23 that would be -- we did this interview in the afternoon,
24 so -- of the day we did the search warrant. So it was the
25 night before.

1 Actually -- yes, September 30. Yep.

2 Q. What session number is that?

3 A. What's that?

4 Q. What session number was that first communication on
5 September 30?

6 A. That is going to be Session Number 5. Session --
7 Session 9, Session 10, just no substance came through with
8 the initial. There was a little bit of a delay when the
9 actual line goes up between when we start getting actual
10 content coming through. But there was a communication
11 between that phone, it's just no content came through.

12 The first one where content comes through -- yeah,
13 it's on the -- yeah, the 30th is the first one. But then
14 content comes through on the second.

15 So I believe we had a little bit of hiccup as far as
16 the lines going up, which is not uncommon.

17 Q. Is it fair to say based on your prior testimony that
18 Session Number 9 would be the ninth time any communication
19 came in through the wire?

20 A. Yes.

21 Q. There were only eight communications prior to that?

22 A. Yes.

23 Q. What did you know about Mr. Santiago before going up
24 on the wire, if anything?

25 A. Just through previous investigations, through

1 I said, "Stopped over. Okay. And what was the
2 substance of that visit?"

3 He said, "Nah, I don't know. He just went to the
4 back room and" --

5 And I said, "Is that it?"

6 And he replied back, "Yeah, he came back. He was
7 all, like, all right. He was supposed to give me some
8 dope, but he didn't."

9 Q. Thank you.

10 Mr. Grasso also discussed your interview with
11 Mr. Pankins.

12 Do you remember that?

13 A. Yes.

14 Q. And she asked you about how Mr. Pankins said that
15 the -- he was holding the meth for someone he called Bass
16 down in Maryland.

17 Do you remember that?

18 A. Yes, I do.

19 Q. Was that -- during the interview, was that the first
20 person who Mr. Pankins said he was holding the meth for?

21 A. Double-check.

22 Q. Exhibit 5, Page 4.

23 A. I don't see any other name.

24 Q. Do you recall him saying that "I had that stuff
25 because a friend of his got caught with some shit. You

know what I'm saying?"

A. Yes. But that was -- yes, that was the other person I was talking about.

Q. So further up in the interview -- and if you don't recall this happening, just let me know -- you're talking about doing business with people you call Bleek and Jake.

Do you see that?

A. Yes.

Q. And what does he respond?

A. He said, "I got my own shit right. You know what I'm saying?" And he ultimately indicates that they're just people he hangs out with and, as Ms. Grasso said, smokes weed together with.

Q. And then directly after that, when he says, "I'm telling the truth."

He then says, "They got their shit going on. Because I don't sell any of that stuff."

A. Right. "I have that stuff because a friend got caught with some shit. You know what I'm saying?"

Q. A friend of his got caught?

A. Yeah.

Q. Some other shit?

A. Yeah.

Q. And who were you talking about immediately prior to that statement?

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has finished testifying, we don't plan to recall him because he was a co-case agent, I'd ask that he be able to remain -- I'd ask that he be excused.

THE COURT: Any objection?

MR. BRESLIN: No objection, Your Honor.

MS. GRASSO: No objection, Your Honor.

THE COURT: All right. Thank you. You may be excused.

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Jerwon J-E-R-W-O-N, Bethel B-E-T-H-E-L, special agent.

JERWON BETHEL, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

DIRECT EXAMINATION

BY MR. IBRAHIM:

Q. Good afternoon, Special Agent Bethel.

A. Good afternoon.

Q. Where do you work?

A. DEA.

Q. And how long have you been a special agent at the DEA?

A. Since September of 2019.

A. We were just discussing what his connections were with Mr. Moss and Mr. Santiago.

MS. MANDELBAUM: One moment, Your Honor.

I have no further questions, Your Honor.

THE COURT: All right. Thank you.

You may step down.

Next witness.

MR. IBRAHIM: Your Honor, the Government calls Special Agent Jerwon Bethel.

THE COURT: Actually, Ms. Mandelbaum, why did you ask the officer about the initial calls on the wire and bring up the point about that it wasn't until the ninth call that Santiago and the two defendants connected?

MS. MANDELBAUM: Ms. Grasso had mentioned, during her cross-examination -- was asking Officer Riccobon about the first time they had conversations on the wire and whether he'd heard about Mr. Santiago prior to the wire and implied that they didn't actually begin talking until a few weeks when we began interceptions. When in reality, the first time Mr. Santiago and Moss connected was actually just the ninth call on the wire, on the first day the wire went up, was my point there.

THE COURT: Okay.

MS. MANDELBAUM: And because Officer Riccobon

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Q. Okay. And what location of the DEA do you work at?

A. Wilmington resident office.

Q. Okay. And how long have you worked at the Wilmington resident office?

A. For about a year and a half.

Q. Where did you work before that?

A. Philadelphia.

Q. Okay. And before you were a DEA special agent, what did you do?

A. I was a police officer, Anne Arundel County, Maryland for seven years, where I was also on a drug unit.

Q. Between your time as a DEA agent and also your time in Anne Arundel County, did you have experience in drug investigations?

A. Yes, I do.

Q. How about experience in wiretap investigations?

A. Yes.

Q. And experience -- do you have experience in the nomenclature of the drug trade?

A. Yes, I do.

Q. How about the means and methods of drug trafficking in general?

A. Yes.

Q. Okay. And can you tell the Court a little bit about the training you go through to become a DEA special agent?

1 A. The training is about four, five months long in
 2 Quantico, Virginia, right on the campus with the FBI.
 3 We do various trainings such as drug trafficking
 4 habits; surveillance techniques; interview interrogations;
 5 drug nomenclature; learning how to do wiretap
 6 investigations; learning to do physical and electronic
 7 surveillance, whether it be trackers on vehicles, phones.
 8 Various drug investigations.
 9 Q. Are you familiar with the investigation into
 10 Malik Moss?
 11 A. Yes.
 12 Q. How are you familiar with it?
 13 A. I was the co-case agent on that case.
 14 Q. And as part of your duties as co-case agent, what did
 15 you do?
 16 A. We swore the affidavits, directed surveillance,
 17 studied line sheets, made --
 18 Q. Do you listen to audio -- telephone calls that were
 19 intercepted?
 20 A. Yes.
 21 Q. Who are you familiar with who Jesus Alfaro is?
 22 A. Yes, I am.
 23 Q. And just generally, who is he?
 24 A. He was one of the main meth buyers from Malik Moss.
 25 Q. And when you use the term "main," what do you mean by

1 that?
 2 A. He was the most frequent caller that would -- he
 3 would talk to in reference to the sale or purchase of
 4 methamphetamine.
 5 Q. Do you know what Jesus Alfaro's voice sounds like?
 6 A. Yes, I do.
 7 Q. Do you know what his phone number is?
 8 A. Yes, I do.
 9 Q. Okay. And how do you know those things, both what
 10 his voice sounds like and what his phone number is?
 11 A. On a daily basis, he would call in, so you would hear
 12 those calls. When a call comes in, it shows the number
 13 it's being contacted, the target line.
 14 Also, you get familiar with hearing the voice,
 15 associating a voice with the name. And then you, also,
 16 would run a subscriber information which would say who
 17 that phone belonged to or what name it was in.
 18 Q. Do you know if Mr. Alfaro, when he was arrested,
 19 whether he had the phone that you attribute to him with
 20 him?
 21 A. Yes, he did.
 22 Q. Okay. Have you listened to audio calls between
 23 Mr. Moss and Mr. Alfaro?
 24 A. Yes, I have.
 25 Q. Have you reviewed line sheets transcribing those

1 calls?
 2 A. Yes, I have.
 3 Q. Have you reviewed text messages between those same
 4 two people?
 5 A. Yes, I have.
 6 Q. Okay. Now, I want to draw your attention to
 7 Exhibit 7A, please.
 8 Okay. And am I just right, generally, that this is a
 9 text message conversation between Mr. Alfaro and Mr. Moss
 10 from October 2, 2021?
 11 A. Yes.
 12 Q. Okay. And if you could just take a minute to read
 13 through the conversation, and I'm just going to ask you
 14 some questions about it. You can just look up when you're
 15 ready.
 16 A. Okay.
 17 Q. I want to draw your attention to the bottom of the
 18 page, the last message, looks like, from Mr. Moss to
 19 Mr. Alfaro. It says, "Aight. Got you QP."
 20 Do you see that?
 21 A. Yes.
 22 Q. Do you know what that refers to?
 23 A. "QP," through this investigation, we found out to be
 24 abbreviated form of -- to symbolize quarter pound.
 25 Q. And quarter pound, is that about 4 ounces?

1 A. Yes.
 2 Q. Or I should say, is that exactly 4 ounces?
 3 A. Yes.
 4 Q. Okay. Then, if you go to the next page, please, it
 5 starts with a message, "Yeah, bro, what's the math?"
 6 Do you see that?
 7 A. Yes.
 8 Q. Okay. And from that message from Mr. Alfaro down to
 9 statement, "Good shit. Get that chunky shit. LOL," could
 10 you tell the Court what's happening in the conversation?
 11 A. So this is a conversation between Mr. Alfaro and
 12 Mr. Moss. Him -- Mr. Alfaro asking what the math, meaning
 13 the price. And in blue, that's Mr. Moss. He replies,
 14 "Same."
 15 Mr. Alfaro says "18" for \$1,800.
 16 Mr. Moss says, "Yeah."
 17 And then Mr. Alfaro asks, "Good shit. Get that
 18 chunky shit. Laugh out loud," which through the
 19 investigation that to mean -- "chunky," meaning the
 20 consistency of the meth as far as the quality. And...
 21 THE COURT: Is "chunky" good or bad?
 22 THE WITNESS: Good. It's a higher quality.
 23 BY MR. IBRAHIM:
 24 Q. Okay. And then on the next page, there's a statement
 25 from Mr. Moss there that says, "Meet in Elms."

1 Do you see that?

2 A. Yes.

3 Q. Are you familiar with what that means?

4 A. Yes.

5 Q. What does that mean?

6 A. The Elms was an apartment complex that Ms. Christina Chamberlain resided at, that Mr. Moss and Mr. Santiago used as a stash house, as well as meeting location when they would do drug deals.

7 Q. So is Mr. Moss directing Mr. Alfaro to do something specific?

8 A. Yes.

9 Q. And what is that?

10 A. Meet him at that location to purchase the QP that he asked for.

11 Q. Okay. And did you have occasion to interview Jesus Alfaro about this conversation?

12 A. Yes.

13 Q. Okay. Did he make any statements that bear on your conclusions about this conversation?

14 A. Yes. He was asked about every date, every encounter, and he confirmed, himself, that QP did mean quarter pound, and that he, in fact, on this date and time, did purchase that quarter pound of meth.

15 Q. Okay. I want to draw your attention to Exhibit 7C,

1 please.

2 Okay. And I'm looking on Page 2 here.

3 Is this a conversation -- text message conversation between Jesus Alfaro and Malik Moss from October 15, 2021?

4 A. Yes, it is.

5 Q. Okay. And based on your training and experience and knowledge of the investigation, do you know what this text message conversation relates to?

6 A. Yes. Again, if you -- the third line, "You got that chunky shit," that's coming from Mr. Alfaro to Mr. Moss.

7 He replies, "Yeah."

8 And he says, "I'm going to hit you around five. Getting shit together."

9 And then after that, Mr. Moss says, "Let me know how much you need."

10 Mr. Alfaro asks for a QP again, which is a quarter pound.

11 Q. Okay. After Mr. Alfaro asks for a quarter pound, does Mr. Moss respond to that message?

12 Let me ask a different question. Does he immediately respond to that message?

13 A. No, he doesn't.

14 Q. Okay. And does Mr. Alfaro, in fact, send two other messages?

15 A. Yes, he does.

1 Q. Okay. At that point, what happens on the wire?

2 A. A phone call comes in from Mr. Alfaro to Mr. Moss.

3 Q. Okay. And if you could turn to Page 8 of the same exhibit, please. Just go to Page 8.

4 And I'm showing you what is marked as Session 5348 from that same day, October 15, 2021.

5 Is that that phone call that you just mentioned came through?

6 A. Yes, it is.

7 Q. Okay. All right. And I want to draw your attention to Mr. Moss' statement, "Bro, it ain't looking like it's going to happen until tomorrow, bro."

8 Do you see that?

9 A. Yes.

10 Q. And then Mr. Alfaro says -- excuse me, Mr. Moss says, "But listen, I got an ounce. That's it. I'll keep it real with you. You want that to hold you over or whatever?"

11 Can you tell the Court what's happening in this call?

12 A. Mr. Moss is explaining to Mr. Alfaro that he doesn't have the quarter pound that he asked for.

13 He states, I only have an ounce, and he's offering that to him just to hold him over until he gets the rest of the quantity that he requested.

14 Q. Does Mr. Alfaro take him up on that offer?

1 A. No, he doesn't.

2 Q. What does Mr. Alfaro say, generally?

3 A. "Nah, you good, you good. I just want -- yeah, I mean, tomorrow is good then. I'm just making sure you're good."

4 Q. Okay. So is your testimony that Mr. Alfaro declines the invitation to pick up the ounce?

5 A. Yes.

6 Q. Okay. So if you could turn back now to Page 3 of that same exhibit, back to where we were before the call came through.

7 Okay. So now I'm drawing your attention to October 16th, the next day, and there's an 11:36 a.m. message from Mr. Alfaro to Mr. Moss that says, "YIZZO."

8 And then Mr. Moss responds, "Grabbing now chew. Got you."

9 Do you see that?

10 A. Yes.

11 Q. What does that mean?

12 A. "Grabbing now" means he's just grabbing the product that he requested, the drugs that he requested.

13 Q. Okay. And if you could turn to the next page, which is Page 4.

14 Is there any indication on this page about drug identity and weight that's being discussed?

1 A. Yes, it is.

2 Q. Okay. Could you tell the Court what that is, please?

3 A. Mr. Alfaro sends a message, 14:31, states, "I need

4 the QP, chunky shit, bro."

5 And Mr. Moss confirms, "You already know. Got you."

6 Q. Okay. And I want to, then, draw your attention to

7 next page, please, Page 5.

8 Is a location discussed on Page 5?

9 A. Yes.

10 Q. Okay. And what is that location?

11 A. Mr. Moss texts the Elms.

12 Q. Based on this conversation, did law enforcement

13 engage in any surveillance of Mr. Alfaro and/or Mr. Moss?

14 A. Yes, we did.

15 Q. Okay. And what did law enforcement surveillance see?

16 A. Physical surveillance. We saw Mr. Alfaro pull into

17 the apartment complex of the Elms, approach the apartment

18 building, and then we also seen him come out of the

19 apartment building and leave the complex.

20 Q. Now, you were here when Officer Riccobon testified.

21 Do you recall him testifying about what Mr. Moss, his

22 general whereabouts were on October 16, 2021?

23 A. Yes.

24 Q. And what were those general whereabouts?

25 A. I believe he was frightened that he might have seen a

1 A. In that general vicinity or area.

2 Q. Okay. After he already had traveled, Mr. Moss?

3 A. Yes.

4 Q. Okay. All right. Now, are you aware whether or not

5 Mr. Alfaro and Mr. Moss actually met that evening?

6 A. Yes. They did meet that evening.

7 Q. And how do you know that?

8 A. Again, Mr. Alfaro explained to us on that date and

9 time that he did meet up with Mr. Moss. And he, in fact,

10 did purchase the quarter pound that was requested.

11 Q. Okay. Thank you.

12 All right. Now, I'd like to draw your attention to

13 Exhibit 7F, please.

14 Okay. Is this a line sheet of a text message

15 conversation between Mr. Alfaro and Mr. Moss on

16 October 27, 2021?

17 A. Yes, it is.

18 Q. Okay. And I want to draw your attention to that

19 first message there. "How much for HP so I know when I

20 get back?"

21 Do you see that?

22 A. Yes.

23 Q. Do you know that message means?

24 A. Just like the "QP" was quarter pound, "HP" was short

25 for half pound.

1 police car or unmarked car.

2 Q. Let me draw your attention, if I can, to Exhibit 10B.

3 Do you know what this map shows?

4 A. Yes.

5 Q. What is it?

6 A. This is a map of ping data, or E911 data from

7 Mr. Moss' phone.

8 Q. Okay. And what does it generally show from that day?

9 A. It basically shows a route of travel, starting from

10 October 16 at 12:12 p.m. in Wilmington, and then going all

11 the way up to Reading at 2:47, and then coming back down,

12 in red, on that same date.

13 Q. Okay. And I want to draw your attention to that

14 lowest red blur of October 16, 2021 at 4:19 p.m. through

15 5:06 p.m.

16 Do you see that?

17 A. Yes.

18 Q. Okay. So if we could go back now to Exhibit 6C. I

19 apologize to make you flip around like this -- excuse me,

20 7C. I apologize. 7C, Page 5.

21 So that text message I asked you about, where

22 Mr. Moss says "Elms" to Mr. Alfaro, is that -- where is

23 that in relation to the pings that you just -- time-wise,

24 at 4:42 p.m.? I believe that's when this message come

25 through.

1 Q. Okay. And what does Mr. Moss respond to that?

2 A. Thirty-five which -- which is \$3,500.

3 Q. \$3,500? Okay.

4 And then, what time is that message at, that he says

5 "35"?

6 A. 9:03.

7 Q. 9:03 a.m.? Okay.

8 Now, I want to draw your attention to a message at

9 9:12 a.m. where Mr. Moss then texts Mr. Alfaro and says,

10 "Bro, just give me 32 for half."

11 Do you see that?

12 A. Yes.

13 Q. Are you aware of anything that happened between

14 9:03 a.m. and 9:12 a.m., when Mr. Moss is sending these

15 two messages to Mr. Alfaro?

16 A. Yes. We had a phone call that Mr. Moss had during

17 that time frame with Mr. Santiago.

18 Q. Can I draw your attention to Exhibit 13, please.

19 MR. IBRAHIM: And, Ms. Dorfman, could we do

20 them side by side, if possible.

21 BY MR. IBRAHIM:

22 Q. Okay. So I am showing you Session 8794, which is

23 from October 27, 2021 at 9:10 a.m.

24 Do you see that?

25 A. Yes.

Q. Okay. And Mr. Moss says, "Bro, I got the trap. Half a plate for 35."

And Mr. Santiago responds, "Oh, shit. How you do that?"

Do you see that?

A. Yes.

Q. Could you tell the Court what that means, what that refers to?

A. "I got the trap," just basically, "trap" means sale or transaction. So he's explaining that he has a sale or transaction for a half plate -- which a plate is also another word for a pound -- for \$3,500.

Q. Now, how do you know that the term "plate" refers to a pound, as you just testified?

A. During the interview with Mr. Jesus Alfaro, we asked him about some of the terminology that was used in communication with him and Mr. Moss, and he stated that a "plate" did mean a pound.

Q. Okay. Now, I want to draw your attention to the second page of Exhibit 13, please. Up towards the top there, Mr. Santiago says, "I'd tell him 32."

Do you see that?

Top of Page 2 of Exhibit 13?

A. Oh, okay. Yes.

Q. And Mr. Moss says, "Yeah, 32, right."

Do you see that?

A. Yes.

Q. Okay. And then a couple -- Mr. Santiago, a couple messages down, says, "Just so he can feel comfortable. You feel me?"

Do you see that?

A. Yes.

Q. Okay. Now, what is -- during that conversation that Mr. Moss is having with Mr. Santiago, is Mr. Moss doing anything with Mr. Alfaro?

A. That's during the same time that he was texting him the price for -- about the half pound that he requested.

Q. Okay. So going back to Exhibit 6-F now, where Mr. Moss says to Mr. Alfaro, "Bro, just give me 32 for half" -- sorry, 7-F.

Does that line sheet that we just looked at affect your conclusion about what Mr. Moss is doing when he says to Mr. Alfaro, "Bro, just give me 32 for half"?

A. Yes. It's overlapping at the same time that the text message was sent out.

Q. Okay. So Mr. Moss and Mr. Santiago are actually talking when Mr. Alfaro receives that message about "just give me 32"?

A. Yes.

Q. Okay. Now, did Mr. Alfaro actually make a purchase

of half of a pound of methamphetamine from Mr. Moss this day?

A. No, he did not.

Q. And how do you know that?

A. He responds that after he's given a price, he says, "When I come back on the 9th, I will definitely grab."

But then when we spoke to him in the interview, he stated that he never purchased a half a pound.

Q. Okay. Did he mention going away for a little while?

A. Yes.

Q. Okay. All right. Now, I'd like to ask you: Have you generally reviewed Exhibit 7D, 7G, 7-H and 7I?

We can go through them. But do you recall reviewing them?

A. Yes.

Q. Okay. So if you go to 7D.

And is this generally -- is this a text message conversation again between Mr. Alfaro and Mr. Moss from October 21, 2021?

A. Yes, it is.

Q. Okay. And if you could go to 7G.

And is this a November 15 text message conversation between Mr. Alfaro and Mr. Moss again?

A. Yes.

Q. Okay. Then the third one, if you could go to 7-H.

And is this a text message conversation between Mr. Alfaro and Mr. Moss that takes place on November 27 and then goes into November 28?

A. Yes.

Q. Okay. And then, finally, Exhibit 7I.

And is Exhibit 7I a December 9th text conversation between Mr. Alfaro and Mr. Moss then -- that also includes a phone call between the two gentleman as well, on the last page?

A. Yes.

Q. Okay. All right. So since we just reviewed those four conversations, generally, from October 21st, November 15th, then November 27th to 28th, and then December 9th, I just want to ask you kind of general questions about them.

What, if anything, do these conversations relate to?

A. These conversations, all, are referring to a purchase for a quarter pound, and a QP is stated in all four of these transactions on these dates.

And all four of them, again, were asked by Mr. Alfaro on these dates and times, did a transaction actually occurred. And he told us that, yes, they did.

Q. Okay. So your testimony is that on all four of these dates, Mr. Alfaro bought methamphetamine from Mr. Moss?

A. Yes.

1 Q. Okay. And how much did he buy?

2 A. Quarter pound.

3 Q. And that's the same as saying 4 ounces; is that

4 right?

5 A. Yes.

6 Q. Okay. So those are four occasions we just discussed.

7 And then if you recall, I just asked you previously about

8 two other occasions where you testified that Mr. Alfaro,

9 in fact, bought methamphetamine from Mr. Moss.

10 Is that the -- so I believe that's six occasions.

11 Is that the total number of occasions that you're

12 aware of that Mr. Moss and Mr. Alfaro met to conduct a

13 deal during the wire interception period?

14 A. During the wire interception period, yes.

15 Q. Okay. And do you know whether Mr. Alfaro was buying

16 crystal methamphetamine from Mr. Moss before the wire

17 interception period?

18 A. Yes.

19 Q. And what is the answer to that?

20 A. Mr. Alfaro stated that he started buying smaller

21 quantities eight months prior and then he moved up to a

22 quarter pound, which he was buying that a lot more

23 frequently than the smaller quantities because he was

24 going through them so quickly.

25 MR. IBRAHIM: Thank you, Your Honor. I have no

1 loud.

2 BY MR. BRESLIN:

3 Q. Having reviewed the DEA 6, does that refresh your

4 recollection?

5 A. Yes.

6 Q. And is it correct that the first time you're speaking

7 with Mr. Alfaro is on June 26, 2022?

8 A. That's correct.

9 Q. Okay. Now, in relation to the -- one, two, three,

10 four, five -- six sales of methamphetamine, none of the

11 controlled substances that Mr. Alfaro allegedly purchased

12 was seized from Mr. Alfaro, correct?

13 A. Correct.

14 Q. And so no testing was done of that, correct?

15 A. Correct.

16 Q. And so there's no purity level -- there's no

17 determination of purity level?

18 A. Correct.

19 MR. BRESLIN: No further questions.

20 THE COURT: All right. Any other cross?

21 MS. GRASSO: I have no questions, Your Honor.

22 THE COURT: All right. You may step -- oh,

23 wait. Sorry.

24 Any redirect?

25 MR. IBRAHIM: No, Your Honor.

1 further questions.

2 THE COURT: All right. Any cross?

3 MR. BRESLIN: One moment, Your Honor.

4 Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. BRESLIN:

7 Q. Good afternoon, Special Agent Bethel. How are you?

8 A. Good afternoon.

9 Q. I only have a few questions for you.

10 During your direct examination you indicated that

11 there were purchases of methamphetamine from Mr. Moss by

12 Mr. Alfaro on October 6 -- or October 2, 16th, 21st, and

13 then November 15th, 29th, and December 9th; is that

14 correct?

15 A. That's correct.

16 Q. And each of those times, it was 4 ounces, correct?

17 A. Correct.

18 Q. Now, the first time you're speaking to Mr. Alfaro was

19 on June 26 of 2022, correct?

20 A. I'd have to look at that.

21 Q. If I showed you a DEA 6, would that help refresh your

22 recollection?

23 A. Yes.

24 MR. BRESLIN: May I approach, Your Honor?

25 THE COURT: Yes. Sorry. I didn't say it out

1 THE COURT: All right. You may step down.

2 Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Any other witnesses?

5 MR. IBRAHIM: No, Your Honor. The Government

6 doesn't have anymore.

7 THE COURT: Any witnesses from the defense?

8 MR. BRESLIN: Nothing, Your Honor.

9 MS. GRASSO: No, Your Honor.

10 THE COURT: All right. So why don't we just

11 walk through the quantity.

12 MR. IBRAHIM: Sure, Your Honor.

13 The quantity that we're alleging, the Court

14 should count --

15 THE COURT: Add it up. You know, I mean, to be

16 quite candid, I just want to make it as easy for me to lay

17 a record and for me to make a decision that's discernible

18 and understandable to folks.

19 MR. IBRAHIM: Right. Agreed, Your Honor.

20 So we have four sets of trips to Reading.

21 THE COURT: Right.

22 MR. IBRAHIM: And the defense is right when

23 they were cross-examining Officer Riccobon about what

24 happened during the first two trips.

25 The Government doesn't know. The Government

1 submits he was going to buy methamphetamine from his
2 supplier. The quantity, we don't have a good sense of,
3 Your Honor.

4 **THE COURT:** So let's do this. Let's just walk
5 through and maybe, if you want, start from what you think
6 is the clearest --

7 **MR. IBRAHIM:** Yes, Your Honor.

8 **THE COURT:** -- and then work backwards. I'll
9 give you an example. I mean, temporally, we could just
10 start with what we left off with, right?

11 We've got six times four, right?

12 **MR. IBRAHIM:** Yes. Absolutely.

13 **THE COURT:** We've got the statement of a
14 coconspirator. Now, granted, it's a hearsay statement,
15 but it's a statement against interest. And hearsay is
16 admissible.

17 And it's six times four, 24 ounces, right?

18 **MR. IBRAHIM:** Yes, Your Honor.

19 **THE COURT:** So that's an example. Let's walk
20 through it that way. All right?

21 **MR. IBRAHIM:** So, Your Honor, you know, that's
22 a pound and a half. What the Government's position is on
23 that pound and a half for Mr. Alfaro is the following: It
24 shows that, basically, every other week, Mr. Moss knows
25 that he's going to be selling a quarter pound to

1 certainly, there probably are -- based on how the
2 guidelines and the base offense levels work, a level 36,
3 10 pounds of methamphetamine -- if the Court concludes
4 that Mr. Moss bought 10 pounds of methamphetamine from
5 Reading on just that one trip --

6 **THE COURT:** And this is which trip?

7 **MR. IBRAHIM:** This is October 27th to 28th --

8 **THE COURT:** Right.

9 **MR. IBRAHIM:** -- because five days later, he
10 has a conversation with Mr. Rodriguez where he says, "I
11 just bought 10 pounds in Reading." And we can get into
12 that conversation more, of course.

13 **THE COURT:** Then what we will do is, in terms
14 of the quantity, we'll start with 10/27-28, 2021 trip.

15 **MR. IBRAHIM:** Right. Right.

16 **THE COURT:** All right? And you've got -- for
17 that, we've got 10 pounds --

18 **MR. IBRAHIM:** Correct.

19 **THE COURT:** -- of methamphetamine attributable
20 to which defendant?

21 **MR. IBRAHIM:** To both of the defendants. They
22 traveled together to buy it. They were buying together.

23 And then, of course, as the Court can see from
24 some of the line sheets, in fact, sharing customers: "Oh,
25 you have meth here, I have meth there. Will you -- can

1 Jesus Alfaro; he's got a customer locked and loaded every
2 other week buying a quarter pound of methamphetamine.

3 So Mr. Moss --

4 **THE COURT:** Every week or every other week?

5 **MR. IBRAHIM:** Every other week -- sorry -- over
6 the course. Six purchases over the three-month wire,
7 essentially, Your Honor, is about every other week, every
8 two weeks.

9 **THE COURT:** Okay.

10 **MR. IBRAHIM:** So from the Government's
11 perspective, the most effective use of that evidence is to
12 prove up the fact that Mr. Moss is buying sufficient
13 quantities from Reading to meet that demand for
14 Mr. Alfaro, as well as his other customers.

15 **THE COURT:** Okay.

16 **MR. IBRAHIM:** And so from the Government's
17 perspective, we have a 10-pound purchase in Reading -- and
18 that comes from Mr. Moss' mouth, as the Court heard today,
19 that he bought 10 pounds in Reading -- the Government
20 submits, that is a reasonable drug weight, it makes sense
21 based on the conversations that Mr. Moss had with
22 Mr. Santiago, it makes sense on the weights that -- based
23 on the weights that he was selling and based on the
24 weights that was seized -- from the Government's
25 perspective, whether there are other weights -- and

1 you go run this over there? I'll got run this over
2 there." You know.

3 **THE COURT:** Okay.

4 **MR. IBRAHIM:** They both have pled guilty to
5 being in a drug conspiracy with each other. So neither of
6 them -- none of that should be surprising.

7 **THE COURT:** All right. 10 pounds for that.
8 What else?

9 **MR. IBRAHIM:** Right. And then the issue there,
10 Your Honor, is the --

11 **THE COURT:** And you'd say that's corroborated
12 by the Alfaro statements? It's corroborated by the
13 defendant -- well, by one of the defendants' words.

14 **MR. IBRAHIM:** Yes. Well, by -- the Government
15 argues, again, by both of them, Your Honor, because of
16 that conversation from October 21.

17 **THE COURT:** We'll get to that. I was only
18 referring to the 10-pound conversation.

19 **MR. IBRAHIM:** Understood. Understood.

20 **THE COURT:** That the 10 pounds comes out of the
21 mouth of Mr. Moss.

22 **MR. IBRAHIM:** Right.

23 **THE COURT:** Right? Okay.

24 **MR. IBRAHIM:** With -- if I may interject.

25 **THE COURT:** Yeah, go ahead.

MR. IBRAHIM: In the lead-up to that trip to Reading, Your Honor, Mr. Santiago and Mr. Moss are talking. And as the Court probably recalls, there's this conversation about, "Do we buy five? Can we get five for 24, or do we have to get ten to the 24 price?"

THE COURT: No question. I just want to do it in an organized fashion.

MR. IBRAHIM: Right.

THE COURT: So you had referred, at the outset, to a clear indication of ten after the fact.

MR. IBRAHIM: Right. Yes.

THE COURT: And it's within a week, actually, of 10/28, I believe, is my recollection, correct?

MR. IBRAHIM: That's right, Your Honor.

THE COURT: Right? Okay.

MR. IBRAHIM: Yes.

THE COURT: And that, though, reference to ten comes solely out of the mouth of Mr. Moss.

MR. IBRAHIM: Yes, Your Honor.

THE COURT: All right. Then there's the conversation which proceeds the Reading -- alleged Reading trip, right -- I haven't made a final finding of fact, but -- of 10/27, slash, 28. And that, we've got clear conversation between both defendants about five, ten -- various weights and also prices.

MR. IBRAHIM: That's right.

THE COURT: Okay. What next?

MR. IBRAHIM: Okay. So just, Your Honor, if I can mention the purity issue here, because, of course, the purity levels affect the guidelines calculation.

THE COURT: Okay.

MR. IBRAHIM: So based on the multiple chemical analyses that the Court saw, the lowest purity level we've seen in this case is 62 percent. That was on a controlled buy where CI bought directly from Mr. Moss that 62 percent pure.

If, from the Government's perspective, the Court wants to be very conservative and assume a 62-percent purity across 10 pounds, that's fine with the Government, you know, in order to be conservative and make sure that, you know, the purity's -- since we don't have purities, a lot of this, this is based on conversation about drug purchases -- the Government would suggest just, you know, using a multiplier of 62 percent purity for that 10 pounds.

THE COURT: Okay.

MR. IBRAHIM: Just that is a base offense level 36, Your Honor.

THE COURT: So one trip?

MR. IBRAHIM: One trip of 10 pounds of

62 percent purity is a base offense level 36.

THE COURT: All right. Okay.

MR. IBRAHIM: On November 11, Your Honor, they go up to Reading again -- and that's, of course, based on electronic surveillance of the men. And then the next day, they have a phone call on November 12, where they're talking about plate --

THE COURT: When you say "they," now we're talking both codefendants that are at the table here?

MR. IBRAHIM: Correct. We are talking about Mr. Moss and Mr. Santiago having a conversation on November 12.

THE COURT: All right. And reference to amount here, spell that out --

MR. IBRAHIM: Yes, Your Honor.

-- if I could direct the Court to Exhibit 6B. And this was Page 16, please. So this is the next morning after they get back from Reading.

THE COURT: Right.

MR. IBRAHIM: Mr. Santiago says to Mr. Moss, "You know, I had a couple of pound traps, right?"

And then Mr. Santiago mentions -- states what the pound traps he has, the drug deals he had lined up. He says, "I've got three, plus that other one. So that's four. And then you've got one. That's five."

So from the Government's perspective, they are talking about the drug deals they have lined up after they just got back from Reading, Pennsylvania.

THE COURT: Okay. And they're ready to sell. They've got five deals for each for a pound.

MR. IBRAHIM: Exactly, Your Honor. From the Government's --

THE COURT: You know what you haven't adduced yet -- and I don't know that we need to have evidentiary on it though -- use of -- what's the amount of meth that somebody uses?

Maybe you did adduce it. I don't remember it. Was it brought up into evidence?

MR. IBRAHIM: It was discussed briefly with Ms. Grasso's cross-examination.

THE COURT: Besides that, though.

MR. IBRAHIM: Yeah.

THE COURT: And, actually, all I recall discussed with her was that 1.6 grams would be indicative of use.

MR. IBRAHIM: Right.

THE COURT: Right. So grams, 1.6 grams, how does that translate into ounces? I mean, maybe you did adduce evidence. I don't recall it.

MR. IBRAHIM: Right. And frankly, Your Honor,

1 I mean, truth be told, with the quantities that we're
2 talking about, they're so far away and above --

3 **THE COURT:** I know. The reason I'm trying to
4 understand it is, my recollection is a pound is not
5 personal use.

6 **MR. IBRAHIM:** Right.

7 **THE COURT:** In other words, the pound's going
8 to be broken up into an awful lot of other individuals.
9 He's selling to drug dealers.

10 **MR. IBRAHIM:** Right. Exactly.

11 **THE COURT:** He's not selling to individual
12 users.

13 **MR. IBRAHIM:** Exactly, Your Honor.

14 **THE COURT:** Yeah. Okay.

15 **MR. IBRAHIM:** And --

16 **THE COURT:** And I've just -- though, could
17 somebody maybe let me know, and then I'll give the defense
18 a chance, if they want to question what Mr. Ibrahim
19 says -- but, you know, it's been a while, I don't
20 remember.

21 What is the average packaging right now on the
22 street of crystal meth?

23 **MR. IBRAHIM:** You're right, Your Honor. I
24 apologize.

25 The Government just kind of assumed that -- a

1 pound is such a large quantity, that's obviously not
2 personal use, but we could have adduced it. You know, I
3 could -- of course, Special Agent Bethel is here.

4 **THE COURT:** I didn't mean it as a criticism.
5 Why don't you just proffer it. Just let me know.

6 **MR. IBRAHIM:** Yeah.

7 **THE COURT:** You know, when I was a prosecutor,
8 crystal meth was like, it's dangerous to be anywhere close
9 to it. It was being manufactured and put in big gallon
10 bottles. I don't know, it seems now chunky, for instance,
11 is a new thing. It's no longer within my brain. So just
12 proffer it and then let's see.

13 **MR. IBRAHIM:** Yeah.

14 **THE COURT:** I'm going to give Ms. Grasso and
15 Mr. Breslin a chance to challenge it. How's it packaged
16 and in what form is it used.

17 **MR. IBRAHIM:** So a pound is the traditional
18 methodology for packaging methamphetamine. Unlike,
19 basically, every other drug, Judge, where it's kilos,
20 methamphetamine's sold in pounds.

21 **THE COURT:** Right.

22 **MR. IBRAHIM:** And it's broken up into ounces
23 and then further in an eighth of an ounce.

24 **THE COURT:** Okay.

25 **MR. IBRAHIM:** In a full --

1 **THE COURT:** Typically, an eighth of an ounce.

2 **MR. IBRAHIM:** I would suggest, a good dividing
3 line is an eighth of an ounce.

4 **THE COURT:** Which in grams is what?

5 **MR. IBRAHIM:** Which would be one-eighth of
6 26 grams. So I believe that's like, maybe, few grams.

7 **THE COURT:** Three.

8 **MR. IBRAHIM:** Yes, Your Honor.

9 **THE COURT:** You guys, either Ms. Grasso or
10 Mr. Breslin, have any reason to challenge that, just,
11 background information?

12 **MS. GRASSO:** No, Your Honor.

13 **MR. BRESLIN:** No, Your Honor.

14 **THE COURT:** Okay. And it would be consistent
15 with what you adduced, Ms. Grasso, on your cross?

16 **MS. GRASSO:** Yes, Your Honor.

17 **THE COURT:** Okay. All right.

18 Go ahead, Mr. Ibrahim.

19 **MR. IBRAHIM:** So the very next day, we have --

20 **THE COURT:** Now we're talking November 12th.

21 **MR. IBRAHIM:** Yes.

22 **THE COURT:** We're talking about the phone call.

23 **MR. IBRAHIM:** Yes, just --

24 **THE COURT:** Yeah, I gotcha. All right. Go
25 ahead.

1 **MR. IBRAHIM:** That morning, they're talking
2 about traps lined up.

3 **THE COURT:** Right.

4 **MR. IBRAHIM:** And Mr. Santiago counts up
5 5 pounds' worth of drug deals that they have lined up.

6 **THE COURT:** Right.

7 **MR. IBRAHIM:** So, you know, we don't have a
8 call like Mr. Moss made the prior trip, where he just
9 makes it abundantly clear how much was purchased.

10 **THE COURT:** Right. Okay.

11 **MR. IBRAHIM:** But it's -- I think it's safe to
12 say that they purchased at least five pounds, Your Honor.

13 **THE COURT:** So you've got 15 pounds. All
14 right. What's next?

15 **MR. IBRAHIM:** That's -- then after that, we
16 talk about the amounts that were seized. That was the
17 last trip that Mr. Moss made to Reading. He only went
18 four times over the course of the wire.

19 **THE COURT:** Okay.

20 **MR. IBRAHIM:** After that, we're talking about
21 amounts seized. We're talking about, how on December 14,
22 3.4 pounds is seized from the home of Tyrell Pankins.

23 **THE COURT:** Okay.

24 **MR. IBRAHIM:** And in an effort to not double
25 count, the Government has kind of been separating the two

1 tracks of the supply side and the seizure side because
2 it's, of course, possible that the 3.4 pounds that's
3 seized from Mr. Pankins' house is part of whatever amount
4 they bought in Reading.

5 But that's 86 percent pure methamphetamine.

6 **THE COURT:** The last trip to Reading that you
7 have, you posit four -- or, really, five, depends on how
8 you want to count it, right?

9 **MR. IBRAHIM:** Right.

10 **THE COURT:** Okay. So, so far, in terms of
11 quantification, you've only discussed two trips: The
12 November 12th, and I'll call it, the October 28.

13 **MR. IBRAHIM:** That's right, Your Honor.

14 **THE COURT:** All right. Do you want to talk
15 about either of the other two trips?

16 **MR. IBRAHIM:** I mean, we have data points. We
17 know that Mr. Alfaro purchased 4 ounces of methamphetamine
18 on October 16, basically, right after Mr. Moss got back
19 from Reading.

20 And we know, based on the phone call with
21 Mr. Alfaro, Mr. Moss told him -- he was honest with him --
22 I'm only down 1 ounce, so -- tomorrow, right? And then
23 Mr. Moss goes to Reading, comes back tomorrow -- the next
24 day -- and sells him 4 ounces of methamphetamine.

25 So clearly, Mr. Moss went to Reading on the --

1 October 16 and purchased an unknown quantity of
2 methamphetamine.

3 **THE COURT:** And the sale to Alfaro was
4 consummated on the 17th; is that right?

5 **MR. IBRAHIM:** On the 16th. That night,
6 actually.

7 **THE COURT:** It was -- that's okay. All right.

8 **MR. IBRAHIM:** But --

9 **THE COURT:** And then, any other quantification
10 you want to point to with the trip, a specific trip?

11 **MR. IBRAHIM:** Well, I want to point to, you
12 know, in an effort to be fair, on October 28, that -- so
13 back to that October 28 trip -- Mr. Moss does something
14 very unusual for him. He starts texting methamphetamine
15 users that he knows of, in his phone, and offers them
16 ounces of methamphetamine for \$450 an ounce.

17 He hadn't done that for the October trip, the
18 prior October trips.

19 So from the Government's perspective, a fair
20 and reasonable inference to be made from that, is that
21 Mr. Moss bought more methamphetamine during that trip than
22 he necessarily had drug deals lined up. He was kind of
23 extending himself a little bit further to see if he could
24 sell more, so that's why he was sending out those
25 solicitations.

1 So I think that's a data point suggesting that
2 maybe on those prior trips to Reading, Mr. Moss wasn't
3 buying quite the quantity that he bought on
4 October 28th when he's, maybe, extending things a little
5 bit further, trying to see if he can make a little bit
6 more money.

7 **THE COURT:** Right.

8 **MR. IBRAHIM:** You know, the Government
9 concedes, the data points around the first two trips to
10 Reading, there aren't a lot of them. It's that third and
11 fourth trip to Reading, October 27, 28, that the
12 Government has a much better sense of how much
13 methamphetamine is being discussed.

14 And then, of course, that November 11 trip
15 when, the next day, they're talking about the drug deals
16 they have lined up with those drugs.

17 **THE COURT:** Okay. And the four trips just,
18 you're talking -- the first trip occurred on what date?

19 **MR. IBRAHIM:** I want to say October 9th,
20 Your Honor, but I can confirm.

21 Yeah, October 9th, Your Honor.

22 **THE COURT:** Got any specific numbers associated
23 with the October 9th trip?

24 **MR. IBRAHIM:** No, Your Honor.

25 **THE COURT:** Just so I'm clear, in terms of

1 quantification alone, that's directly tied to the -- a
2 particular trip that's to Reading. Now, I'm putting aside
3 general discussion on the wire and seizure evidence.

4 **MR. IBRAHIM:** Right. Okay.

5 **THE COURT:** Okay? You've got -- for the
6 10/9 trip, which is the first one, you don't have anything
7 specific.

8 **MR. IBRAHIM:** Correct.

9 **THE COURT:** For the 10/16 one, the specific,
10 I'll call it, contemporaneous evidence you have, is the
11 Alfaro "I bought 4 ounces."

12 **MR. IBRAHIM:** Yes.

13 **THE COURT:** Right? And 4 ounces would be a
14 quarter pound.

15 **MR. IBRAHIM:** Yes.

16 **THE COURT:** Okay. For the next trip, is the
17 10/28 trip. And there, you've got, Mr. Moss' own words,
18 about 10 pounds.

19 **MR. IBRAHIM:** Yes.

20 **THE COURT:** Very quickly after the trip,
21 coupled with calls that preceded the trip that talked
22 about quantities that would have -- five or more pounds.

23 **MR. IBRAHIM:** Yes.

24 **THE COURT:** For the fourth trip, which is
25 November 11, you've got a call between Mr. Santiago and

1 Mr. Moss, very quickly after the trip, discussing multiple
2 pound deals, at least five, arguably more because they're
3 looking for more. And then -- and that's it.

4 **MR. IBRAHIM:** Yes. That's correct, Your Honor.

5 **THE COURT:** All right. And if you added that
6 up, if you limited yourself to specific -- you want to add
7 something else?

8 **MR. IBRAHIM:** No, Your Honor. I just have the
9 math in front of me on a Post-It.

10 **THE COURT:** So then you'd have one quarter plus
11 ten -- you know, if you really wanted to be conservative,
12 you'd say five -- you'd have 15 and one-quarter pounds.

13 **MR. IBRAHIM:** Yes, Your Honor.

14 **THE COURT:** Okay.

15 **MR. IBRAHIM:** And, again --

16 **THE COURT:** All right. Now, that's just -- I
17 was limiting you in your presentation. So then, in
18 addition, you've got the seizure evidence.

19 **MR. IBRAHIM:** Yes, Your Honor.

20 **THE COURT:** So you've got the three quarters of
21 a pound from Pankins, right?

22 **MR. IBRAHIM:** From Pankins --

23 **THE COURT:** 3.4 pounds.

24 **MR. IBRAHIM:** 3.4 pounds, yes.

25 **THE COURT:** Right. Okay. Then, go ahead.

1 **THE COURT:** Right. The problem there is, as
2 you say, you're going to end up double counting what's
3 coming from Reading.

4 **MR. IBRAHIM:** Correct, Your Honor.

5 **THE COURT:** Okay.

6 **MR. IBRAHIM:** So that's why the Government
7 recommends a track of, either looking at the supply side
8 and sticking on the supply side, or looking at seizure
9 side and sticking on the seizure side, just to avoid
10 double counting.

11 **THE COURT:** Well, let's do this: If we did
12 15 pounds, 15-and-a-quarter pounds at 62 percent purity,
13 what do you get?

14 **MR. IBRAHIM:** I have 6,803 grams and a
15 62 percent purity -- I apologize, Your Honor.

16 **THE COURT:** No, don't apologize. There's no
17 need to apologize.

18 So 15 pounds and one quarter -- wait. Sorry.
19 15-and-one-quarter pounds is how many grams?

20 **MR. IBRAHIM:** That is 6,917 grams, Your Honor.

21 **THE COURT:** Okay. And then add a 62 percent
22 purity, comes out with what weight?

23 **MR. IBRAHIM:** 4,288 grams, Your Honor.

24 **THE COURT:** Okay. And that's a level?

25 **MR. IBRAHIM:** That's a Level 36, Your Honor.

1 **MR. IBRAHIM:** So we have the 3.4 pounds that
2 were seized from Tyrell Pankins. And that's 86 percent
3 pure, Your Honor. And then --

4 **THE COURT:** Your point there would be that --
5 so if you multiply that times the purity rate, all of a
6 sudden, we have a much bigger quantity.

7 **MR. IBRAHIM:** Yes, Your Honor.

8 **THE COURT:** Right.

9 **MR. IBRAHIM:** If the Court assumed a purity
10 rate of 86 percent across the board, we would have a much
11 higher number.

12 **THE COURT:** All right. Go ahead.

13 **MR. IBRAHIM:** And then we have the
14 almost-10 ounces that's seized from Roland Lapointe's
15 house. And that's 98 percent purity.

16 **THE COURT:** Right. And then 10-ounce, if I
17 convert it -- well, that's -- okay.

18 **MR. IBRAHIM:** I do have the conversion to
19 grams, Your Honor.

20 **THE COURT:** No, no, no. Aren't I better
21 sticking with -- no, I'm going to need grams, aren't I?

22 **MR. IBRAHIM:** Yes. And for the seizure
23 evidence, Your Honor, we actually have the chemical
24 analysis. So I can cite you down to a tenth of a gram,
25 the weight.

1 The cutoff is 4.5 kilograms of meth, actually. So it's
2 about 300 grams short.

3 **THE COURT:** The cutoff to go to a 37.

4 **MR. IBRAHIM:** To 38.

5 **THE COURT:** To go --

6 **MR. IBRAHIM:** Yes.

7 **THE COURT:** Right. All right.

8 All right. Now, if you do it -- that's from
9 the -- we'll call it, from the Reading side of the
10 equation.

11 **MR. IBRAHIM:** Yes.

12 **THE COURT:** If you do it from the seizure side,
13 you've got -- how would you do that?

14 **MR. IBRAHIM:** So --

15 **THE COURT:** You have Pankins, Lapointe, and...

16 **MR. IBRAHIM:** Yes. So we have 1549 grams at
17 86 percent purity, so it's already calculated. At
18 Exhibit 9, Page 7, it calculates it to 1332 grams of
19 pure --

20 **THE COURT:** Well, hold up.

21 **MR. IBRAHIM:** Yes, Your Honor. Ms. Dorfman can
22 make it bigger.

23 **THE COURT:** When you say it's already
24 calculated -- well, the purity's calculated in the
25 reports. But, wait, what's the -- you did a Sentencing

Guideline calculation?

MR. IBRAHIM: The DEA lab actually creates a calculation for the amount of pure meth that it would be based on the purity, so...

THE COURT: Oh, yeah, yeah. Okay. I see it.

MR. IBRAHIM: So we have -- I think that's about as accurate as it can get, Your Honor, 1332 grams of pure meth.

THE COURT: All right. So just add up the -- I want to go through the seizure. So the Pankins one, it was 1549 grams at 86 purity, equals what?

MR. IBRAHIM: 1332, Your Honor.

THE COURT: Okay.

Next is Lapointe.

MR. IBRAHIM: Yes. And that's 296 grams --

THE COURT: Yep.

MR. IBRAHIM: -- of 98 percent purity --

THE COURT: Yep.

MR. IBRAHIM: -- and so that's 290 grams of pure meth.

THE COURT: Okay. Anything else you want to --

MR. IBRAHIM: Not from the seizure side, Your Honor.

THE COURT: Okay. So that's a total of...

MR. IBRAHIM: 1622 grams.

MR. IBRAHIM: Right.

First of all, he doesn't go into the Elms, right. He comes from his house, helps Mr. Pankins drop his car off for Mr. Pankins' girlfriend, and then his -- Mr. Moss is with Mr. Pankins are seen together.

Mr. Moss -- as Officer Riccobon testified, his phone is pinging at the location of Mr. -- right in the immediate vicinity of Mr. Pankins' apartment, and then drives directly to this drug deal.

Mr. Pankins drives him. He's in Mr. Pankins' car with a half pound of methamphetamine.

The Government submits, Mr. Moss is not spending the entire morning with a half pound of methamphetamine, moving it from cars and various locations with him.

He's taking that right from the location that it's at, right from the stash house, directly to the confidential informant.

Especially such a large purchase, Your Honor. Half a pound of methamphetamine is a lot of methamphetamine. It's way, way, way, way higher than the amount of personal use, I mean.

THE COURT: How much was it bought for?

MR. IBRAHIM: It was bought for -- I believe it was \$2,000, but I do have the answer.

THE COURT: Okay. Which is also?

MR. IBRAHIM: Which is also base offense level 36, yes.

THE COURT: Level 36. Okay.

All right. And then the evidence that Pankins lot is attributable to both defendants --

MR. IBRAHIM: Right.

THE COURT: -- is what?

MR. IBRAHIM: So we have...

THE COURT: We've got the "probably" statement.

MR. IBRAHIM: Yes. We have -- oh.

THE COURT: What do you say about that?

MR. IBRAHIM: The Roland Lapointe statement.

THE COURT: Oh, I'm mixing them up. Sorry. Let's stick with Pankins. Let's go with Pankins.

MR. IBRAHIM: Okay. Sure.

So there's a couple things from Mr. Pankins.

The first and biggest thing, Your Honor, from the Government's perspective is that Mr. Moss comes directly from the location of Mr. Pankins' home when he's going to the controlled buy, sell a half pound of methamphetamine to the confidential informant.

THE COURT: Now, the defense is going to say, I mean, he's going somewhere else and then coming back and -- what do you say to that?

It was \$1,800, Your Honor.

THE COURT: All right.

MR. IBRAHIM: So we have that. We have, then, two other data points. November 7, Mr. Moss correctly spots law enforcement surveillance in the Elms. They're trying to watch them; he sees them.

He texts Christina Chamberlain, tells her to erase all her messages. Calls her, says, "Get that block, put it in a bag." Then he has Mr. Meadow go pick up that bag and then meet him at a neutral location, by that gas station that Officer Riccobon testified about.

The ping data, you know, comes in every 15 minutes, but where does it -- it shows, basically, right when Mr. Moss is between the Elms and Mr. Pankins' house, right in the area of where he would be meeting Mr. Meadow, and then 15 minutes later. And 15 minutes after that, he's pinging right by the home of Mr. Pankins.

The Government submits, that's where he went.

THE COURT: Right. And that's the data from November 7, correct?

MR. IBRAHIM: That's November 7.

Yeah. And Mr. Meadow recounts, basically, meeting Mr. Moss with a bag of methamphetamine and giving it to Mr. Moss.

THE COURT: Okay.

MR. IBRAHIM: And so the Government argues, where is the first place he goes?

To his other stash house that he knows is a lot safer than the stash houses he was using of Christina Chamberlain and Roland Lapointe, who are drug addicts, who have reason to bring heat on themselves.

THE COURT: All right.

MR. IBRAHIM: And then November 11, Your Honor, that's the day that he goes to Reading. He texts Mr. Pankins this address in Reading. He tells Mr. Pankins, notably, "You passed the exit." He sends him another text, "You passed the exit." The inference from that is, he's not traveling with Mr. Pankins. He's in a separate car from Pankins.

But then on the way back, where does Mr. Moss' phone go directly? It goes right by where Mr. Lapointe's house would be and goes right towards Mr. Pankins' house.

Why is he going to Mr. Pankins' house after going to Reading, where we know his methamphetamine supplier is, if Mr. Pankins is in a separate car? Mr. Pankins has his own car. He doesn't need no drop Mr. Pankins off. Mr. Pankins isn't with him, as we know from the text message.

The Government submits, he's going to Mr. Pankins' house because that's his main stash house.

there's no Reading on the wire?

MR. IBRAHIM: From the conversation with Mr. Santiago. Mr. Santiago looks like he had the connection. The guy he referred to as "Bull." That -- Bull was the middleman between the Reading supplier and Mr. Santiago.

Mr. Santiago was recounting a text message, basically, reading verbatim the text message he had with Bull where Mr. Santiago is trying to say, "Hey, but basically, can we just get the five for 2400 a pound without having to get the full ten to get that special price?"

THE COURT: And I believe there was testimony that Bull refers to, like, a generic guy.

MR. IBRAHIM: Right.

THE COURT: It's not a name.

MR. IBRAHIM: Right. I mean --

THE COURT: How do you spell it? B-O-U-L or B-O-U-L-E?

MR. IBRAHIM: Yeah. I think it would be fair to maybe spell it B-U-L-L or B-O-U-L. But, you know -- yeah, I mean certainly --

THE COURT: You don't know the number to that? I mean, whatever -- that wasn't followed up?

MR. IBRAHIM: So, you know, the Government, of

THE COURT: So your theory that he and Pankins -- Moss and Pankins are in separate cars and they both go up to Reading and pick up stuff and they come back and they both go to Pankins?

MR. IBRAHIM: That's right, Your Honor.

THE COURT: Why are they taking two separate cars?

MR. IBRAHIM: Well, one of the reasons that Mr. -- that Officer Riccobon mentioned, Mr. Moss is on probation at the time. He doesn't have a valid license. He is not someone who's going to be, quote, "wanting to ride dirty."

Mr. Pankins, on the other hand, has a car that's registered to him, it's inspected, all those things. He's a valid driver.

Mr. Moss does not want to be transporting large quantities of methamphetamine in his own car because he's just a target for police activity, and knows it. That's why he's constantly vigilant, engaging in countersurveillance. That's why he knows when surveillance officers in the Elms and immediately spots them. He's constantly on the look out for that kind of thing.

THE COURT: All right. And what's your theory about how Mr. Moss arranges these trips in Reading, since

course, got toll hits, toll records for Mr. Santiago. But both Mr. Santiago and Mr. Moss, you know, utilize -- we know they utilize other forms of communication than just their phones. There's FaceTime. There's WhatsApp. So many other encrypted communications that you can't possibly get everything.

THE COURT: Okay. All right.

MR. IBRAHIM: So --

THE COURT: Anything else you want -- about Pankins?

MR. IBRAHIM: So, you know, we discussed the November 7, going to Pankins' house; and November 11, going to Pankins' house. Then we have the statement from Mr. Pankins, Your Honor.

And this was, you know, subject of little bit of confusion when Officer Riccobon was testifying, because Ms. Grasso asked him about the guy named Bass, where Mr. Pankins says, "Oh, that meth came from a guy named Bass."

But the first time he's asked about it, that's not what he says. He's being asked about his relationship to Mr. Moss and Mr. Santiago. And in that conversation -- this is Exhibit 5, Page 4 -- in the middle of the page, Officer Riccobon is saying, "During the deals that were made, we know that."

1 Pankins says, "Purchases with whom? No, I
2 don't do business with them."
3 And Riccobon makes it clear, "Bleek and Jake."
4 And Pankins reiterates, "No, I don't do
5 business with them. We smoke weed together."
6 And then Pankins says, "Yeah, I promise you."
7 Pankins then says, "I'm telling the truth. They got their
8 shit going on," clearly referring to Bleek and Jake.
9 **THE COURT:** Hold up, hold up.
10 **MR. IBRAHIM:** Sure.
11 **THE COURT:** I was looking at the wrong
12 document. Sorry.
13 **MR. IBRAHIM:** Sure, no problem. This is
14 Exhibit 5, Page 4.
15 **THE COURT:** Yeah, I was looking at four. Okay.
16 **MR. IBRAHIM:** So this is Mr. Pankins'
17 statement.
18 **THE COURT:** Yes. All right. Go ahead, then.
19 **MR. IBRAHIM:** Sure.
20 Officer Riccobon tees up, that he's talking
21 about Bleek and Jake, Mr. Moss and Mr. Santiago.
22 And Pankins says, I don't have anything to do
23 with them, basically. "I'm telling the truth. They got
24 their shit going on," meaning Mr. Moss and Mr. Santiago.
25 "I don't sell any of that stuff." And then he says, I had

1 **THE COURT:** You think the friend is
2 Chamberlain?
3 **MR. IBRAHIM:** I think that's -- obviously,
4 we're -- we don't know exactly how Mr. Moss framed what
5 happened to Mr. Pankins in terms of asking him to store
6 his drugs at Mr. Pankins' house.
7 But we know that just before this all happened,
8 Mr. Moss had that run in with surveillance, he told Tina
9 to do what she did, had that interaction with Christopher
10 Meadow, and then went right to the location of
11 Mr. Pankins' home.
12 So yes, the Government submits that all fits
13 together.
14 **THE COURT:** Okay.
15 **MR. IBRAHIM:** And, Your Honor, the Government
16 submits, it also makes -- it makes sense. Mr. Pankins is
17 a good friend of Mr. Moss', as he says. There's no
18 dispute about that. They're very good, long-term friends.
19 Mr. Pankins has his own good -- his own thing
20 going on, as he says. He had 40 pounds of marijuana in
21 his house and multiple firearms. He was big-time
22 marijuana trafficker. But he's doing a favor to his
23 friend Malik Moss and helping him out because there's a
24 lot of heat on Mr. Moss at this time, and what better
25 person to store your methamphetamine with than a guy who

1 that stuff because a friend of his got caught with some
2 shit.
3 This is well before Mr. Pankins comes up with
4 this Bass person from Maryland, all of that stuff.
5 And the Government submits that this is
6 actually what happened. And then Mr. Pankins realized,
7 oh, I maybe just implicated them. Now I've got to make up
8 a story about Bass in Mr. Maryland. But the very first
9 time he's asked about it, he says -- he says, I had this
10 stuff because a friend of his got caught with some shit.
11 And the Government submits that what he's
12 really talking about is the fact that Mr. Moss, at this
13 point in time, was hypervigilant about where he was
14 storing drugs because he caught officers surveilling him.
15 And that's exactly what he's saying. And he asked
16 Mr. Pankins to store the bulk quantity of the
17 methamphetamine that he was selling. And, Your Honor, it
18 makes sense.
19 **THE COURT:** And the friend of his got caught is
20 referring to what?
21 **MR. IBRAHIM:** The Government submits that this
22 is actually referring to the fact that police were at the
23 residence of Christina Chamberlain.
24 **THE COURT:** So it's Chamberlain?
25 **MR. IBRAHIM:** Yes.

1 has dozens and dozens of pounds of marijuana that he's
2 hiding.
3 **THE COURT:** And what's Pankins' deal with the
4 Government?
5 **MR. IBRAHIM:** He has no deal. He pled guilty,
6 actually, Your Honor, to the possession with intent to
7 distribute the methamphetamine at issue because,
8 although --
9 **THE COURT:** Why wasn't he charged with
10 possession with the intent to distribute marijuana?
11 **MR. IBRAHIM:** Just because -- only because the
12 methamphetamine was actually the more serious offense,
13 Your Honor. He could have -- he pled guilty to an
14 information where he pled guilty to the methamphetamine,
15 which carries a much higher base offense level than the
16 marijuana, even though it's 40 pounds of marijuana.
17 **THE COURT:** How does that fit with his,
18 basically, saying it's not my stuff?
19 **MR. IBRAHIM:** Because even if you possess --
20 and the Government just does this in every case -- if you
21 store drugs for somebody and your intent is only to give
22 it back to them, not even make a profit, you're still
23 guilty of a possession with intent to distribute, or
24 you're guilty of aiding and abetting. But either way,
25 you're guilty of possessory offense of, in this case,

methamphetamine.

THE COURT: All right.

MR. IBRAHIM: And so the Government insisted that Mr. Pankins was, in fact, guilty of possessing methamphetamine with intent to distribute it. Now, his intent was to distribute it back to Mr. Moss, not to sell it himself. But he still had the intent to distribute it, and so he's guilty of that offense. And, in fact, he pled guilty to it.

THE COURT: Okay.

MR. IBRAHIM: So those the data points that the Government has pointing that the --

THE COURT: That Pankins is storing Moss' drugs?

MR. IBRAHIM: Yes, Your Honor.

THE COURT: All right. Okay.

All right. And then, Lapointe, that's where you do have the "probably" statement?

MR. IBRAHIM: Yes, we have the "probably" statement, but that's coupled with him not using the word "probably" when he says, "Jacob came over last night. He went back to the back room." There's no "probably" there. That's what he says.

We also have Mr. Santiago's own words in that call with Mr. Moss where he said, "I went to Ro's crib. I

asked him to hold my shit."

THE COURT: And that call is what date?

MR. IBRAHIM: If I could have a minute, Your Honor, I can grab that.

It's a December 12th call, just two days before the arrest.

THE COURT: Okay. Anything else?

MR. IBRAHIM: Relating to Mr. Lapointe, there's -- you know, Ms. Chamberlain recounts, in her sworn testimony, her recollection, that the drugs were -- the methamphetamine was taken out of the house by Mr. Santiago and taken to Ro's crib. And she actually gets it right. Based on the calls, we know she gets it right. And it was weighed there, realizes she didn't actually steal anything. But it never came back to her house.

THE COURT: Okay.

MR. IBRAHIM: So that's yet another data point pointing to Roland Lapointe's house. And then, you know, I will mention, Your Honor, on November 11 when we have that ping data from Mr. Moss' phone, his second stop after Mr. Moss' house is right in the immediate vicinity of Bluefield Road.

And the Government submits, that actually what he did that night, was he went to Mr. Pankins' house and

dropped off methamphetamine. But that wasn't going to be his own stash house. He also utilized his other stash house. So he dropped some off at Mr. Lapointe's house as well.

THE COURT: Okay.

MR. IBRAHIM: So based on all of those factors, Your Honor, the Government thinks it's carried the burden by a preponderance of showing that both Mr. Lapointe's home and Mr. Pankins' home were used to store drugs as part of this drug organization. And so those amounts that were seized from those locations are attributable to this conspiracy.

THE COURT: All right.

MR. IBRAHIM: And that's all that the Government has, Your Honor.

THE COURT: Okay.

MR. IBRAHIM: Thank you, Your Honor.

THE COURT: Let's hear from the defense.

MR. BRESLIN: As Your Honor's aware, the base offense in this case is really going to come down to the weight and the purity. And that's what's going to set it.

The Government is asserting that a Level 36 is, you know, appropriate based upon the alleged 10-pound sale of methamphetamine from Reading, Pennsylvania, and the methamphetamine that was found in Mr. Pankins' residence.

My client and I respectfully disagree.

THE COURT: Well, actually, I think they're saying "or," it's not "and."

MR. BRESLIN: Correct. "And/or."

THE COURT: So I would like you both to approach it from that point of view. Let's talk about both. We'll call it the Reading side and then the seizure side. I think that's the easiest way to discuss it. Okay?

MR. BRESLIN: Understood, Your Honor.

So looking at the Reading side, we have an alleged 10-pound purchase of methamphetamine on October 27, October 28.

THE COURT: Right.

MR. BRESLIN: Just put them together because that was how it was kind of presented during the hearing.

What we have is, the morning of the 27th at 8:39 a.m. we have Mr. Moss and Mr. Santiago discussing what they're going to purchase. And Mr. Santiago specifically says, "We only going to get five, because I ain't trying to get the whole ten, for real."

THE COURT: Right. Now, doesn't that suggest, one, he knows it's possible to get ten, but as of 8:30 in the morning on the 27th, he's only buying five?

MR. BRESLIN: That would be the defense's

1 position. That, you know, there's no intent to buy ten.
2 They're only going up to there buy five.

3 **THE COURT:** Okay.

4 **MR. BRESLIN:** And I think that is coupled with
5 a phone call --

6 **THE COURT:** Hold on. I'm just curious. Has
7 anyone done the math? Let's, for argument's sake, say
8 they bought five. Where does that leave them?

9 So in other words, instead of it being
10 15-and-a-quarter ounces, it's 10 pounds and a quarter
11 ounces.

12 What's the calculation for the guidelines for
13 that? Does anybody know?

14 **MR. IBRAHIM:** Yes, Your Honor. Based on
15 62 percent purity again?

16 **THE COURT:** Yeah.

17 **MR. BRESLIN:** I believe it's 1400 grams. So
18 that would be a base offense level 34, just below the 36.

19 **THE COURT:** Okay. And then the 62 percent
20 purity level comes from -- that's the lowest of anything
21 we've got.

22 **MR. IBRAHIM:** That's right, Your Honor.

23 **THE COURT:** And that's from which seizure?

24 **MR. IBRAHIM:** That is from the controlled
25 purchase from Mr. Moss of a half pound of methamphetamine.

1 put Mr. Moss at a level 32, by my math, because it would
2 put him in between 1.5 kilograms, but less than
3 5 kilograms of methamphetamine.

4 **THE COURT:** What do you -- talking about in the
5 guidelines, maybe walk me through that.

6 **MR. BRESLIN:** Sure. So I'm looking at,
7 specifically --

8 **THE COURT:** Incidentally, what year guidelines,
9 again, are we using? Is it '18? What are we using?

10 **MR. IBRAHIM:** I believe there's a 2021,
11 Your Honor, but we have yet to receive it, so we've been
12 using the 2018.

13 **MR. BRESLIN:** And just the guideline I'm using
14 is off the website. So I've been using the 2021.

15 **THE COURT:** What do you think, Ms. Grasso?
16 First of all, does anybody know it makes a difference?

17 **MR. IBRAHIM:** I believe there is no difference.

18 **MS. GRASSO:** There's no difference. Yeah,
19 there's been no change.

20 **THE COURT:** Right. It's not going to make a
21 difference, right?

22 **MS. GRASSO:** Not on that.

23 **THE COURT:** So everybody agrees we can use --
24 it doesn't matter, 2021 or 2018. All right. So by
25 default, we normally would use 2021 anyway. But just walk

1 **THE COURT:** Which was on what date?

2 **MR. IBRAHIM:** Which was on November 18.

3 **THE COURT:** So that was 62 percent for a half
4 pound. Then we've got high 90s for how many?

5 **MR. IBRAHIM:** For three controlled buys. And
6 the amounts found at Roland Lapointe's house are all high
7 90s.

8 **THE COURT:** So in other words, the amounts that
9 preceded the November 18 controlled buy, and that followed
10 it, are all -- what's the lowest amount of those? I think
11 it's in the 80s.

12 **MR. IBRAHIM:** 86 percent from Mr. Pankins'
13 home.

14 **THE COURT:** 86 percent?

15 So Mr. Breslin, why should I go with 62 percent
16 in any event?

17 **MR. BRESLIN:** I don't think Your Honor should
18 go with the 62 percent because we don't know what the
19 purity is.

20 **THE COURT:** So what do you do?

21 What do you think? Zero percent and then he's
22 at a zero offense level?

23 **MR. BRESLIN:** No. I think Your Honor would
24 have to equate it to, say, a mixture and substance, not
25 applying the ice guideline, which would, unfortunately,

1 me through the guidelines.

2 **MR. BRESLIN:** Sure. So I'm looking at,
3 specifically, 2D1.1, which is "Unlawful manufacturing,
4 importing, exporting, or trafficking; attempt or
5 conspiracy."

6 **THE COURT:** Right.

7 **MR. BRESLIN:** And we're going to, specifically,
8 the drug quantity table of Subsection C.

9 **THE COURT:** All right. I'm there.

10 **MR. BRESLIN:** And then, there is, under
11 Subsection 4, level 32.

12 **THE COURT:** Yeah, I'm there.

13 **MR. BRESLIN:** And then -- one, two, three,
14 four -- the fifth bullet down, we have at least
15 1.5 kilograms, but less than 5 kilograms of
16 methamphetamine. And then below that would be the "ice,"
17 or the actual guideline.

18 **THE COURT:** Oh, I see. So you want me to apply
19 at least 1.5 kilograms, but less than 5 kilograms,
20 assume -- right? That's what you want me to --

21 **MR. BRESLIN:** I would say that would be
22 appropriate because we don't know the purity, if we are to
23 stick with the Reading side.

24 **THE COURT:** We know it's at least 62 percent.

25 **MR. BRESLIN:** We know there was a purchase of

62 percent, but we don't know specifically what the purity of what was purchased in Reading.

THE COURT: Is it fair to say, though, we know that the vast majority of the drugs that we actually have, the purity rate is actually greater than 80 percent?

MR. BRESLIN: I would agree with Your Honor's statement in general; however, in this case, we have the purchase of the 60 percent, plus we have the messages where, I believe it's Mr. Rodriguez is making specific complaints about the quality of the methamphetamine.

THE COURT: Okay. All right. So go ahead.

MR. BRESLIN: So circling back. So we have the two text messages on the morning of October 27, where I would assert that their only intent is to go up to Reading and purchase five.

And then, as we just discussed, we don't have a purity, so I would assert that the mixture and substance guideline would be appropriate if Your Honor's inclined to stick with the Reading side.

THE COURT: Okay.

MR. BRESLIN: So now turning to, I guess, we would call it the Pankins side. The defense would assert that there's just not a sufficient link between the methamphetamine found in Mr. Pankins' house and to Mr. Moss.

The Government would like Your Honor to believe that Mr. Pankins' house is a stash house. But we have Mr. Pankins' clear statement saying the meth belonged to Bass, who is somebody from Maryland.

And to give it even more context, he even gives law enforcement the location of where the house was that he cleaned out. It was Winding Brook, I believe, was the name.

THE COURT: He makes the Bass statement when? Show it to me again and exactly when he makes it.

MR. BRESLIN: So it is exhibit -- Exhibit 5, Page 11.

THE COURT: Okay.

MR. BRESLIN: Now, the Government would like Your Honor to think that this is a stash house because they have Mr. Moss being picked up by Mr. Pankins, what, before this sale to the confidential source. But we also have Mr. Pankins explicitly saying that Mr. Moss is one of his best friends. That's probably one of his only friends. They've been friends for years.

And I believe it goes on to say that, you know, they hangout together. They smoke weed together. So there's certainly a logical conclusion that, can be drawn that it's not just him -- he just happens to go to Pankins' house. It's not that he is keeping drugs there.

And then I think one of most important things, Your Honor, is why he can't link Mr. Moss to Mr. Pankins' residence is because you have the dialogue two days before Mr. Pankins' house is searched. And that is between, I believe it's Mr. Chamberlain, Mr. Moss, and Mr. Santiago. And this is where there's dispute about missing drugs in Ms. Chamberlain's apartment. And we're told that the drugs are moved from the Elms apartment to Mr. Lapointe's house.

There's no dialogue about it being moved to Mr. Pankins' house. And that's just two days before the search is done and drugs are found in Mr. Lapointe's house, as well as Mr. Pankins' house.

So those are the -- there's just a missing link between -- conclusively establishing that the drugs found in Mr. Pankins' house is Mr. Moss' house.

I would only, lastly, note is, I think the fact that Mr. Pankins is found with 40 pounds of marijuana and several firearms is indicative that Mr. Pankins, he's got his own stuff going on. You know, is it logical that maybe he wants to expand? Who knows? You know, he admits to selling marijuana, you know.

But I think, you know, the fact that he has such a large amount of marijuana, you know, it could be -- it would be indicative of maybe he's expanding his sales

and he's going into methamphetamine.

THE COURT: Okay. Now, I know where you are on Pankins. On the Reading, the four trips, you know, the tape is pretty bad for, especially, the October 28 trip, right, going up.

Are you challenging any of the four trips, that they actually occurred and that your client purchased something from Reading, or are you challenging just the amount?

MR. BRESLIN: Can I have one moment, Your Honor?

THE COURT: Yep.

While you're doing that, we're going to take a couple-minute break.

MR. BRESLIN: Sure, Your Honor.

THE COURT: Court reporter break.

(Whereupon, a recess is taken.)

THE COURT: All right. Go ahead.

MR. IBRAHIM: Your Honor, I asked Mr. Breslin if I could just inject real quick.

Does the Court have any objection of excusing Special Agent Bethel? He --

THE COURT: No. No, that's fine.

MR. IBRAHIM: Thank you, Your Honor.

1 Appreciate it.

2 **THE COURT:** Go ahead, Mr. Breslin.

3 **MR. BRESLIN:** Sure.

4 **THE COURT:** Incidentally, I heard somebody
5 recorded a device, and I'm looking into it. I'm going to
6 make a referral to the U.S. Attorney's Office. It's
7 illegal to record a court proceeding. And it's all going
8 to be under advisement.

9 But the Marshals need to make sure they get the
10 identification material from the person who was recording
11 our proceeding. And then I will make a criminal referral,
12 and we'll have to see what the U.S. Attorney's Office does
13 in consultation with the United States Marshal Service.

14 We cannot have people recording devices
15 recording our proceedings. It's completely against the
16 law.

17 So please get the information from that person.
18 Please take appropriate steps to make sure the phone is
19 maintained so that the phone can be used to address the
20 situation.

21 Can you also make sure that that phone,
22 whatever needs to be done --

23 **MR. IBRAHIM:** Thank you, Your Honor.

24 **THE COURT:** -- done to make sure that this
25 situation is remedied.

1 Can I speak with the U.S. Attorneys? I want
2 to...

3 This is not about the case.
4 (Sidebar discussion off the record.)

5 **THE COURT:** All right. Sorry about that.

6 Thank you, Mr. Breslin. Go ahead.

7 **MR. BRESLIN:** Thank you, Your Honor.

8 I believe, before the recess, Your Honor asked
9 the question, if whether Mr. Moss is challenging just the
10 weight or whether certain activities occurred on certain
11 days. And I would say it's both. Your Honor --

12 **THE COURT:** It's fair. What I'd like to do,
13 though, is kind of -- it sounds like you're not
14 challenging that he went to Reading and purchased some
15 methamphetamine in Reading on or around October 28, or are
16 you?

17 **MR. BRESLIN:** No. I would agree with
18 Your Honor.

19 **THE COURT:** Right.

20 **MR. BRESLIN:** I mean, something occurred on
21 October 28th and --

22 **THE COURT:** In Reading. And your position
23 would be, they went up there with the intent to buy five
24 and that's it.

25 **MR. BRESLIN:** That's correct, Your Honor.

1 **THE COURT:** All right. So that's that visit.
2 What about the other three visits? What are you
3 challenging on that, just so I understand?

4 **MR. BRESLIN:** I would argue that on October 9,
5 which is, I believe, the first trip, that nothing
6 happened. They went up to Reading for whatever reason,
7 but nothing illegal, essentially, transpired.

8 **THE COURT:** That's fine. So you're
9 basically -- you're challenging that there weren't any
10 drugs purchased, but you're actually saying -- you're not
11 debating that Mr. Moss, at least, went to Reading around
12 October 9.

13 **MR. BRESLIN:** Unfortunately, the cell phone
14 data puts him in Reading.

15 **THE COURT:** I get it. So you're not. Right?

16 **MR. BRESLIN:** Absolutely.

17 **THE COURT:** Then the third trip is the...

18 **MR. BRESLIN:** Well, there's a second trip,
19 which is on --

20 **THE COURT:** Oh, October 6, the second trip,
21 right? October 16.

22 **MR. BRESLIN:** October 16.

23 **THE COURT:** Okay. And are you challenging that
24 there was a -- that he went there?

25 **MR. BRESLIN:** No.

1 **THE COURT:** Okay. But you're challenging that
2 that -- well, what are you challenging on that?

3 **MR. BRESLIN:** Unfortunately, I would say, at
4 best, there is -- and, again, this is the Government's
5 burden of prove. But, at best, there would be a small
6 purchase there because of the subsequent communications
7 with Mr. Alfaro.

8 **THE COURT:** Right. Which was only 4 ounces,
9 you'd say.

10 **MR. BRESLIN:** That's correct.

11 **THE COURT:** But you're acknowledging or you're
12 not disputing that Mr. Moss went to Reading. And,
13 frankly, I think as an attorney, you have to admit
14 these -- there's certain things you just have to admit,
15 right? So all right -- to save your credibility.

16 What I am getting at is, in case Mr. Moss is
17 saying there like, why are you admitting certain things?
18 Well, I'm basically saying, well, you know, at some point,
19 the evidence is what it is, right?

20 **MR. BRESLIN:** Yes, Your Honor.

21 **THE COURT:** Okay. But you're challenging the
22 purchase of any drugs at Reading on October 9; you're
23 challenging the purchase of any drugs beyond 4 ounces on
24 October 16; you're challenging the -- any insertions by
25 the Government that anything more than 5 pounds was proven

1 for the October 28.

2 And then, what about the November 11?

3 **MR. BRESLIN:** I would, again, assert that, you
4 know, Mr. Moss went up to Reading, for whatever reasons,
5 and that nothing illegal transpired.

6 **THE COURT:** Okay. And then on the seizures,
7 the Pankins, you're saying, that's not, that's not your
8 client.

9 **MR. BRESLIN:** Correct.

10 **THE COURT:** Right?

11 Okay. And then on the Lapointe, you're saying
12 what?

13 **MR. BRESLIN:** Unfortunately, Your Honor, I
14 don't think I can honestly refute that.

15 You know, we have -- and I -- picking one or
16 the other, you know, the Lapointe weight is much lower.

17 You know, unfortunately, we had the
18 communications between Mr. Moss, Mr. Santiago, and
19 Mr. Lapointe. Mr. Lapointe is -- in his statement is
20 saying that drugs are being stored there. So
21 unfortunately, you know -- I would prefer to have
22 Lapointe's attributed to Mr. Moss.

23 **THE COURT:** That makes sense. It's a lot less.
24 Sure.

25 **MR. BRESLIN:** Respectfully.

1 **THE COURT:** And what you're saying, therefore,
2 is that given Chamberlain's statements, given the Santiago
3 call on December 12, you would say that it's proof of the
4 storage of some methamphetamine in some other place; and
5 what you're saying is, that's Lapointe, that's not Pankins
6 place.

7 **MR. BRESLIN:** Correct.

8 **THE COURT:** All right.

9 Anything else? You want to keep going? I
10 didn't want to interrupt you, but I just wanted to get
11 clarity on that.

12 **MR. BRESLIN:** One second, Your Honor.

13 One more minute, Your Honor.

14 **THE COURT:** Sure. Take your time.

15 **MR. BRESLIN:** Your Honor, with the Court's
16 indulgence, the Government is kindly pulling up a specific
17 line sheet I'd just like to highlight for Your Honor.

18 **THE COURT:** Okay. Thank you.

19 **MR. BRESLIN:** And just to highlight my further
20 disagreement with the alleged amount being purchased --
21 the attributing of, quote-unquote, "5 pounds" to the
22 November 11, which I believe Your Honor was discussing
23 with the Government during their presentation, this is a
24 phone call that took place on November 12, 2021,
25 9:46 a.m., between Mr. Santiago and Mr. Moss.

1 And when they're...

2 **THE COURT:** Is this the five traps? Right? Is
3 this the one?

4 **MR. BRESLIN:** No. This is a different one.

5 **THE COURT:** Okay.

6 **MR. BRESLIN:** So if we look at the very first
7 line, they're discussing, essentially, how much -- how
8 many grams they have, and they're saying that they only
9 70 grams.

10 So this is the day after the November 11
11 purchase, which would be -- I would assert, is indicative
12 that essentially no purchase took place. Because if a
13 large purchase, as the Government would -- is asserting
14 took place when they went to Reading, they'd certainly
15 have more than 70 grams.

16 **THE COURT:** All right. What exhibit is this?

17 **MR. IBRAHIM:** This isn't one on the
18 Government's exhibits, Your Honor.

19 **THE COURT:** Oh. Well...

20 **MR. IBRAHIM:** We can provide it to the Court.
21 It's Session 14406 from November 12 at 9:46 a.m.

22 **THE COURT:** All right. So the defense -- you
23 don't have it into evidence right now.

24 **MR. IBRAHIM:** Correct, Your Honor, it's not in
25 evidence.

1 **THE COURT:** Okay.

2 **MR. BRESLIN:** I apologize, Your Honor. I
3 didn't realize it wasn't an exhibit.

4 **THE COURT:** All right. It's a November 12 call
5 at nine in the morning?

6 **MR. BRESLIN:** I can give you the exact time.
7 It is 9:46 a.m. And would you like the session number,
8 Your Honor?

9 **THE COURT:** Well, not yet because -- I mean, I
10 don't even have the document. So we're going -- I mean,
11 we have a sentencing hearing still. We have a firearms
12 enhancement issue, so we're not going to decide everything
13 tonight. I just -- but you need to remember that, then.

14 Okay. What else?

15 **MR. BRESLIN:** I believe that is it, Your Honor.

16 **THE COURT:** All right. Let me hear from
17 Ms. Grasso.

18 **MS. GRASSO:** Thank you, Your Honor.

19 I'm going to try and follow the Court's logic
20 with regard to -- I think we're kind of breaking this down
21 to the Reading trips and what's recovered.

22 **THE COURT:** That would be helpful.

23 **MS. GRASSO:** So to the search warrants.

24 But one of the things I want to point out,
25 which I think kind of applies to everything. It's just,

1 you know, we have some circumstantial evidence. We have a
2 lower burden, obviously, at this level, by a
3 preponderance. But we have --

4 **THE COURT:** And we have evidentiary rules that
5 don't apply, right? I mean, hearsay is admissible.

6 **MS. GRASSO:** Correct.

7 Which, that's -- I don't even think that's
8 really an issue. But the burden is lower, but we have a
9 lot of speculation and conjecture.

10 Which, the question then becomes: Does some of
11 that, which, you know, is this could prove this or it may
12 not. And the question is: Does that meet the burden, you
13 know, by a preponderance.

14 And one of the things that Officer Riccobon
15 said, that I wrote down early on -- and I, quite frankly,
16 forget which recovery he was referring to -- but he said
17 that there was -- I think it was something at
18 Ms. Chamberlain's home, that the presumption was that it
19 was heroin, but it turned out to be fentanyl.

20 And that's the danger we have here overriding
21 this whole scenario here, Your Honor. Is that, you know,
22 these are logical inferences that can be made, but are
23 they indicative by a preponderance of what the Government
24 purports them to be. And I would suggest that they are
25 not in every instance.

1 And I don't believe that that occurred until
2 after the 6th and the 19th. So I think with Mr. Santiago,
3 we're starting off with, really, the 27th and 28th, at
4 best.

5 **THE COURT:** Okay.

6 **MS. GRASSO:** And so when you look at those
7 dates, we have obviously the conversation where there's,
8 you know, clearly discussions of pounds, but there's a lot
9 of back and forth about how much.

10 **THE COURT:** This is before. You're talking
11 about the 8:30 a.m. call.

12 **MS. GRASSO:** The 27th.

13 **THE COURT:** Yeah.

14 **MS. GRASSO:** The October 27th, leading to
15 the -- the 28th, there are no calls, other than "I'm
16 here." So we're talking about the 27th.

17 And Mr. Santiago clearly says, call
18 Number 7044, "I ain't ready for that." Call Number 8764,
19 "Ain't trying to get the whole thing."

20 And so we have, I think, at best, the 5 pounds,
21 as the Court has alluded to. But I would suggest that the
22 evidence doesn't prove that anything ever happened in
23 Reading.

24 We have the Officer Riccobon telling us that on
25 the 27th that Santiago is not involved with the 27th with

1 And so I'll try to go through the trips, if I
2 could.

3 **THE COURT:** Yep.

4 **MS. GRASSO:** The Reading trip on the -- the
5 conversations on the 27th --

6 **THE COURT:** Why don't we go through -- let's
7 start with October 9th. Do you mind? Can we go through
8 them in that order?

9 **MS. GRASSO:** Oh, I'm sorry, Your Honor.

10 And the only reason I jumped to the 27th and
11 the 28th is because Mr. Santiago is not mentioned before
12 the 9th or the 16th.

13 So with regard to -- there is no conduct
14 alleged with regard to him on those dates. The question
15 then becomes, you know, is that --

16 **THE COURT:** Attributable to him.

17 **MS. GRASSO:** Attributable to him as foreseeable
18 conduct under the course of conspiracy. I would suggest
19 that there's no evidence.

20 I think the Government sort of conceded -- or
21 Riccobon testified that, basically, you know, he knew that
22 there was some involvement going on, but they didn't
23 really start to work together or start to think about
24 pulling there stuff together until a certain point in
25 time.

1 any type of cell phone data having him go up there, it's
2 just Moss. But he clearly says -- it's speculation -- "I
3 don't know what happened."

4 Did they discuss money? Did they -- were they
5 low on the supply? He doesn't know. Nothing really
6 changes with regard to the 28th, other than they go up
7 there, or he thinks that they go up there. And
8 Mr. Santiago's phone is -- you know, his phone data is
9 even less accurate than that of Mr. Moss'.

10 And so I don't think you can, even at this
11 preponderance level -- certainly, I don't dispute that
12 there are inferences that could lead one to believe that.
13 But even at this level, Your Honor, I would dispute that
14 that transaction took place, because we don't have any
15 specific drugs linked to that.

16 All we have later after that is Mr. Moss, you
17 know, advertising product to people, to -- making a big
18 advertisement. And he's talking about ounces, which is
19 what Riccobon has told us all along, that there's lots of
20 conversations about ounces. And so nothing has, perhaps,
21 changed.

22 And I think that that's a fair inference as
23 well. And he's advertising product. Maybe he got
24 something; maybe he got less than a pound. We don't know.
25 And I think it is -- there's a danger in any type of

1 speculation or conjecture to that degree because I don't
2 think it reaches the preponderance level.

3 So that's, essentially, my argument with regard
4 to the 27th and the 28th.

5 **THE COURT:** What about -- you've got
6 conversation before about buying five, and then you've got
7 conversation afterwards, not from your client, "I bought
8 ten."

9 **MS. GRASSO:** Right. I forgot about that.

10 And would I suggest -- and I think the officer
11 agreed with me, that people are bragging. I think it's
12 almost, you know -- Your Honor, I'm sure, is very familiar
13 with it. There's a lot of bragging that goes on and a lot
14 of -- you know, wanting people to believe that you have a
15 certain quantity or that you're capable of getting it.

16 I mean, in that conversation, if you listen to
17 the whole conversation, he's saying, like, I swear to
18 God -- this is Moss -- is saying, I swear to God. You
19 know, this is what it was. And he describes this door and
20 it's -- it's kind of like trying to give this big,
21 grandiose picture of, you know, some big drug spot they
22 went to. And it's just -- it's bragging.

23 And so we can't be sure, just because it came
24 out of his mouth, that that's actually what occurred.
25 It's not the type of situation where it's -- you know,

1 They want you to speculate that these 5,
2 10-pound deals are made, but yet nobody checks out the
3 address, nobody checks out who lives there. They could
4 have called. They have an active surveillance going on.
5 And they could have called, you know, backup in Reading to
6 stake this out. None of that happens.

7 And then they just want this Court to speculate
8 and conjecture that a 5 or 10-pound deal was made, when
9 you have calls later that says we had 170, maybe 70 grams
10 the next day? I don't think you can do that, Your Honor.
11 I understand their arguments, but you can't take that leap
12 of faith.

13 And so that is my argument with regard to the
14 11th.

15 And with Mr. Santiago, we don't even really
16 know what car he's in, if he's even in a car. There's a
17 call. If you look at the sheets that they -- on the cell
18 phone data --

19 **THE COURT:** Well, wait.

20 I mean, the 170, at least, is referencing some
21 purchase, right?

22 **MS. GRASSO:** It's saying we have 170 grams,
23 which means --

24 **THE COURT:** Agreed. And it follows on calls
25 discussing going to buy some quantity.

1 it's an admission against his interest or anything like
2 that, where it would have some form of reliability.

3 I would suggest that it's nothing to him, just,
4 you know, boasting that, yeah, I can get this and I'm
5 running up to somewhere and there's all these big drug
6 dealers and Mexicans and whatever, and this is what's
7 happening. We don't know.

8 **THE COURT:** Okay. All right. That's that.

9 What about the next two?

10 **MS. GRASSO:** There's that.

11 So that takes us to the -- with regard to the
12 Santiago, where there's any involvement, is the 11th, I
13 guess, in Reading. And I agree with counsel that, you
14 know -- I'm not conceding that there's any quantity
15 purchased on that day.

16 He just pointed out a call, which was something
17 that I was going to alert the Court to as well, which is
18 regard to -- they're talking about 170 grams the day
19 after, is all they have.

20 So again, whatever happens, they don't have it.
21 They don't have the product to sell.

22 And so once again, we're left wondering what
23 really happened. And we also, at this point now, we now
24 have an address that's been texted from Moss to Pankins.
25 And there's no follow through.

1 **MS. GRASSO:** Well, no. I would suggest --

2 **THE COURT:** So even if he didn't -- even if
3 there were no proof putting him physically in Reading for
4 the last trip --

5 **MS. GRASSO:** Right.

6 **THE COURT:** -- I mean, he's pled guilty to
7 conspiring with Moss.

8 **MS. GRASSO:** Sure. No, I understand that. And
9 that's not lost on me, Your Honor.

10 But what I'm suggesting is that the reference
11 to 170 is a quantity that they had on hand from some other
12 time.

13 **THE COURT:** That's a different story.

14 **MS. GRASSO:** Yes. Okay.

15 **THE COURT:** Oh, you're saying that that 170
16 predates November 11.

17 **MS. GRASSO:** Correct. Whatever they have is --
18 they're talking about -- on the 12th, they're talking
19 about what they have on hand, because they didn't get
20 anything on the 11th.

21 So whether it was -- and I would agree with
22 Your Honor that if Moss gets it -- Santiago under the
23 conspiracy theory is, you know, responsible. I'm not
24 disputing that.

25 So that takes care of, I guess, the Reading

1 aspect of the case.

2 **THE COURT:** All right. And then Pankins.

3 **MS. GRASSO:** And then with regard to Pankins,
4 Your Honor, he tells Riccobon that it's not -- doesn't
5 belong to Moss. It doesn't belong to Santiago.

6 And they try to, on recross, rehabilitate,
7 basically, what they wanted to say, which is that when he
8 first talks to them -- which is on Government's Exhibit 5,
9 Page 4 -- if you could pull that up.

10 **THE COURT:** I've got it. I'm looking at it
11 right now.

12 **MS. GRASSO:** Right.

13 **THE COURT:** I have the stuff because a friend
14 of his got caught with some.

15 **MS. GRASSO:** Right. And that is a safe --
16 like, in other words, they're trying to mix the second
17 sentence with that first sentence. Because if you look up
18 a few lines, Pankins says, "I don't do business with
19 them."

20 And Riccobon says, "Bleek and Jake."

21 "I don't do business with them."

22 Well, there's the pronoun "them." And he's
23 referring to a "they."

24 And then he says, "I got the stuff because a
25 friend of his." Well, which "his"? It's a different

1 conversation. It is not sequitur, Your Honor. And he
2 clearly makes that 100 percent clear.

3 It's not as if he, all of a sudden during the
4 course of interview -- which on page, now, 10 or 11, which
5 is, you know -- I would -- we'd have to listen to it to
6 tell -- but maybe it's within a few seconds, a few
7 minutes, all of the sudden he comes up with this notion
8 that, oh, it's from this guy Bass in Maryland who's at
9 Winding Brook. It's very specific, and there's no
10 hesitation.

11 So it's not as if, like, he says, "Oh, it's
12 from this guy from Maryland." And then the officer says,
13 "Oh, yeah? Well, where from Maryland? What's his name?
14 Where?" He just lays it all out there.

15 So I would suggest that this Pankins statement
16 makes it clear that that meth does not belong to Santiago
17 and Moss.

18 **THE COURT:** Okay.

19 **MS. GRASSO:** And I think what they were trying
20 to say logically, if I understand the Government's
21 argument correctly, is that somehow, when they go on the
22 11th, that they make it directly to Pankins' house, and
23 that that somehow is what's recovered almost a month later
24 on December 14, if these guys are constantly selling
25 drugs. It doesn't make any sense logically either.

1 But the statement to me is unequivocal, that
2 it's not -- it doesn't belong to them. And they don't
3 have any other connection to Pankins' -- to the drugs at
4 Pankins's house. And --

5 **THE COURT:** Okay. And then what about
6 Lapointe?

7 **MS. GRASSO:** With regard to Lapointe,
8 Your Honor, you picked up on that quite clearly. You
9 know, it's probably Santiago's.

10 And I pointed out that, you know, he's
11 saying -- Lapointe is saying, well, you know, I didn't
12 know Moss -- and in for penny, in for pound in terms of
13 the conspiracy. So it may not matter so much. But I
14 don't know that you can believe what Lapointe is saying.

15 First of all, we know there's other people that
16 are sleeping at his house. We do know that Santiago is
17 there the day before the house is busted. But we also
18 know that he's saying, oh, well, Moss is saying he didn't
19 deal with that stuff because it's too hot.

20 But yet we know in reality, the one thing that
21 we do know is that Moss later sells to a confidential
22 source -- or had been selling to a confidential source
23 before this statement is made by Lapointe. So -- and
24 there's not a connection between Santiago and Lapointe's
25 house on a regular basis.

1 And so I would make the suggestion that you
2 can't even, with certainty, at this level -- albeit it'd
3 be the weakest of arguments here with regard to Lapointe's
4 house -- that they've met their burden with regard to
5 that, Your Honor.

6 And the final argument would I make, which
7 is -- as to purity -- and I think the Government seems to
8 be conceding, to some degree, a little bit on the purity
9 levels of what was found in Reading.

10 But I think the officer made it clear that,
11 obviously, different sources of supply. We don't know --
12 Reading is a big area. There could be one on one block
13 and one on another. Let's assume that you even believe
14 they went to Reading. We don't know the purity levels.

15 There's definitely conversations regarding
16 customers being upset about the levels. I don't think you
17 can take the leap to say that what is recovered -- I mean,
18 what is not recovered is, in fact, ice or is a purity of
19 80 percent of more, which is what is required.

20 And, in fact, what is recovered in --

21 **THE COURT:** Wait, wait, wait. Has to be
22 80 percent or more?

23 **MS. GRASSO:** Yes, I believe so, under the
24 guidelines.

25 **MR. IBRAHIM:** If I may, Your Honor. There are

1 three different ways to calculate a guideline number in
2 the guidelines. Mixture and substance of meth. So that's
3 zero percent or 1 percent, the actual amount of meth.

4 And then there's this provision of ice. And
5 ice is 80 percent pure or more. So I think that's
6 Ms. Grasso is talking about. But we haven't really gotten
7 into the ice calculations, Your Honor.

8 **THE COURT:** All right.

9 **MS. GRASSO:** And which -- and so I think that
10 argument, with regard to purity, you can't speculate on,
11 you know -- and it's a lot of speculations. Did it
12 happen, how much did it happen, and what's the purity
13 level?

14 I think the easiest one to say is that -- you
15 know, given the testimony of the officer, that you cannot
16 speculate on the purity level at all.

17 I appreciate the Government's arguments. I'm
18 not saying that they're completely illogical, but they
19 don't get you there when you look at everything in
20 context.

21 And as Riccobon stated early on, you know, the
22 presumption was that it was heroin, but it was fentanyl.

23 So -- and it's their burden, Your Honor.

24 **THE COURT:** All right.

25 All right. So here's what I think we should

1 do. I think we should have some briefing.

2 **MS. GRASSO:** I'm sorry?

3 **THE COURT:** I would like to have briefing.

4 Now, nobody's asking about credibility findings
5 or anything like that.

6 I'm going to find that both the agent and the
7 officer were credible witnesses. And I think they gave
8 credible testimony based on substantial experience such --
9 and I think that their interpretation of some of the
10 words, "plate," for instance, and "QP" and "HP" are
11 credible. And not simply just because it came out of
12 their mouth, but just if you read the doc -- you read the
13 transcripts, there's a consistency to what they say. It
14 makes sense, the context of the conversation.

15 So, and I don't know. I didn't hear any
16 argument. Although the cross-examination was somewhat
17 directed to that, neither of you really said that a
18 "plate" isn't a pound, at least in your arguments.

19 So that's one thing. I'm going to find that.

20 What I think would be helpful is for -- there
21 would be some briefing on narrow arguments focused on the
22 issues that I have raised and that we have discussed.

23 I don't need the general -- these are clearly
24 drug dealers, and they pled guilty to it. Their language
25 and their words, the conversations on the wire make that

1 manifest.

2 Let's hone down on the quantities for the four
3 Reading trips.

4 For the seizures, let's focus on the purity for
5 each of those.

6 And, I mean, it can be bulletproof -- not
7 bulletproof -- it can be bullet type briefing, you know.
8 Here is the exact thing.

9 So, for instance, because this conversation
10 that came out from the defense, it sounds like,
11 November 11th or 12th?

12 **MR. BRESLIN:** November 12, Your Honor.

13 **THE COURT:** November 12th. I didn't know that.
14 And now, you know -- well, I'm going to let them proffer
15 that.

16 It's a Government wire, so I think it should
17 come in to -- I think it should be made part of the
18 record, unless there's a -- I mean, is there objection to
19 that?

20 **MR. IBRAHIM:** Not really, Your Honor. I mean,
21 obviously, the Government would have preferred if it was
22 asked on cross-examination --

23 **THE COURT:** Fair enough.

24 **MR. IBRAHIM:** -- because Officer Riccobon could
25 have easily dealt with it. And frankly, Your Honor, so

1 can I, by proffer.

2 **THE COURT:** Okay. Well, I actually -- I mean,
3 it is true, right, we had an evidentiary hearing. You
4 didn't adduce this at the evidentiary hearing.

5 So the Government -- if you're going to use it,
6 I think the Government gets to explain it.

7 **MR. BRESLIN:** Correct, Your Honor.

8 **THE COURT:** Okay. Ms. Grasso?

9 **MS. GRASSO:** I agree. Yes, Your Honor.

10 **THE COURT:** All right. And we're going to have
11 another hearing. What I would do is this: I would --
12 we're going to have another -- you're frowning,
13 Mr. Ibrahim.

14 **MR. IBRAHIM:** No, no. Sorry, Your Honor.

15 **THE COURT:** We're going to have a sentencing
16 hearing --

17 **MR. IBRAHIM:** Right.

18 **THE COURT:** -- and the Government, itself,
19 said, save for another day the firearms issue, right. So
20 we're going to have.

21 We're not going to have any more evidence
22 adduced about drug weight. This was both parties' job.
23 All right.

24 I am, though, having said that, what I'm going
25 to do is, if in the post-trial briefing, you know, the

1 defense brings up this one line sheet, right, and only
2 that -- you can't bring up anything else. This was your
3 chance, but you didn't -- you chose not to adduce it into
4 evidence on cross or through a witness.

5 So I'll let you raise it in the briefing, the
6 Government gets to respond with, essentially, a proffer,
7 summarize what -- you know, what you would show to explain
8 that sheet. And if need be, we'll adduce that evidence at
9 the sentencing hearing. Okay. I just think it should be
10 addressed.

11 Okay. So that's what I would like to see done.
12 Does that make sense?

13 You know, it's very, very narrow -- it's very,
14 very focused, maybe a better we'd say, it's not narrow,
15 it's focused, you know.

16 You've got four discrete trips, and you've got
17 two seizures -- well, actually, you have more than two.

18 And then the Government -- as I say, you know,
19 I understand, like, the controlled buys -- which you're
20 saying is they're essentially supportive evidence that
21 would go into either of the two pockets, effectively. The
22 two main pockets being, I will call it, the Reading and
23 the seizures.

24 Does that make sense?

25 **MR. IBRAHIM:** Sure, Your Honor.

1 So just so I follow, we don't need to mention
2 the controlled buys again, right?

3 **THE COURT:** Well, you don't need to mention
4 them except if you -- do you want to put them -- like, for
5 instance, you may find them relevant to purity.

6 **MR. IBRAHIM:** Of course.

7 **THE COURT:** But my point is, I think you've --
8 I think what the Government's position is, and it makes a
9 lot of sense to me, is there's two ways to really address
10 quantity. One is with the four Reading trips; one is with
11 the seizures.

12 **MR. IBRAHIM:** Right.

13 **THE COURT:** And your argument is, either route
14 gets you the 36.

15 **MR. IBRAHIM:** Right.

16 **THE COURT:** But what I'd say is, okay, we'll
17 address those four Reading trips in one category, address
18 the two seizures, but you may want to think about the
19 purity and also respond to what you heard from the defense
20 about, well, maybe you should not just assume the
21 62 percent purity, but you should assume the -- I'll call
22 it the -- what do I want to call it? -- the at least 1.5,
23 the mixture --

24 **MR. IBRAHIM:** Yes, Your Honor.

25 **THE COURT:** -- prong, you know. And will tell

1 you, I'm not familiar -- I have not had experience with
2 the ice issue, the 80 percent. I've never dealt with
3 that. So you may want to address that.

4 **MR. IBRAHIM:** Understood, Your Honor.

5 In terms of timing, would you like the briefing
6 to be simultaneous or one side to be responding?

7 **THE COURT:** Well, I don't know. I mean, what
8 do you think? What's your preference?

9 I mean, I normally don't like simultaneous, but
10 this one I could kind of see simultaneous work and then
11 you each get to respond or -- well, what do you think?

12 **MR. IBRAHIM:** I mean, selfishly, Your Honor, I
13 would rather be in a responsive posture.

14 **THE COURT:** Well, no. You're going to get to
15 respond. I just said if you do simultaneous, you get to
16 respond.

17 **MR. IBRAHIM:** Right. Obviously, the Government
18 filed kind of pre-briefing --

19 **THE COURT:** And I read it.

20 **MR. IBRAHIM:** -- and, you know, laid out kind
21 of the Government's position. The Government doesn't want
22 to be redundant for the Court, right? That won't help the
23 Court at all.

24 **THE COURT:** So you're not going to be
25 redundant. Here's the thing: You tell a nice story,

1 okay, in your briefing.

2 I'm looking for something more kind of
3 mathematical, like line items.

4 **MR. IBRAHIM:** Right.

5 **THE COURT:** Okay. It's that, I got this --
6 "this" being, you know, October 28 trip -- and then
7 underneath it, I've got what you say is the proof. And
8 then they can say, that's not good enough.

9 And then -- but you're not only saying "this is
10 the proof of the amount," then you say "and the proof of
11 the purity is this."

12 **MR. IBRAHIM:** Right.

13 **THE COURT:** Okay? And if you want to leave it
14 that, hey, I'm just going to live with 62 percent purity
15 because that's the lowest common denominator.

16 But then you've got to respond to them saying,
17 wait a second, I mean, who's to say 62 is really an
18 accurate -- you know, a fair floor, right? I mean, why
19 isn't 30 percent a fair floor?

20 I think you need to respond that.

21 **MR. IBRAHIM:** Right. Makes sense, Your Honor.

22 **THE COURT:** Okay.

23 So what would be your preference, then, as far
24 as briefing? It is your burden. So if you said to me --
25 you'd rather, you go first, they respond, you go second --

1 that's fine.

2 But keep in mind, I don't want the type of
3 briefing I got coming in, which I'm not complaining about.
4 It was very good, actually. Very good briefing.

5 I want something very focused.

6 **MR. IBRAHIM:** Yes, Your Honor. Understood.

7 **THE COURT:** What do you want to do?

8 **MR. IBRAHIM:** I think simultaneous would be
9 just fine, Your Honor, just to --

10 **THE COURT:** Why don't we do that. Because you
11 all know the categories. You've got to break it down,
12 right? I don't have to repeat it.

13 Are you good?

14 **MS. GRASSO:** Yes, Your Honor.

15 **THE COURT:** You good?

16 **MR. BRESLIN:** Yes, Your Honor.

17 **THE COURT:** Okay. So let's do simultaneous
18 briefing, but then there gets to be a response. Okay?
19 All right.

20 What are you all thinking time wise?

21 I mean, look, the truth is, both of these
22 gentlemen are looking at a lot of time, so we're not in a
23 hurry.

24 **MR. IBRAHIM:** And, Your Honor, of course, as
25 you probably know, Ms. Grasso and I are set to appear in

1 front of Your Honor for a trial in the middle of January.

2 **THE COURT:** I had forgotten, yes.

3 **MR. IBRAHIM:** So I think speaking on behalf of
4 Ms. Grasso and I, we wouldn't mind a time, either later in
5 January or February, just --

6 **THE COURT:** Tell you what, you submit a
7 briefing schedule -- go caucus, submit a briefing schedule
8 and I'm going to defer to you all.

9 **MR. IBRAHIM:** That would be fine, Your Honor.
10 Thank you.

11 **THE COURT:** All right. Okay. And I'm not
12 going to place limits on the paging and -- but keep in
13 mind, I'm looking for focused bullet points, not a story.

14 All right. Anything else?

15 **MR. IBRAHIM:** Not from the Government. Thank
16 you for -- you were abundantly clear about what you're
17 looking for, Your Honor. So I think we can deliver
18 exactly what you want.

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

20 **MR. BRESLIN:** Nothing further from defense,
21 Your Honor.

22 **MS. GRASSO:** I envision something, a page or
23 two, based on what Your Honor's instructing in terms of
24 bullet points --

25 **THE COURT:** Well, it depends, you know. And

1 then -- because if you're going to have bullet points, you
2 better point to the record.

3 **MS. GRASSO:** Yes. Absolutely.

4 **THE COURT:** But I'll leave it to you all.

5 All right. Everybody have a good day.

6 (The proceedings concluded at 4:50 p.m.)

7
8 CERTIFICATE OF COURT REPORTER

9
10 I hereby certify that the foregoing is a true and
11 accurate transcript from my stenographic notes in the
12 proceeding.

13 /s/ Bonnie R. Archer
14 Bonnie R. Archer
15 Official Court Reporter
16 U.S. District Court
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Crim. Action No.: 1:22-cr-00024-CFC-1
 :
 MALIK J. MOSS, :
 :
 Defendant. :

**POST-HEARING BRIEF FOR DEFENDANT MALIK MOSS REGARDING
BASE OFFENSE LEVEL**

COMES NOW Daniel C. Breslin, on behalf of Defendant Malik J. Moss, hereby submits the following post-hearing brief in support of the Defendant’s sentencing position. As is outlined within and during the December 21, 2022 evidentiary hearing, Mr. Moss advances that the Government has not met its burden of proof for a base offense level 36 as the evidence, at best, establishes a base offense level of 32.

I. Applicable Evidentiary Standard.

1. It is well recognized that the burden of proof falls on the party that is seeking to prove the disputed fact.¹ And as “[d]ecisions made in sentencing do not

¹ *United States v. McDowell*, 888 F.2d 285, 291 (3d Cir. 1989) (“It therefore logically follows that the burden of ultimate persuasion should rest upon the party attempting to adjust the sentence. Thus, when the Government attempts to

as deeply implicate a defendant's rights as do decisions made regarding guilt or innocence",² the applicable burden of proof for disputed facts at a sentencing hearing is a preponderance of the evidence.³ Thus, it is the Government's burden to prove by a preponderance of the evidence the applicable methamphetamine drug weight and purity level attributable to Mr. Moss.

II. The Government has not sustained its burden of proof for a base offense level of 36 as the evidence at best establish a base offense level of 32.

A. The evidence relating to Mr. Moss' trips to Reading Pennsylvania at best establish a base offense level of 32.

2. At the evidentiary hearing, the Government presented evidence and argued that a base offense level of 36 is appropriate⁴ in this matter because Mr. Moss and Mr. Santiago purchased 10 pounds of at least 60% pure methamphetamine from a source in Reading, Pennsylvania.⁵ The evidence does not support this conclusion as the

upwardly adjust the sentence, it must bear the burden of persuasion."").

² *Id.* at 290.

³ *Id.* at 291.

⁴ Pursuant to § 2D1.1(c)(2) of the United States Sentencing Guidelines, the Government asserted that Mr. Moss and Mr. Santiago possessed "at least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual, or at least 1.5 KG but less than 4.5 KG of "Ice". U.S.S.G. § 2D1.1(c)(2) (2021).

⁵ December 21, 2022 evidentiary hearing transcript at 4, hereinafter referenced as "Evid. Hearing at ____".

evidence relating to the Reading trips, at best, establish a base offense level of 32.⁶

3. In relation to the October 9, 2021 Reading trip, Officer Riccoban testified during cross examination that no controlled substances were seized from Mr. Moss, Mr. Moss' residence, any of the alleged stash houses. For this reason, no controlled substances were field tested or preliminarily weighed and no chemical analysis could be performed.⁷ Additionally, Officer Riccoban admitted that there was no first hand surveillance of Mr. Moss in Reading on this date as the only information showing that Mr. Moss in Reading on October 9, 2021 was the ping data from his cell phone.⁸ As there was no surveillance of Mr. Moss during this trip to Reading and there were no controlled substances that could be tested, the Government conceded during its closing argument that it did not know what happened during this trip.⁹ Thus, because the Government does not even know what happened on October 9, 2021, it is inappropriate to assign any drug weight or purity level to the October 9, 2021 trip to

⁶ Pursuant to § 2D1.1(c)(4) of the United States Sentencing Guidelines, Mr. Moss asserts that the evidence establishes at best that Mr. Moss and Mr. Santiago possessed “at least 1.5 KG but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than 500 G of “Ice”. U.S.S.G. § 2D1.1(c)(4) (2021).

⁷ Evid. Hearing at 105-07.

⁸ *Id.* at 105-06.

⁹ *Id.* at 200-01 (“[T]he defense is right when they cross-examine Officer Riccoban about what happened during the first two trips. The government doesn’t know.”).

Reading Pennsylvania.

4. A similar reasoning applies to the October 16, 2021 Reading trip. Consistent with his testimony regarding the October 9, 2021 trip, Officer Riccoban also testified that no controlled substances were seized immediately following this trip and therefore, no controlled substances could be field tested, preliminarily weighed, or chemically analyzed.¹⁰ There was also no physical surveillance of Mr. Moss in Reading on this date.¹¹ As such, the Government conceded that the Government did not know what occurred during this trip.¹²

5. The only evidence presented during the evidentiary hearing that tends to implicate a purchase of methamphetamine by Mr. Moss on October 16th and is the two quarter pound sales of methamphetamine to Mr. Alfaro. However, this evidence only shows that Mr. Moss was in possession of a half pound of methamphetamine without any indication of its purity level.¹³ Thus, at the most, only a half pound of methamphetamine of an unknown purity, can be assigned to this trip to Reading, Pennsylvania.

¹⁰ *Id.* at 107-08.

¹¹ *Id.* at 107.

¹² Evid. Hearing at 200-01.

¹³ *Id.* at 199 (Special Agent Bethel testified during cross examination that none of the methamphetamine allegedly purchased by Mr. Alfaro from Mr. Moss was recovered by law enforcement and therefore, the alleged methamphetamine could not be chemically analyzed to determine the purity level).

6. Now turning to the October 27th and October 28th trips to Reading Pennsylvania. Similar to the October 9th and 16th, no controlled substances were seized, field tested, preliminarily weighed, or chemically analyzed¹⁴ and Mr. Moss was not physically observed by law enforcement in Reading on either of those dates.¹⁵ However, unlike October 9th and October 16th, there was a dialogue between Mr. Moss and Mr. Santiago on the morning of October 27th about what was to be purchased. In particular, Mr. Santiago informed Mr. Moss that “we only gonna get 5, because I ain’t tryinna get the whole 10, for real.”¹⁶ This was interpreted by Officer Riccoban as Mr. Moss and Mr. Santiago only purchasing 5 pounds of methamphetamine.¹⁷

7. It should also be noted that law enforcement could not definitively explain the back-to-back trips on October 27th and 28th as Officer Riccoban testified that there could be a “variety of reasons”.¹⁸ As such, Mr. Moss asserts that the evidence relating to the October 27th and October 28th trips, at best, establish that Mr. Moss and Mr. Santiago purchased 5 pounds of methamphetamine of an unknown purity level.

8. Turning to the final trip to Reading on November 11, 2021. Consistent with

¹⁴ *Id.* at 109-11.

¹⁵ *Id.* at 109, 110.

¹⁶ *Id.* at 123; *see also* page 3 of the Government’s Exhibit 6F.

¹⁷ Evid. Hearing at 123.

¹⁸ *Compare Id.* at 75-76 and *Id.* at 163-64.

the previous trips to Reading, no controlled substances were recovered, field tested, preliminarily weighed, or chemically analyzed and Mr. Moss was not personally observed in Reading by law enforcement.¹⁹ Additionally, the day after this trip, Mr. Moss and Mr. Santiago were overheard discussing how they only had 70 grams remaining which is indicative that no methamphetamine was purchased on November 11th. Furthermore, despite having the alleged location of the source in Reading, Officer Riccoban conceded that, as of the date of the evidentiary hearing, no investigative actions had been taken to confirm the alleged location of the methamphetamine source.²⁰ As there is minimal evidence establishing that a purchase of methamphetamine occurred during this trip, it would be inappropriate to assign any drug weight or purity level to November 11th trip to Reading.

9. Lastly, Mr. Moss asserts that it would be inappropriate for an artificial purity level to be assigned to any of the Reading trips. As described above, the burden of proof for drug weight and purity level falls squarely on the Government. The Government should not be relieved of this burden simply because the controlled substances its chose to have chemically analyzed met the requisite purity level²¹ especially since the Government had the ability to stop Mr. Moss upon his return to

¹⁹ *Id.* at 112-14.

²⁰ *Id.* at 162.

²¹ U.S.S.G. § 2D1.1(c) n. B (2021); U.S.S.G. § 2D1.1(c) n. C (2021).

Delaware from Reading to confirm their suspicions. Furthermore, the assignment of an artificial purity level would be inappropriate as there was at least one occurrence where the methamphetamine tested at 62% and there was other evidence about the poor quality of the methamphetamine.²²

10. As the evidentiary hearing evidence at best establishes that Mr. Moss was in possession of 5.5 pounds or 2.49 kg of methamphetamine of an unknown purity, the Government has failed to meet its burden of proof for a base offense level of 36.

B. The methamphetamine seized from Mr. Pankins' residence should not be attributed to Mr. Moss.

11. The Government also asserts that a base offense level of 36 would be appropriate because the 3.4 pounds of methamphetamine, which was 86% pure, recovered from Mr. Pankins' residence is attributable to Mr. Moss. This assertion fails for a number of reasons and therefore, the methamphetamine recovered from Mr. Pankins' residence can not be considered when calculating the base offense level for Mr. Moss.

12. The Government's assertion fails to consider that Mr. Pankins told law enforcement that the methamphetamine belonged to someone other than Mr. Moss. Officer Riccoban testified that Mr. Pankins specifically told law enforcement that "he

²² Evid. Hearing at 112; *see also* Government's Exhibit 9 at 6..

was holding [the methamphetamine] for somebody else”²³, that the methamphetamine belonged to someone named “Bass”, and that Mr. Pankins got the methamphetamine from cleaning out a house in the “Winding Brooks” community in Maryland.²⁴ As Mr. Pankins gave law enforcement specific information about where he obtained the methamphetamine, the methamphetamine recovered from Mr. Pankins’ home is not attributable to Mr. Moss.

13. The Government’s assertion also fails to consider that the methamphetamine being stored at Ms. Chamberlain’s residence was moved to Mr. LaPointe’s residence, not Mr. Pankins’, just two days before law enforcement searched the alleged stash houses. Officer Riccoban testified during direct examination that primarily Ms. Chamberlain’s residence “was the primary location that they would hang out and do most of their drug transactions. . . .”²⁵ However, when Ms. Chamberlain’s residence was searched, no methamphetamine was recovered because Mr. Santiago had moved the methamphetamine to Mr. LaPointe’s residence.²⁶ Thus, the evidence does not support the conclusion that Mr. Moss used Mr. Pankins’ residence as a stash house.

²³ Evid. Hearing at 116, 155.

²⁴ *Id.* at 157-59; Government’s Exhibit 5 at 10-13.

²⁵ Evid. Hearing at 34.

²⁶ *Id.* at 37, 47, 49-51.

14. Additionally, the link between the methamphetamine found at Mr. Pankins' residence and Mr. Moss is tenuous at best. The Government would like this Court to believe that Mr. Moss was storing methamphetamine at Mr. Pankins' residence because Mr. Pankins and Mr. Moss spoke a lot,²⁷ law enforcement observed Mr. Pankins driving Mr. Moss to a controlled purchase,²⁸ Mr. Pankins traveled to Reading at the same time as Mr. Moss on November 11th, and that Mr. Moss traveled to the area of Mr. Pankins' residence after returning to Delaware on November 11th. None of these reasons lend any meaningful support to the conclusion that Mr. Moss was using Mr. Pankins' residence as a stash house.

15. The fact that Mr. Moss and Mr. Pankins spoke a lot and that Mr. Pankins drove Mr. Moss to a controlled purchase is not indicative of Mr. Pankins' residence being a stash house for Mr. Moss. As explained by Officer Riccoban during cross examination, Mr. Pankins informed law enforcement that he Mr. Moss have been friends for years, that they grew up together, and Mr. Pankins considered Mr. Moss his best friend.²⁹ And as Mr. Moss' best friend, it is certainly logical that Mr. Pankins would be observed with Mr. Moss during various points of the investigation which could have included just prior to a controlled purchase. More importantly, there was

²⁷ *Id.* at 32.

²⁸ *Id.* at 95.

²⁹ *Id.* at 155-56.

no evidence establishing that Mr. Moss entered Mr. Pankins' residence prior to the controlled purchase.³⁰

16. Additionally, the fact that Mr. Pankins may have been in Reading, Pennsylvania at the same time as Mr. Moss on November 11th, does not somehow mean that Mr. Moss was using Mr. Pankins' residence as a stash house. It is apparent from the sheer amount of illegal contraband found in Mr. Pankins' residence that Mr. Pankins was engaged in his own unlawful activities. As Mr. Pankins possessed over 40 pounds of marijuana and several firearms,³¹ it is certainly logical to conclude that Mr. Pankins may have also been involved in the sale of methamphetamine which would explain his presence in Reading, Pennsylvania on November 11th.

17. Lastly, the fact that Mr. Moss traveled to the area of Mr. Pankins' residence after returning to Delaware on November 11th does not lend any meaningful support to the argument that Mr. Moss used Mr. Pankins' residence as a stash house. The Government's assertion relies on faulty logic as the Government would like this Court to believe that Mr. Moss drove to Mr. Pankins' residence after the two traveled to Reading in two separate cars,³² and did so by driving past Mr. LaPointe's

³⁰ Evid. Hearing at 126.

³¹ *Id.* at 90-91.

³² *Id.* at 83-84; Government's Exhibit 10F.

residence, an alleged stash house,³³ only to then double back to that same stash house less than 20 minutes later.³⁴ Thus, as described above the link between Mr. Moss and the methamphetamine recovered from Mr. Pankins' residence is tenuous at best and therefore, the Government has not proven by a preponderance of the evidence that this methamphetamine should be attributed to Mr. Moss.

WHEREFORE, for the reasons presented to this Honorable Court in this post-hearing brief as well as during the evidentiary hearing, Mr. Moss respectfully requests that this find that the Government has failed to sustain its burden of proof for the base offense level of 36.

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Dated: February 20, 2023

³³ Evid. Hearing at 45 (Mr. LaPointe's residence "was used as a place that they would hang out over . . . but also as a place that they would occasionally stash their product as well.").

³⁴ *Id.* at 45, 118-20; Government's Exhibit 10G.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
v.)	Crim Action Nos. 22-24-CFC-1
)	22-24-CFC-2
MALIK MOSS a/k/a “Bleek,”)	
and JACOB SANTIAGO,)	
)	
Defendants.)	

**GOVERNMENT’S POST-HEARING BRIEF IN SUPPORT OF
PROFFERED DRUG GUIDELINES CALCULATION**

Following guilty pleas from Malik Moss (“Moss”) and Jacob Santiago (“Santiago”) to conspiracy to distribute controlled substances, the Court held an evidentiary hearing to determine the weight and type of substances attributable to the conspiracy. The government presented evidence supporting a base offense level 36 applying the crystal methamphetamine (“meth”) guidelines under two separate drug quantity theories, deemed the “Seizure Side” (based on drugs actually seized) and the “Reading Side” (based on total meth purchased from a Reading supplier). *See* Tr. at 220.¹ Either calculation leads to a base offense level 36 based on

¹ All references to transcripts are to pages of the December 21, 2022 Evidentiary Hearing transcript. All references to exhibits are to exhibits submitted at the hearing.

conservative calculations. However, if the Court concludes by a preponderance of the evidence that the meth *seized* at the conclusion of this case were the remnants of 15 pounds of meth purchased in Reading, a straightforward calculation would apply, resulting in a base offense level of 38 before enhancements. *See* Section B.3.b., *infra*.

At the conclusion of the hearing, the Court requested simultaneous post-hearing briefing and responses from both parties listing the guidelines calculations for each separate theory and a very brief summary, with citations, of the evidence. The government's submission follows.

A. "The Seizure Side"

At the conclusion of the wiretap investigation, law enforcement seized 1,549.7 grams of 86% pure meth from Tyrell Pankins' ("Pankins") house and 296 grams of 98% pure meth from Roland Lapointe's ("Lapointe") house. Ex. 9 at 7, 11. Because investigators are aware of the weight and the purity of each of these seizures, the only question for the Court is whether each, or both, are attributable to the Moss and Santiago conspiracy.² They are.

² If the Court finds that the meth at Pankins' house is attributable to the conspiracy, there is no need for the Court to determine whether the meth at Lapointe's house is also attributable to the conspiracy. It would not change the base offense level of 36: $(1,549 \text{ grams} \times .86) + (296 \text{ grams} \times .98) = 1.622.22 \text{ grams of actual meth}$, which is also a base offense level of 36.

1. Pankins' House

1,549.7 grams at 86% purity, which is 1,332.74 grams of “actual” meth. (Ex. 9 at 7)

Level 36 (applying the “Ice” guidelines for meth that is $\geq 80\%$ pure)³

The government presented evidence that Pankins assisted Moss and Santiago in purchasing, selling, and storing their meth. The government presented evidence about three examples of this collaboration:

- Pankins travelled with Moss and Santiago to Reading on November 11, 2021, to purchase meth (discussed in detail below). Moss then travelled directly back to Pankins' house, to store the meth they had just purchased despite the two apparently being in separate cars. Tr. at 81-86 (Riccobon testimony); Tr. 225-26 (argument); Ex. 6G at 7 (text messages to Pankins giving directions to address in Reading); Ex. 10F, 10G, 11B (location data).
- Prior to a sale of half a pound of meth to a confidential source, Moss and Pankins met up and then drove together from the area of Pankins' apartment to the drug deal. Tr. at 92-96 (Riccobon testimony); Tr. 222-24 (argument). The purchase was made directly from Moss (while Pankins waited in the car).

³The guidelines include different base offense levels for “Methamphetamine,” “Methamphetamine (actual),” and “Ice.” “Ice” refers to “a mixture or substance containing [meth] of at least 80% purity.” U.S.S.G. § 2D1.1, Note (C) to Drug Quantity Table.

“Methamphetamine (actual)” refers “to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing [meth] at 50% purity contains 5 grams of [meth] (actual).” U.S.S.G. § 2D1.1, Note (B) to Drug Quantity Table. In a case, like this, involving a mixture or substance of meth, the Court is instructed to “use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the . . . methamphetamine (actual), **whichever is greater.**” *Id.* (emphasis added).

Tr. at 92-96 (Riccobon testimony), 184 (Bethel testimony). The meth was tested and determined to weigh 226.8 grams total and to be 62% pure. Ex. 9 at 6.⁴ This indicates that Moss travelled to Pankins' house directly before selling a half pound of meth because he needed to pick up the bigger quantity from his main stash house.

- On November 7, 2021, after observing undercover law enforcement at one of his stash houses, Moss orchestrated to move a supply of meth out of the home of Christina Chamberlain ("Chamberlain"). After meeting with the courier, Moss moved the meth directly to Pankins' house. Tr. at 96-103 (Riccobon testimony); Tr. at 224-25 (argument); Ex. 3 at 1-3 (Meadows recalls same); Ex. 6I (communications); Ex. 10E (location data).⁵

Each of these examples demonstrates Pankins' involvement with the conspiracy and indicates that he stored meth for the conspiracy at his home.⁶ This is corroborated by: (1) Pankins' own words, Ex. 5 at 4 (before coming up with a more detailed story, stating that he did not sell meth with "Bleek" (Moss) and "Jake" (Santiago) but was holding the meth "because a friend of his [Moss or Santiago] got caught with some shit"); and (2) the location of the meth in Pankins' home – stored

⁴ The quantity purchased here alone would result in a base offense level of 30 under the guidelines (140.61 grams of "actual" meth).

⁵ Officer Trevor Riccobon testified that while location data is not exact, he compared Moss's location data on this date to his location at times when he had been surveilled at Pankins' house and they showed him in the same location on November 7 and November 11. *See* Tr. at 85-86, 169-170 (Riccobon testimony).

⁶ In fact, investigators sought and received authorization to search Pankins' house because, prior to finding any drugs there, there was probable cause to believe that it was a stash house for the conspiracy. *See* Tr. at 90 (Riccobon testimony). The sufficiency of probable cause to search Pankins' home for drugs related to this conspiracy was never challenged.

separately from the marijuana he admitted to selling himself. *See* Tr. at 90-91 (Riccobon testimony) (explaining the meth was in the laundry room inside the apartment and the marijuana was stored in the garage); Tr. at 229-31 (argument).

2. Lapointe's House

296 grams at 98% purity, which is 290.08 grams of “actual” meth. (Ex. 9 at 11).

Level 32 (290 g of “actual” meth or applying the “Ice” guidelines for meth \geq 80% pure)

The government presented evidence that Lapointe's house was used to store meth, and other drugs, for the conspiracy.⁷ *See* Tr. at 45-55 (Riccobon testimony). This conclusion was based on intercepted communications, including calls made just days before the seizure wherein Santiago and Moss discussed moving meth from Chamberlain's and storing it at Lapointe's. Tr. at 50-55 (Riccobon testimony); Ex. 6K (December 12 communications); *see generally* Ex. 6J (additional communications about storing drugs with Lapointe). Lapointe admitted that Moss

⁷ Moss's counsel does not dispute this. *See* Tr. at 249 (Moss). Moss's counsel argued that the conspiracy either stored drugs at Lapointe's house or at Pankins' house but could not have stored drugs at both. But, as Ofc. Riccobon testified, dealers often have multiple stash houses. *See* Tr. at 120 (“[D]ealers are not going to use one specific location, again because if a police raid happens or competition comes after them, they're going to have separate locations to keep a lot of their products.”); *see also* Tr. at 58 (describing Santiago discussing “going to dip into . . . a larger supply somewhere.”); Tr. at 147 (testifying that Chamberlain's house was where a lot of transaction occurred but not the place drugs were primarily stored).

and Santiago used his house to store meth and fentanyl, Ex. 4 at 4-6, 14-15, 21-23, and, in particular, that Santiago had come to his house days prior to the seizure, weighed meth, and left it in his home. Ex. 4 at 4, 12, 14-15; Tr. at 115, 120 (Riccobon testimony); *see also* Ex. 1 at 21 (Chamberlain also recalls the incident and believes the drugs were moved to Lapointe's house).

B. "The Reading Side"

The Court can also base its conclusion as to drug quantity on the amount of meth purchased by Moss and Santiago in Reading. Repeated conversations over the wiretap indicate that when Moss and/or Santiago travelled to Reading, they were purchasing meth. *See* Tr. at 187-91 (Bethel testimony) & Ex. 7C (on October 15 Moss is out of meth to sell Alfaro but tells him on October 16 he is "grabbing now" and then completes a deal); Tr. at 77-79 & Ex. 6F at 10-12 (after October 27-28 trip Moss describes the house where he bought "ice" in Reading); Tr. at 81, 84-85 (Riccobon testimony) & Ex. 6G at 6, Ex. 15 (on November 11 Moss says he is "trying to grab this ice" and confirms to Chamberlain, a stash house manager, that he is on his way back).⁸

⁸ Moss's counsel acknowledges that drug deals, albeit for smaller amounts, took place on October 16 and October 27/28, Tr. at 246-49, while Santiago's counsel denies that deals took place on any occasion or, if they did, Santiago was not involved. Tr. at 254-61.

To determine the guidelines range, the Court calculates both the quantity of meth involved and its purity. The government focuses on two bulk purchases of meth made by Moss and Santiago for at least ten pounds on October 27-28, 2021, and for at least five pounds on November 11, 2021.⁹

1. Ten Pounds on October 27-28.

In October, Moss and Santiago discussed purchasing between five and twenty pounds of meth. *See* Tr. at 61-69 (Riccobon testimony); Ex. 6B at 11 (discussing buying 20 pounds on October 21); Ex. 6F at 3 & Ex. 13 at 3 (discussing buying 5 or 10 pounds on October 27). They ultimately travelled to Reading on October 27 and again on October 28. Tr. 69-74 (Riccobon testimony); Ex. 10C, 10D, 11A (location data). The evidence shows that they ended up purchasing ten pounds (4,535.92 grams) for two reasons. First, on the way home from Reading, Moss began mass advertising the meth he had for sale, something that was atypical for him and

⁹ At the hearing, the Court and government also discussed attributing a quarter pound of meth distributed to Jesus Alfaro (“Alfaro”) on October 16 after Moss returned from that trip to Reading. That additional quantity does not alter the guidelines calculation materially. Based on intercepted communications, and Alfaro’s own admissions, investigators concluded that over the course of the conspiracy Alfaro purchased at least a pound and a half (680.39 grams) of meth from Moss for redistribution. Tr. at 183-97 (Bethel testimony); Ex. 7A-7I. Sales to Alfaro alone would result in a base offense level of 32 (> 22.1% pure) or even a 34 (> 73.5% pure), recognizing that Alfaro requested, and Moss provided, the “chunky” higher quality meth. *See* Ex. 7A; Ex. 7C; Ex. 7G; Ex. 7H; Ex. 7I (communications between Moss and Alfaro); Tr. at 167-68 (Riccobon testimony); Tr. at 184, 186, 189 (Bethel testimony).

suggested that he had purchased a larger quantity than originally expected. Tr. at 74-75 (Riccobon testimony); Ex. 6F at 7-9. Second, and most importantly, Moss explicitly told a co-conspirator, Gerardo Rodriguez, that he had gone to “Reading, PA” and bought “10 pounds of ice.” Ex. 6F at 10-12; Tr. at 77-80 (Riccobon testimony).

2. Five Pounds on November 11.

On November 11, Moss, Santiago, and Pankins travelled to Reading. *See* Tr. at 81-86 (Riccobon testimony); Ex. 6G at 6-8 (communications); Ex. 10F, 10G, 11B (location data). The day after that trip, Moss and Santiago spoke on the phone. Ex. 6B at 16-23. Santiago explained that he had some “pound traps” and added up a total of five one-pound drug sales that were lined up between the two of them. Ex. 6B at 16 (“I’ve got three, plus that other one, so that’s four. And you’ve got one. That’s five.”); *see also* Tr. at 86-88 (Riccobon testimony). The Court can determine, based on this conversation, that Moss and Santiago purchased *at least* five pounds (2,267.96 grams) of meth in Reading on November 11 because the next day they discuss at least five pounds that already have lined up to sell.¹⁰

¹⁰ After the evidentiary portion of the hearing was closed, defense counsel proffered information about an additional call that occurred soon after the November 11 trip to Reading, suggesting that it supported a theory that fewer than five pounds were purchased that day. *See* Tr. at 251-52, 258-60. The Court has allowed the defense to introduce this (and only this) additional evidence in their submissions to be filed simultaneous with this submission. Tr. at 267-68. The government is aware of the

3. Purity Calculations.

a. **Calculation without reference to Pankins and Lapointe seizures.**

At a bare minimum, the Court should find that the purity of the meth for each of these Reading purchases is 62%, the lowest purity of any meth associated with the entire conspiracy, which was based on a purchase of 226.8 grams of meth directly from Moss. Ex. 9 at 6; Tr. at 92-96 (Riccobon testimony), 184 (Bethel testimony). Given that the meth purchased directly from Moss prior to the initiation of the wiretap was between 94% and 95% pure, *see* Ex. 9 at 2, 3, 5; Tr. at 12-15, and the meth seized pursuant to search warrants at the end of the conspiracy was between 86% and 94% pure, *see* Ex. 9 at 7, 8; Tr. at 92-96, a proposed across-the-board purity assessment of 62% for the proven, but unseized, meth is reasonable and conservative. The guidelines based on this purity are as follows.

Fifteen Pounds (6,803.89 grams):

- 6,803.89 grams x .62 = 4,218 grams actual meth
 - **Level 36:** Between 1,500 grams and 4,500 grams actual meth

Ten Pounds Only (4,535.92 grams):

- 4,535.92 grams x .62 = 2,812.27 grams actual meth
 - **Level 36:** Between 1,500 grams and 4,500 grams actual meth

Five Pounds Only (2,267.96 grams)

- 2,267.96 grams x .62 = 1,406.13 grams actual meth
 - **Level 34:** Between 500 grams and 1,500 grams actual meth

call and, in its response, will provide relevant context and argument supporting the contention that at least five pounds of meth were purchased on November 11.

b. Calculation with reference to Pankins and Lapointe seizures.

However, if the Court determines that the government has shown a sufficient nexus between the fifteen pounds purchased in Reading and the meth seized from the homes of Pankins and/or Lapointe, the Court should conclude that those seized quantities were the remnants of the meth purchased from Reading on October 27/28 and November 11 and assess a purity of 86% (the lower purity between the amounts seized from Pankins and Lapointe). As shown below, that would result in a base offense level of 38 provided that the Court concludes that 10 pounds or more was purchased from Reading.

Fifteen Pounds (6,803.89 grams) or Ten Pounds (4,535.92 grams):

- **Level 38:** Over 4,500 grams (9.9 pounds) of “Ice”

Respectfully submitted,

DAVID C. WEISS
United States Attorney

By: /s/ Ruth Mandelbaum
Alexander P. Ibrahim
Ruth Mandelbaum
Assistant United States Attorneys

Dated: February 21, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
v.)	Crim Action Nos. 22-24-CFC-1
)	22-24-CFC-2
MALIK MOSS a/k/a “Bleek,”)	
and JACOB SANTIAGO,)	
)	
Defendants.)	

**RESPONSE TO DEFENDANTS’ POST-HEARING BRIEFING
REGARDING DRUG GUIDELINES CALCULATION**

The government respectfully submits the below post-hearing briefing responses to the submissions made by Defendants Malik Moss (“Moss”) and Jacob Santiago (“Santiago”) regarding drug weight and purity calculations.

A. Response to Defendant Moss’s Submission

1. October 27/28 Reading Trips

The government submits that the evidence presented at the evidentiary hearing and discussed in its initial post-hearing submission establish by a preponderance of the evidence that Moss and Santiago travelled together to Reading, Pennsylvania and purchased ten pounds of crystal methamphetamine (“meth”).

2. November 11 Reading Trip

During the evidentiary hearing, the government presented a call at 8:54 a.m. on November 12, where Santiago and Moss discuss a total of five “pound traps,” to support the conclusion that they purchased at least that much meth from Reading the day before. Ex. 6B at 16. At the conclusion of the evidentiary hearing and after the witnesses had testified, counsel for Moss presented an additional line sheet, not yet in evidence, for a call made at 9:46 a.m. that same day. He suggested then, and in post-hearing briefing, that the call indicated that the two men had only 70 grams of meth on hand and, therefore, could not have purchased five pounds the previous day. *See* Ex. 17.¹ When viewed in its proper context, this call actually supports the government’s position both that Moss and Santiago purchased at least five pounds of meth on November 11 and that they used the homes of Roland Lapointe (“Lapointe”) and Tyrell Pankins (“Pankins”) as stash houses for this product.²

¹ Defendant Santiago makes a similar argument, referring to 170 grams. *See* Santiago Br. at 5 n.5. As shown in Exhibit 17, Santiago states: “yeah but I, remember we had like 170 grams? That shit only says 70 something grams and I know you took a zone out. I took a half and I think we had like a quarter somewhere but. . .” A fair reading of this may be, that in this particular location, they once had stored 170 grams but now have only “70 something” grams. Neither Defendant attached this line sheet to briefing, so the government does so here as Exhibit 17.

² Because this line sheet was raised after the evidentiary portion of the hearing, the Court has stated that it will allow the government to respond by proffer. Tr. 268-69.

As detailed in the government's prior briefing, on November 11, Moss, Santiago, and Pankins travelled to Reading, Pennsylvania and then stopped at the homes of Pankins and then Lapointe. *See* Exs. 10F & G; Ex. 6G at 9 (around the time of the GPS hit, Moss calls Lapointe and says: "Yo, open the door fat boy."). The government argued they did so to stash the meth they had just purchased.

The next day, on November 12, additional calls show that Santiago has a deal lined up, but cannot access this meth stored at Lapointe's house because Lapointe is not answering the phone:

- 8:42-8:44 a.m. (Ex. 6J at 5-6):³ Santiago asks Moss if he "touch[ed] any of [his] shit last night." Santiago tells Moss that he has a sale but can't get ahold of Lapointe to access the meth: "Roland not trying to pick up. I gotta trap, I'm gonna bust this trap in the morning." Moss offers to loan Santiago an "ounce" but Santiago says he needs "the whole twizzie." Moss offers to call Lapointe for Santiago.

³ There is no dispute that this call relates to meth, but even if there was, Moss's reference to "shaky shit" makes it clear that the call references meth. This reference also indicates that Moss is interested in, and used to selling, the higher quantity "chunky" meth. Tr. at 167 (Riccobon) ("Usually with crystal meth . . . the shake is just . . . left over from the chunks."); Tr. at 184 (Bethel) (responding that "chunky" is "Good. It's a higher quality.").

- 8:50-8:52 a.m. (Ex. 6J at 7-8): Moss tells Santiago that Lapointe did not pick up so Santiago says he will go over there himself (“I’m about to slide over now.”). Santiago then tells Moss that he is charging his buyer \$3,750 for the pound-level deal he has lined up.⁴
- 8:54-9:04 a.m. (Ex. 6B at 16-23): Santiago calls Moss to discuss each of the “pound traps” that the two men have lined up, adding up to five. They also discuss the “change,” or small amounts, they have at Chamberlain’s house (“Beans crib”) amounting to only “four ounces” or “five ounces.” *Id.* at 18. Santiago tries to see whether he can cobble together enough for a deal without getting into the main stash (“I could use that four then your one and my one...”). *Id.*

Only after this, at 9:46 a.m. (Ex. 17), do the two discuss the “170 grams” they had. This is the call that defense counsel suggests points to the fact that Moss and Santiago had over only a total of 170 grams of meth: “[R]emember we had like 170 grams?” However, that argument misses three key points: first, Santiago still has not gone to Lapointe’s house to get his stash of drugs (“I gotta go to Ro crib anyway”). Santiago is trying to figure out what other amounts of meth he has ready access to before going to Lapointe’s to pick up more (“[D]id you grab out of that

⁴ This is consistent with the price the CS paid, \$1,800 for a half pound, from Moss on the day of the controlled purchase. Tr. 222-24.

little bag? . . . The one that had ounces in?”). Second, the context of the call and the use of the past tense also makes it clear that the men are talking about drugs they *had*, i.e. pre-existing amounts before going to Reading to get more (“[R]emember we *had* like 170 grams” (emphasis added)). The problem with the Reading meth is that they do not have easy access to it—it is stored at the homes of others, and at least one of those people is not picking up the phone.⁵ Third and finally, Santiago’s multiple calls with Moss make it clear he needs a pound of meth that morning. One pound is 454 grams—much larger than the 170 grams the defense has argued was at issue. Indeed, an hour after that call, at 10:49 a.m., Santiago is now ready to make the sale and needs Moss to meet him; he confirms for Moss that his buyer, “Jeff,” needed a full pound of meth. *See* Ex. 6B at 24) (call at 10:49 a.m. where Santiago says “Jeff . . . he needed a plate.”).

In this context, the calls between Moss and Santiago confirm that the morning after the Reading trip, Santiago wanted to use the meth he had stored at Lapointe’s

⁵ This call also indicates that the two are storing meth in multiple locations. Moss states that he left some of “that shit at B crib.” As Officer Riccobon testified, this drug organization, like many others, had multiple stash houses it used to store quantities of meth. Tr. at 120 (“[D]ealers are not going to use one specific location, again because if a police raid happens or competition comes after them, they’re going to have separate locations to keep a lot of their products.”); *see also* Tr. at 58 (describing Santiago discussing “going to dip into . . . a larger supply somewhere.”); Tr. at 147 (testifying that Chamberlain’s house was where a lot of transaction occurred but not the place drugs were primarily stored).

house in order to accomplish at least one pound-level deal of meth because the small amounts they stored elsewhere could not fulfill the customers' orders.

B. Response to Defendant Santiago's Submission

1. Quantity

The government relies on its arguments presented in its opening brief regarding drug quantity. While not material to those calculations, the government notes that Santiago argues that there is “no testimony that [he] was involved in the Conspiracy before October 21st,” and, thus, should not be responsible for trips taken to Reading or sales prior to that date. Santiago Br. at 4 n.2. The government does not base its calculation on anything prior to this date. But the record includes multiple examples of Moss and Santiago discussing buying, storing, and selling meth prior to that date anyway. *See, e.g.*, Ex. 6B at 7 (Oct. 7 conversation where Moss offers to loan Santiago a “zip”); Ex 6E (Oct. 16 conversation where Moss and Santiago discuss taking a ride up to Reading).

2. Purity

Santiago also takes issue with the government attributing “large quantities of methamphetamine actual to defendant Santiago when no quantity of drugs were either recovered or tested,” relying solely on “sheer conjecture” as to the purity of the meth. Santiago Br. at 11. The Guidelines do not “require absolute certainty about the amount of drugs or their purity when the drugs are not seized or the amount

seized does not reflect the scale of the offense.” *United States v. Walker*, 688 F.3d 416, 423 (8th Cir. 2012) (quoting *United States v. Cockerill*, No. 99-4634, 2000 WL 852608, at *2-3 (4th Cir. June 28, 2000)).

While it would be ideal to have laboratory results for all of the meth involved in the conspiracy, this evidence is “not required” and this Court should consider “whatever reliable evidence is available to make its . . . purity determination.” *United States v. Williams*, 19 F.4th 374, 380 (4th Cir. 2021); *see also United States v. Walker*, 688 F.3d 416, 423 (8th Cir. 2012) (“The Guidelines do not require the government to establish the identity, quantity, or purity of methamphetamine by laboratory analysis.”).

Through testimony, lab reports of seized meth, and intercepted communications, the government has presented substantial evidence about the purity of meth sold over the course of the conspiracy, which is more than enough to meet the government’s burden as to purity of the unseized meth, as laid out in its opening brief. *See United States v. Farris*, 421 F.Supp.3d 321, 329 (W.D. Va. 2019) (holding that the conspiracy sold “ice” meth based on testimony of co-conspirators and trend in the region, despite having no chemical analysis for most drugs and an analysis below 80% for a sale to an undercover agent); *United States v. Sebastian*, 2021 WL 164552, at * 5 (W.D. Va. Jan. 19, 2021) (applying ice guidelines for entirety of

conspiracy based on analysis of meth seized at end of conspiracy and purchased from a coconspirator).

As the government has laid out for the Court in its initial post-hearing briefing, if the Court wishes to proceed conservatively and use the lowest purity level across the many drug seizures in this case, 62%, that results in a base offense level 36. If the Court concludes that the amounts seized from the homes of Pankins and Lapointe were remnants from the Reading purchases, then an 86% purity would be appropriate, resulting in a base offense level 38.

3. Policy

Santiago finally argues that the Court should not follow the meth guidelines for policy reasons: essentially, the 10:1 disparity between “actual” meth and a mixture and substance is unfair. This argument is mistimed and does not alter the Court’s duty at this stage to calculate the appropriate, advisory guidelines range based on the offense level under the relevant drug guidelines. U.S.S.G. §2D1.1(a)(5).

Assuming that this request will be reiterated at the time of sentencing, the government will address it in detail then. While the Court may choose to deviate from the guidelines range based on policy considerations, it is not required to, and appellate courts have consistently approved of district courts’ decisions not to vary

downward based on the same argument defendant Santiago advances here.⁶ *See, e.g., United States v. Mosley*, 53 F.4th 947, 965 (6th Cir. 2022) (approving of district court’s decision not to vary downward based on argument attacking meth guidelines on policy grounds); *United States v. Noriega*, 35 F.4th 643, 652 (8th Cir. 2022) (same); *United States v. Maldonado-Pineda*, 2022 WL 17592129, at *2 (4th Cir. Dec. 13, 2022); *United States v. Cain*, 2022 WL 16579603, at *8 (6th Cir. 2022) (same); *United States v. Tafolla*, 2022 WL 3973617, at *1 (8th Cir. Sep. 1, 2022) (same); *United States v. Iglesias-Tovar*, 2022 WL 3349124, at *3 (8th Cir. Aug. 15, 2022) (same); *United States v. Smith*, 2021 WL 3854762, at *2 (10th Cir. Aug. 30, 2021) (same); *United States v. Johnson*, 812 F. App’x 329, 335 (6th Cir. 2020) (same); *United States v. Lewis*, 976 F.3d 787, 799-800 (8th Cir. 2020) (same); *United States v. Heim*, 941 F. 3d 338, 340-41 (8th Cir. 2019) (same); *United States v. Campos*, 724 F. App’x 279, 280 (4th Cir. 2018) (same); *United States v. Sharkey*,

⁶ Perhaps because the decision not to vary downward based on a policy disagreement is less controversial than the decision to do so, there are few district court opinions detailing reasons for rejecting the same argument Santiago makes here. *But see United States v. Farris*, 421 F.Supp.3d 321, 330 (W.D. Va. 2019), *affirmed sub. nom. United States v. Williams*, 19 F. 4th 374 (4th Cir. 2021) (“It is beyond dispute that methamphetamine is a highly destructive drug. . . It is thus not inappropriate for the Sentencing Guidelines to treat higher purity methamphetamine more seriously, in light of its increased popularity, its more profound effect on the user, and its connection with international crime syndicates.”); *United States v. Kaufman*, 2:18-CR-36, 2019 WL 3220571, at *3 (D. Me. July 17, 2019) (considering and rejecting arguments requesting downward variance based on guidelines disparity). Appellate decisions, including those cited and many more, confirm that courts often, wholly appropriately, reject this argument.

895 F.3d 1077, 1082 (8th Cir. 2018) (same); *United States v. Trejo*, 624 F. App'x 709, 714 (11th Cir. 2015) (same). For reasons the government will discuss at the appropriate time, the Court should not vary downwards from the meth guidelines.

Respectfully submitted,

DAVID C. WEISS
United States Attorney

By: /s/ Ruth Mandelbaum
Alexander P. Ibrahim
Ruth Mandelbaum
Assistant United States Attorneys

Dated: February 27, 2023

EXHIBIT 17

NONE

Linesheet

User: Jerwon Bethel

Case: CP-21-0025		Target: MOSS, Malik		Line: 8562711632 - ATT ... File Number:	
Session:	14406	Classification:	Pertinent	Direction:	Outgoing
Date:	11/12/2021	Content:	Audio	Associate DN:	(267) 752-0603
Start Time:	09:46:37 EST	Primary Language:	English	In/Out Digits:	12677520603
Stop Time:	09:49:42 EST	Complete:	Completed	Subscriber:	
Duration:	00:03:05	Monitor ID:	adale	Participants:	MOSS, Malik SANTIAGO, Jacob
Synopsis					

MOSS to SANTIAGO

[Non Pertinent conversatiion]

MOSS asks Santiago about the keys (Rodneys) . SANTIAGO says they are in the Taurus. SANTIAGO is going to get the keys because someone has to go to the clinic.

[Pertinent conversation]

SANTIAGO tells MOSS he has to go to Ro's crib. SANTIAGO asks about a bag that has

[End of call]

SB: AD

[Beginning of pertinent conversation at: 9:48:30]

SANTIAGO: Nah, I gotta go, I gotta go to Ro crib anyway.

MOSS: A'right.

SANTIAGO: Ey yo, yo, yo, yo.

MOSS: Yo.

SANTIAGO: Um, forgot what I was gonna say. Ey yo, did you grab out of that little bag?

MOSS: What little bag?

SANTIAGO: The one that has the ounces in. [U/I] that zone that you um grabbed last night?

MOSS: Nah, remember I left that shit at B crib. I only took, I only took um..

SANTIAGO: [U/I]

MOSS: I only took a "zone" [S/L] out of there, remember?

Linesheet

User: Jerwon Bethel

Case: CP-21-0025

Target: MOSS, Malik

Line: 8562711632 - ATT ... File Number:

SANTIAGO: Yeah but I, remember we had like 170 grams? That shit only says 70 something grams and I know you took a "zone" out. I took a half and I think we had like a quarter somewhere but..

MOSS: No, remember I sold it? I added that shit to the other quarter. [Pause] You heard me?

SANTIAGO: Huh?

MOSS: I added that shit to the other quarter, remember? That little bag you had. [U/I]

SANTIAGO: Yeah.

MOSS: I needed a quarter and then the mother fucker called me for another quarter and I had to take a quarter out of that jawn?

SANTIAGO: Yeah but shit. I, I ain't think uh... call you right back.

[End of conversation]

SB: AD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Crim. Action No.: 1:22-cr-00024-CFC-1
	:	
MALIK J. MOSS,	:	
	:	
Defendant.	:	

DEFENDANT MALIK MOSS' RESPONSIVE POST-HEARING BRIEF
REGARDING BASE OFFENSE LEVEL

COMES NOW Daniel C. Breslin, on behalf of Defendant Malik J. Moss, hereby responds to the Government's post-hearing brief in support of proffered drug guidelines calculation. As is outlined during the December 21, 2022 evidentiary hearing, Mr. Moss' February 20, 2023 post-hearing brief, as well as within, Mr. Moss advances that the Government has not met its burden of proof for a base offense level 36 as the evidence, at best, establishes a base offense level of 32. In support of this responsive brief, Mr. Moss asserts the following:

I. The Government has failed to present sufficient evidence to establish that the methamphetamine recovered from Mr. Pankins' residence is attributable to Mr. Moss.

1. The Government asserts that the methamphetamine recovered from Mr. Pankins' residence is attributable to Mr. Moss because:

- a. Mr. Pankins traveled with Mr. Moss and Mr. Santiago to Reading, Pennsylvania on November 11, 2021 to purchase meth and upon returning to Delaware, Mr. Moss traveled to Mr. Pankins' residence;¹
- b. Mr. Moss and Mr. Pankins were together prior to a controlled purchase and they "drove together from the area of [Mr.] Pankins' apartment to the drug deal";² and
- c. Mr. Moss allegedly moved methamphetamine being stored at Ms. Chamberlain's residence to Mr. Pankins' residence on November 7, 2021.³

However, as described below and within Mr. Moss' post-hearing brief, none of these "examples demonstrate[] Pankins' involvement with the conspiracy and indicate[] that he stored meth for the conspiracy at his home."⁴

2. In making the argument that the methamphetamine found at Mr. Pankins' residence is attributable to Mr. Moss because they traveled together to Reading and then Mr. Pankins' house on November 11th, the Government has failed to consider critical evidence undermining its argument. In particular, the Government does not take into account that the sheer amount of illegal contraband found at Mr. Pankins' residence suggests that Mr. Pankins was involved in his own unlawful activities.⁵

¹ Government's February 21, 2023 Post-Hearing Brief in Support of Proffered Drug Guidelines Calculation at 3, hereinafter referenced as "Government's Brief at ___".

² *Id.* at 3-4.

³ *Id.* at 4.

⁴ *Id.* at 4.

⁵ *Id.* at 90-91

Additionally, the Government does not consider Mr. Pankins' own words to law enforcement as to how he came into possession of the methamphetamine and who it belonged to.⁶ Furthermore, the Government's argument relies on this Court believing that Mr. Moss drove past an alleged stash house⁷ in order to store methamphetamine at Mr. Pankins', only to then double back to that same stash house less than 20 minutes later.⁸ It is not logical. Thus, the Government's argument is unpersuasive as it fails to consider clearly relevant evidence and relies on faulty logic.

3. Similar reasoning applies to the Government's assertion that Mr. Moss and Mr. Pankins being together prior to a controlled purchase is indicative of Mr. Moss storing methamphetamine at Mr. Pankins' residence.⁹ The Government has seemingly turned a blind eye to the legitimate and lawful reason why the two were together and why the two were observed coming from Pankins' residence. And that reason is Mr. Moss agreed to help Mr. Pankins pick up and return Mr. Pankins' girlfriends vehicle to Mr. Pankins' residence so that Mr. Pankins' girlfriend could use the vehicle to travel to Washington D.C.¹⁰ When this legitimate explanation is

⁶ Evid. Hearing at 116, 155, 157-59; Government's Exhibit 5 at 10-13.

⁷ Evid. Hearing at 45 (Mr. LaPointe's residence "was used as a place they would hang out over . . . but also as a place that they would occasionally stash their product as well.").

⁸ *Id.* at 45, 118-20; Government's Exhibit 10G.

⁹ Government's Brief at 3-4.

¹⁰ Evid. Hearing at 94; Government's Exhibit 8 at 2.

considered, together with the lack of evidence showing that Mr. Moss entered Mr. Pankins' residence prior to the controlled purchase,¹¹ it becomes evident that the Government's assertion has no merit.

4. The Government is also incorrect that the evidence shows that methamphetamine was moved from Ms. Chamberlain's residence to Mr. Pankins' residence on November 7, 2021. Contrary to the its argument, the evidence cited by the Government, Exhibits 3, 6I, and 10E, do not prove that the methamphetamine was moved to Mr. Pankins' residence on that day. At best, exhibits 3 and 6I show that Mr. Meadows, at the request of Mr. Moss, retrieved a bag containing one or two ounces of methamphetamine from Ms. Chamberlain's apartment and then met Mr. Moss at a nearby gas station in close proximity to Mr. LaPointe's residence.¹² Additionally, Exhibit 10E does not show that Mr. Moss traveled to Mr. Pankins' residence after meeting Mr. Meadows as the cell phone location data¹³ shows that Mr. Moss was in the vicinity of the I95 on-ramp at 9:22 pm and then in an unoccupied space between the I95 highway and Eagle Run Road at 9:37 pm and 9:53 pm. Thus, the evidence does not support the Government's assertion that Mr. Moss moved

¹¹ Evid. Hearing at 126.

¹² Evid. Hearing at 124-25; Government's Exhibit 3 at 1-2; Government's Exhibit 6I at 3-10.

¹³ Officer Riccoban testified that the cell phone location ping data would be within meters of where the cell phone was. Evid. Hearing at 84, 105.

methamphetamine from Ms. Chamberlain's residence to Mr. Pankins' on November 7, 2021.

5. Additionally, the Government attempts to bolster its argument by misconstruing Mr. Pankins' words to discredit his detailed statement as to how he came into possession of the methamphetamine.¹⁴ In particular, the Government would like this Court to believe that when Mr. Pankins stated that he was holding the meth "because a friend of his got caught with some shit", he meant that he was holding the methamphetamine for Mr. Moss or Mr. Santiago.¹⁵ This is not supported by the evidence in this case. It is clearly established that the investigation in this case came to a head on December 14, 2021, when the Defendants in this case were taken into custody and their respective residences were searched.¹⁶ As Mr. Moss, Mr. Santiago, and Mr. Pankins were all taken into custody on the same day, Mr. Moss and Mr. Santiago could not have been the person Mr. Pankins was holding the methamphetamine as neither Mr. Moss nor Mr. Santiago "got caught with some shit" prior to December 14, 2021.

6. Furthermore, the fact that Mr. Pankins stored a large amount of marijuana in his garage and a much smaller amount of methamphetamine in a laundry room does

¹⁴ Government's Brief at 4.

¹⁵ *Id.*

¹⁶ Evid. Hearing at 26-27, 35-36, 46-47, 90-91, 114-15, 139-40.

not somehow link the methamphetamine to Mr. Moss, especially in light of Mr. Pankins' statement as to how he came into possession of the methamphetamine and who it belonged to. Thus, without more, this fact alone does not sufficiently link Mr. Moss to the methamphetamine recovered from Mr. Pankins' residence.

7. Lastly, it should be noted, that the Government has failed to present any communications between Mr. Moss and Mr. Santiago about methamphetamine being stored at Mr. Pankins' residence. Throughout the evidentiary hearing, the Government presented evidence of communications between Mr. Moss and Mr. Santiago showing that methamphetamine was being stored at Ms. Chamberlain's residence as well as Mr. LaPointe's residence.¹⁷ However, the Government failed to present similar evidence showing that methamphetamine was being stored at Mr. Pankins and the absence of this evidence undermines the entirety of the Government's argument. As such, the methamphetamine recovered from Mr. Pankins' residence should not be attributed to Mr. Moss.

II. The Government's evidence relating to Mr. Moss' trips to Reading, Pennsylvania establishes, at best, a base offense level of 32.

8. The Government asserts that this Court can find a base offense level of 36 based upon the bulk purchase "of meth by Moss and Santiago for at least ten pounds

¹⁷ Evid. Hearing at 37-42, 44-48, 50-56, 98-02; Government's Exhibit 6I, 6J, 6K.

on October 27-28, 2021. . . .”¹⁸ The Government argues that the evidence shows that Mr. Moss purchased ten pounds on October 27-28, 2021 because Mr. Moss “mass advertis[ed] the meth he had for sale”¹⁹ on his way home from Reading and because he told Mr. Rodriguez, after the fact, that he purchased 10 pounds.²⁰ The Government’s arguments are unpersuasive.

9. Although Mr. Moss may have advertised methamphetamine for sale upon his return to Delaware on October 28, 2021, this fact alone does not establish the amount purchased especially since Mr. Moss was advertising the sale of ounces, not pounds.²¹

10. Mr. Moss’ phone call with Mr. Rodriguez also does not establish that Mr. Moss purchased ten pounds methamphetamine on October 27-28, 2021. This phone call is in direct conflict with a phone call between Mr. Moss and Mr. Santiago that occurred on the morning of October 27 during which Mr. Santiago definitively states that “we only gonna get 5, because I ain’t tryinna get the whole 10 for real.”²² The phone call between Mr. Moss and Mr. Santiago certainly holds more weight than the phone call with Mr. Rodriguez as it would appear that Mr. Moss is almost acting as

¹⁸ Government’s Brief at 8.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 8.

²¹ Government’s Exhibit 6F at 7-9.

²² Evid. Hearing at 123; *see also* page 3 of the Government’s Exhibit 6F.

a salesmen to convince Mr. Rodriguez to sell methamphetamine.²³ Thus, contrary to the Government's argument, neither of these events prove by a preponderance of the evidence that Mr. Moss purchased ten pounds of methamphetamine on October 27-28, 2021.

11. The Government also asserts that the evidence presented during the evidentiary hearing establishes that Mr. Moss and Mr. Santiago purchased five pounds of methamphetamine on November 11, 2021. In support, the Government highlights a tiny portion of a phone call between Mr. Moss and Mr. Santiago on November 12, 2021 during which they are allegedly discussing "five one-pound drug sales".²⁴ This argument is unpersuasive.

12. The fact that Mr. Moss and Mr. Santiago are allegedly discussing "five one-pound drug sales" on November 12, 2021 does not in itself prove that five pounds of methamphetamine were purchased the day before. This becomes evident after considering a greater portion of the phone call during which Mr. Santiago states that he is trying to "go up there" while also voicing concerns over the price that

²³ Ex. 6F at 11 ("my boys all down there hustling right now."); *Id.* ("But, one of them is like a millionaire, though, bro."); *Id.* ("I swear to you [U/I] it's like, a dope flip bro, you ain't gonna lose, I swear you not, ain't no . . . way you can lose bro. . . ."); *Id.* at 12 ("I promise you bro, that's where the bread is at."); *Id.* ("That's how I be staying a float. . . ."); *Id.* ("Times like this, the ice money be coming through bro, I am telling you, that shit save me every time.").

²⁴ Government's brief at 8.

would need to be paid.²⁵ This is not indicative of someone who recently made a large purchase of controlled substances as it appears that Mr. Santiago is concerned about his ability to meet his customers demands. This is consistent with later parts of the conversation where Mr. Santiago describes that there are only a few ounces at Ms. Chamberlain's residence²⁶ as well as the phone call Counsel highlighted during his closing argument during which Mr. Moss and Mr. Santiago are discussing how there are only 70 grams left.²⁷ Thus, the Government has not presented sufficient evidence to prove that Mr. Moss purchased five pounds of methamphetamine on November 11, 2021.

13. Lastly, the Government asserts in a footnote that this Court could find a base offense level of 34 based upon Mr. Moss' sales of methamphetamine to Mr. Alfaro. However, none of the methamphetamine allegedly purchased by Mr. Alfaro from Mr. Moss was recovered by law enforcement and therefore, a purity level could not be determined.²⁸ Thus, the Government failed to present sufficient evidence to establish a base offense level of 34.

²⁵ Government's Exhibit 6B at 16-18.

²⁶ *Id.* at 18.

²⁷ Evid. Hearing at 250-51.

²⁸ *Id.* at 199 (Special Agent Bethel testified during cross examination that none of the methamphetamine allegedly purchased by Mr. Alfaro from Mr. Moss was recovered by law enforcement and therefore, the alleged methamphetamine could not be chemically analyzed to determine the purity level).

III. This Court should not assign an artificial purity level to any methamphetamine that the Government failed to have chemically analyzed.

14. The Government asserts that this Court, “[a]t a bare minimum . . . should find that the purity of the meth for each of the[] Reading purchases is 62%”²⁹ and that “a proposed across-the-board purity assessment of 62% for the proven, but unseized, meth is reasonable and conservative.”³⁰ However, the Government’s argument has no merit.

15. To assign an artificial purity level to unseized methamphetamine would run afoul of Mr. Moss’ due process rights. Although “[d]ecisions made in sentencing do not as deeply implicate a defendant’s rights as do decisions made regarding guilt or innocence”,³¹ “[d]ue process does guarantee a convicted criminal defendant the right not to have his sentence based upon “materially false” information.”³² As such, “a sentencing court considering an adjustment of the offense level . . . need only base its determination on the preponderance of the evidence with which it is presented.”³³

²⁹ Government’s Brief at 9.

³⁰ *Id.*

³¹ *United States v. McDowell*, 888 F.2d 285, 290 (3d Cir. 1989).

³² *Id.* (citing *Townsend v. Burke*, 334 U.S. 736, 741 (1948); *United States v. Cifuentes*, 863 F.2d 1149, 1153 (3d Cir. 1988)).

³³ *Id.* at 291 (citing *United States v. Lee*, 818 F.2d 1052, 1056 (2d Cir. 1987); *United States v. Urrego-Linares*, 879 F.2d 1234, 1237-38 (4th Cir. 1989); *United States v. Restrepo*, 832 F.2d 146, 150 (11th Cir. 1987).

Thus, due process mandates that the Government prove by a preponderance of the evidence the weight and purity level attributable to Mr. Moss.³⁴

16. However, the Government's is essentially asking this Court to relieve the Government of its burden of proof by simply assigning a blanket purity level for untested methamphetamine. To make matters worse, the Government, through law enforcement, had the means to stop Mr. Moss upon his return to Delaware from Reading, Pennsylvania on October 9, 2021, October 16, 2021, October 27, 2021, October 28, 2021, and November 11, 2021 in order to confirm their suspicions that Mr. Moss purchased methamphetamine on those dates. They chose not to. Thus, it would be inappropriate to relieve the Government of its burden of proof by assigning an artificial purity level to untested methamphetamine.

17. Furthermore, as noted by Mr. Santiago in his post-hearing brief as well as his responsive brief, this Court has the discretion to reject the methamphetamine "actual" or "ice" guidelines on policy grounds and calculate the base offense level solely upon methamphetamine as a mixture and substance.³⁵

³⁴ *Id.*

³⁵ Jacob Santiago's February 21, 2023 Post-Evidentiary Hearing Memorandum at 5-12; Jacob Santiago's February 27, 2023 Reply to the Government's Post-Evidentiary Hearing Memorandum at 4; *see also United States v. Melendrez*, WL 1192770, at *2-3 (D.N.J. April 20, 2022) (sentencing the defendant under the mixture and substance guidelines as the "purity metric is outdated and no longer representative of an individual's level of control in a drug

IV. The Government has failed to present sufficient evidence to establish a base offense of level 38.

18. Finally, the Government asserts that should this Court “determine[] that the government has shown a sufficient nexus between the fifteen pounds purchased in Reading and the meth seized from the homes of Pankins and/or Lapointe”, then this Court should find a base offense level of 38. However, for reasons outlined above as well as in Mr. Moss’ February 20, 2023 post-hearing brief, and during the evidentiary hearing, the Government has, at best, proven a base offense level of 32.

WHEREFORE, for the reasons presented to this Honorable Court in this post-hearing brief as well as during the evidentiary hearing, Mr. Moss respectfully requests that this find that the Government has failed to sustain its burden of proof for the base offense level of 36.

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distribution enterprise because the purity level of nearly all confiscated methamphetamine is substantially pure.”).