

Mr. [REDACTED] - Cross - Mr. Creizman

1 the Murano and one person was inside -- the backseat of
2 one car, another person from the Murano was in the
3 backseat of another car.

4 Q. And at that point were they in custody?

5 A. I believe so.

6 Q. Did you speak with any of the officers on the scene,
7 any of the NYPD officers on the scene?

8 A. Yes, I did.

9 Q. Did you learn anything from them?

10 A. We learned that they seized a bag or they found a bag
11 of money.

12 Q. Did they tell you where they found it?

13 A. I don't remember.

14 MR. [REDACTED] Give me just one second,
15 your Honor.

16 (Pause.)

17 MR. [REDACTED] No further questions,
18 your Honor.

19 CROSS-EXAMINATION

20 BY MR. CREIZMAN:

21 Q. Agent, my name is Eric Creizman. I'm going to be
22 asking you some questions today.

23 You've been an agent for over eight years; right?

24 A. A little over six years.

25 Q. A little over six years but in law enforcement,

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- 1 longer than that.
- 2 A. Correct.
- 3 Q. And you focused on narcotics cases since you've been
4 at ICE?
- 5 A. Primarily.
- 6 Q. And you've worked on many investigations.
- 7 A. Yes.
- 8 Q. Over 50 perhaps?
- 9 A. Possibly.
- 10 Q. Over a hundred?
- 11 A. No.
- 12 Q. Okay. And you've been -- in those investigations,
13 you've participated in proffer sessions.
- 14 A. Correct.
- 15 Q. And more than you can count probably.
- 16 A. Probably.
- 17 Q. All right. And you understood -- and you understand
18 that cooperators can get a substantial benefit from
19 cooperation; is that right?
- 20 A. They can.
- 21 Q. A reduced sentence.
- 22 A. Yes.
- 23 Q. Sometimes a significantly reduced sentenced.
- 24 A. Sometimes.
- 25 Q. Okay. And Mr. -- I will call him [REDACTED] Mr. [REDACTED]

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1 basically was facing I think a mandatory minimum; right?

2 A. Yes, he was.

3 Q. Something like five years.

4 A. Yes.

5 Q. And do you remember that he was facing a mandatory
6 maximum of forty years?

7 A. Yes, I do.

8 Q. Okay. So he had a strong incentive to cooperate;
9 didn't he?

10 A. Yes, he did.

11 Q. And he had brought in something like -- he pled
12 guilty to something like 500 kilos of cocaine.

13 A. 500 grams of cocaine.

14 Q. 500 grams of cocaine; right. My apologies.

15 Now he participated in a proffer session with you not
16 too long after his arrest.

17 A. That's correct.

18 Q. Right. Something like a month?

19 A. Correct.

20 Q. And the purpose of you holding a proffer, of you
21 being part of a proffer is to determine whether the
22 witness is trustworthy in part.

23 A. In part.

24 Q. Right. You also want to know whether he has helpful
25 information.

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1 A. Yes.

2 Q. You want to know that you could rely on this person's
3 information.

4 A. Absolutely.

5 Q. You want to know that he won't hold back about anyone
6 in terms of protecting anyone.

7 A. Yes.

8 Q. So you don't give a cooperation agreement and I mean
9 I am sure this decision is not yours on your own, but you
10 don't give a cooperation agreement until you are
11 confident that that witness is reliable.

12 A. Correct.

13 Q. Now Mr. [REDACTED] eventually obtained a cooperation
14 agreement.

15 A. I believe he did.

16 Q. Okay. And are you aware that that cooperation
17 agreement was about ten months after the proffer session,
18 the February proffer session?

19 A. I was not aware of that.

20 Q. Okay. But would you accept my representation that he
21 had signed a cooperation agreement December 3, 2009?

22 MR. [REDACTED] Objection.

23 THE COURT: He didn't sign it then?

24 Q. Did you have a -- were you part -- were you present
25 for his guilty plea?

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1 A. No, I was not.

2 THE COURT: Is there any dispute about the date
3 he signed the cooperation agreement?

4 MR. [REDACTED] I'm sorry?

5 THE COURT: I say is there any dispute?

6 MR. [REDACTED] I don't believe so.

7 MR. CREIZMAN: No.

8 THE COURT: So why did you object? What is the
9 problem?

10 MR. [REDACTED] He asked the witness to accept
11 his representation as to the date.

12 THE COURT: So as long as it's accurate, what
13 difference does it make?

14 MR. CREIZMAN: Your Honor?

15 MR. [REDACTED] I don't know that it's accurate
16 actually.

17 THE COURT: All right.

18 MR. CREIZMAN: Well, okay.

19 Q. You understand that he got his cooperation agreement
20 after the day that he wore the wire on July 13, some time
21 after?

22 A. I knew it was some time after.

23 Q. Okay. And so he was interested at this point -- he
24 was still in the proffer stage; fair to say?

25 A. On what date?

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1 Q. This was July 13, 2009.

2 A. Yes, we were -- I don't believe we had proffered him
3 since then but he was -- he had been proffered and I had
4 been in communication with him following the proffer in
5 February of 2009.

6 Q. You were still trying to make a decision, still
7 trying to see if he could come up -- whether he was
8 reliable or not.

9 A. No, I believe a decision had already been made.

10 Q. Except he didn't get a cooperation agreement until
11 five months later; that you agree upon with me or until
12 sometime later.

13 A. Correct.

14 Q. Okay. Now I want to talk to you about July 14; do
15 you understand?

16 A. Yes.

17 Q. Okay. First thing you hear from ██████ that date, you
18 get a telephone call; correct?

19 A. Correct.

20 Q. And he says that there's going to be a meeting
21 amongst people about moving heroin; correct?

22 A. Yes.

23 Q. And he said it was just a meeting; isn't that right?

24 A. Correct.

25 Q. All right. And he didn't give you an address as to

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- 1 where this meeting was going to occur.
- 2 A. No, he did not.
- 3 Q. Okay. And you told him you wanted to meet with him.
- 4 A. Yes, I did.
- 5 Q. Okay. And did he seem surprised about that at all?
- 6 A. Not at all.
- 7 Q. Okay. And you and Special Agent [REDACTED] decided to set
- 8 up a vehicle stop of the participants of that meeting?
- 9 A. That was the plan.
- 10 Q. Okay. And you wanted to be able to ID them.
- 11 A. Correct.
- 12 Q. And this way it would be easier for you to track them
- 13 in the future.
- 14 A. It would be -- we would have liked to have got their
- 15 true names, addresses, to I guess help with our
- 16 investigation.
- 17 Q. You end up meeting with Mr. [REDACTED] that day.
- 18 A. Yes, I did.
- 19 Q. And you met with him alone on a Queens Street.
- 20 A. I met with him with Agent [REDACTED]
- 21 Q. With Agent [REDACTED] and no one else?
- 22 A. No one else.
- 23 Q. And you were in the car; correct?
- 24 A. I believe we were outside of our cars.
- 25 Q. Okay. You gave him a recording device.

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1 A. The previously day I believe I had.

2 Q. Oh, right. You had given it to him the previous day;
3 okay.

4 At some point during that day after you left
5 Mr. ██████ you get information --

6 MR. ██████ Your Honor, I am sorry. May I
7 confer very briefly with defense counsel? Very, very
8 briefly?

9 THE COURT: Go ahead.

10 (Counsel and client confer)

11 MR. ██████ Thank you, your Honor.

12 Q. At some point you get information from ██████ that
13 this was not going to be just a meeting; correct?

14 A. Via text message; correct.

15 Q. Right. It was going to be an actual heroin deal.

16 A. Correct.

17 Q. And you get the text message on your cell phone?

18 A. On my cell phone; correct.

19 Q. Right. And at one point -- and then is this the same
20 text that you get -- that you talked about on direct, a
21 kilogram of heroin in red Murano?

22 A. Correct.

23 Q. Okay. So that's the same one.

24 A. The same one.

25 Q. And had you -- were you -- was the red Murano in

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1 sight at that point?

2 A. It was on scene. I -- whether I had direct view of
3 it, I don't remember.

4 Q. But you had seen it and you were in the vicinity of
5 it.

6 A. Correct.

7 Q. Okay. And you asked Mr. -- I'm sorry, [REDACTED] you
8 asked him to pull over -- should we pull over the red
9 Murano essentially?

10 A. Yes.

11 Q. Okay. And he told you no.

12 A. Yes.

13 Q. Okay. And you had talked to him before. You know,
14 during your earlier meeting, you had talked to him before
15 about that you were interested in helping -- in getting
16 drugs, right and him finding you drug transactions;
17 right, at least during your earlier proffer sessions, any
18 time.

19 A. I told him that I was -- I worked primarily in
20 narcotics cases and I told him what types of things that
21 we were looking for.

22 Q. Right. Okay.

23 Did you lose communication with him after that text
24 for a little while?

25 A. I didn't lose communication. He just -- he was with

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1 another target, so he wasn't in constant communication
2 with me.

3 Q. Right, so you couldn't talk to him.

4 A. Correct.

5 Q. Okay. And eventually you get to was it Bushwick and
6 Flatbush Avenue?

7 A. Flatbush and Beaver Avenue, I believe.

8 Q. Beaver Avenue; okay. And that's where you were
9 watching -- where you couldn't see it but your partner
10 could see through a rear view mirror benches to a
11 building; right? People coming in and out of a building?

12 MR. [REDACTED] Objection. I think that
13 conflates two pieces of the witness' earlier testimony.

14 A. The --

15 THE COURT: Go ahead.

16 Q. If you can --

17 A. The -- I'm sorry. I wasn't -- I am not familiar with
18 the area that he met the red Murano at. We later arrived
19 at a Flatbush/Beaver address, the ultimate location but
20 the -- what you're speaking of surveilling out of the
21 rear view mirror or side view mirror, that was at another
22 location in Brooklyn.

23 Q. Were you following [REDACTED] to the location of the, you
24 know, meeting?

25 A. Yes, we were.

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1 Q. And when [REDACTED] got to the meeting were you right
2 behind him or nearby?

3 A. We were nearby.

4 Q. And you were in a position or some -- one of you or
5 both of you were in a position to see what was going on
6 in front of the building?

7 A. I think you are confusing two separate incidents.

8 Q. Yes, please.

9 A. The meeting with -- when the red Murano shows up to
10 meet [REDACTED] and [REDACTED] that was at a location not
11 known to me somewhere in Brooklyn near a park. The
12 ultimate location where the building was involved where
13 the narcotics transaction took place was on I believe
14 Ellery and Beaver.

15 Q. Okay. Gotcha.

16 I want to go to those recordings that you testified
17 about earlier.

18 A. Yes.

19 Q. And I would like to play one clip, if that's okay.

20 A. Yes.

21 THE COURT: Do you want to tell me what that
22 corresponds to on the --

23 MR. CREIZMAN: It corresponds to 1:26 on the
24 tape.

25 THE COURT: No, no, on the transcript.

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1 MR. CREIZMAN: On the transcripts; I'm sorry,
2 the first thing -- the first thing you see actually.

3 THE COURT: Okay.

4 MR. CREIZMAN: Right, the first page, the top
5 of the page.

6 (Pause.)

7 MR. CREIZMAN: It's 1:26:19 to 1:27 and that
8 will be right up until the pause, your Honor.

9 MS. [REDACTED] Why don't you just have them play
10 the --

11 MR. CREIZMAN: From the top to the pause on
12 that page.

13 (Pause.)

14 THE COURT: Well you have the transcript. How
15 critical is it to have it actually played?

16 MR. CREIZMAN: I think it might add to it a bit
17 but -- it might help the cross a bit, but -- because you
18 want to hear it in context, I would think. I think it
19 sounds more in context when you hear it.

20 (Pause.)

21 (Audio recording played.)

22 Q. Okay. Agent, you asked -- this is the first time
23 you've spoken to [REDACTED] since your meeting, your earlier
24 meeting.

25 A. I believe so.

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- 1 Q. Okay. And this is where you understand the heroin
2 transaction will occur.
- 3 A. Where a heroin transaction --
- 4 Q. This is -- this is -- yes, where you understand
5 basically the meeting --
- 6 A. Well I understood that a heroin transaction was going
7 to take place when I got the text message but speaking,
8 yes.
- 9 Q. Okay. And then he told you that these are not the
10 customers. The red Murano's parked. They're just
11 parking but that's not the customers.
- 12 A. Correct.
- 13 Q. And you said, "He has the product." Right?
- 14 A. "He has the product though." Correct.
- 15 Q. And when you said he has the product, you were
16 talking about heroin; correct?
- 17 A. Yes, I was.
- 18 Q. And [REDACTED] answers, "He has the product." Correct?
- 19 A. Yeah, he had the product.
- 20 Q. And you asked [REDACTED] a question about what he is going
21 to do and his response was, "We going to sell it to this
22 guy." Correct?
- 23 A. Correct.
- 24 Q. And then you ask, "Who has the stuff?" Correct?
- 25 A. Correct.

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1 Q. There was some confusion there perhaps, talking about
2 one person, then the next -- then another guy; is that
3 possible there? Is that how you interpreted what you are
4 saying there?

5 A. I believe there's -- just reading the transcript,
6 there's a lot of -- you can -- there's a lot of confusion
7 or it reads confusing and it certainly was confusing
8 speaking with ██████ that day.

9 Q. Understood. Okay. I am going to play a second clip,
10 starting on page 1 and it starts at 1:40:40 on the tape,
11 14 minutes and it goes to -- this is a long one. It will
12 go to the top of page 6.

13 MS. ██████ 1:40:40?

14 MR. CREIZMAN: Yes.

15 (Audio recording played.)

16 Q. Now this is -- there is a delay between the last clip
17 I played for you and then this clip. This is actually a
18 pause of about 14, 15 minutes. Would you accept that
19 representation?

20 A. Okay.

21 Q. And when ██████ gets back on the phone, he starts --
22 he tells you about that there is going to -- he was
23 trying to identify the person who had the heroin;
24 correct?

25 A. (No verbal response.)

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1 Q. And the first thing he says here is, "This guy with
2 the red shirt, that's the Puerto Rican guy. I don't know
3 if he bring the money." Correct?

4 A. That's what he said.

5 Q. Right. And you are -- so you hear red shirt. That's
6 the first thing you hear.

7 A. Yes.

8 Q. Okay. Now I go -- and he said that this is in an
9 Armani Exchange bag; correct?

10 A. Correct.

11 Q. Now you go to page 2, four lines down, [REDACTED] "Yeah,
12 yeah, the stuff is there. They cross the street. All
13 right."

14 "Who has the stuff?" Right? That's the exchange
15 between you and [REDACTED] fair to say?

16 A. Yes.

17 Q. Okay. And then he asks -- he actually identifies the
18 person who supposedly has the heroin, right, and you ask
19 -- that he was crossing the street and you ask him a
20 couple of prior questions and say, "Right there? You
21 know, with the brown shirt? The person with the brown
22 shirt?" You were saying, is that the person who is
23 carrying the heroin; correct? Is that what you're trying
24 to get out of him?

25 A. Are you looking on page 3?

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1 Q. I'm looking on page 2, I am sorry. It's the -- your
2 one, two, three, four, five, six, seven -- seven lines
3 in. It's the last thing you say.

4 A. Correct.

5 Q. Okay. And he says, "Yeah, yeah. Exactly. Exactly.
6 That's the stuff." Right?

7 A. Correct.

8 Q. So at this point when you get to the location and you
9 have your first conversation with [REDACTED] and then you
10 restart your conversation with [REDACTED] about 15 minutes go
11 by, there's a lag period.

12 A. Okay.

13 Q. I -- and you ask -- and then let me move you to page
14 -- draw your attention to page 3 at the top of the page.
15 Eventually you say who should we stop; right?

16 A. Yes.

17 Q. And you have been telling [REDACTED] that you want to stop
18 the guy with the product; right? That's who you are
19 asking about.

20 A. Correct.

21 Q. Okay. And so [REDACTED] answers, "Oh, well he got the
22 stuff right now. He going to bring the money when he
23 come back." Right?

24 A. Yes.

25 Q. And so you say, "So he has the stuff. We need to

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1 stop the guy in the brown shirt."

2 A. Yes.

3 MR. [REDACTED] Objection. On the transcript,
4 it's a question and it's my recollection it also sounds
5 like a question.

6 MR. CREIZMAN: Oh, right. Okay. I am sorry.

7 Q. "So he has the stuff. We need to stop the guy in the
8 brown shirt?"

9 A. Yes.

10 Q. And the response was, "Yeah, he got the stuff. The
11 guy with the black shirt."

12 And then -- is that correct? Is that how you heard
13 it?

14 A. That is.

15 Q. And then your response is, "The guy with the brown
16 shirt; right?"

17 And then his response is, "Yes." Right?

18 A. Yeah, "Armani Exchange baggie."

19 Q. Right. So it's a little -- you're getting brown
20 shirt, black shirt, different responses to your
21 questions; right?

22 A. Yes.

23 Q. Okay. And we'll move down a couple of lines.

24 "Mike," that's you, "A guy with a brown shirt and
25 black hat." Right?

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1 A. Yes.

2 Q. And then he says, "Yeah, the black shirt." Correct?

3 A. Correct.

4 Q. At this point, you ask him a little -- a couple of
5 lines down, the second line down from the bottom, "So we
6 should stop him?" That's what you asked.

7 A. Right.

8 Q. "So we should stop him?" I just want to make sure
9 that's correct. All right.

10 [REDACTED] responds, "I don't know if you want to stop him
11 but he's going to pick up the money right now upstairs.
12 They go into the building." Right?

13 A. Yes.

14 Q. So at that point, it was going to be virtually
15 impossible to get to him if he was already going into
16 that building.

17 MR. [REDACTED] Objection. I don't see where on
18 the transcript -- on the transcript it says, "Anybody's
19 going to pick up the money right now." Where are you
20 pointing to?

21 MR. CREIZMAN: I'm pointing to the bottom of
22 page 3.

23 MR. [REDACTED] Okay.

24 Q. On page 4, second line, is that the second column --
25 I'm sorry, the second row, is that -- this unidentified

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1 male, is that your partner, Agent [REDACTED]

2 A. I believe it is.

3 Q. Okay. And Agent [REDACTED] says, "We need to stop him
4 before he gets -- because he's going into the apartment
5 building to get the money." Correct?

6 A. Correct.

7 Q. "If they want the product, they got to stop the guy."
8 Correct?

9 A. Correct.

10 Q. And that's what -- that's who you were asking [REDACTED]
11 for; correct? The guy with the product?

12 A. Correct.

13 Q. All you wanted him to do was point him out.

14 A. I wanted him to identify him for us; correct.

15 Q. Okay. Going down again -- just two more lines, two
16 more rows, Mike: "All right, the guy had blue jeans, a
17 brown shirt and a black hat and carried a suitcase that
18 you bring on a plane."

19 [REDACTED] "No, no, no, no, no, no, no. He have a short
20 -- a short pants, a black t-shirt and the other guy have
21 a red red shirt." Right? Is that what he says?

22 A. That's what he says.

23 Q. He says another guy has a red red shirt. It's not
24 clear who he is talking about and who is doing what;
25 correct?

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1 A. Correct.

2 Q. Okay. I am going to take you to page 5 and I am
3 going to call your attention to the sixth row from the
4 bottom. You ask [REDACTED] a question. "Where did he --
5 where did he go on Beaver Street or the street that
6 you're on?"

7 [REDACTED] response, "Yeah, yeah, but he -- I think they
8 go inside to the building, some building."

9 Is that responsive to your question?

10 A. I believe it was.

11 Q. That -- he asked what street and you -- and his
12 answer is they go inside a building?

13 A. Yes.

14 Q. And that's responsive to your question?

15 A. He responded. He didn't respond correctly but he
16 responded.

17 Q. Okay. He didn't respond to the question that was
18 asked.

19 A. Correct.

20 Q. Okay. And two lines down from there, you said -- you
21 were pretty frustrated at this point; fair to say?

22 A. Very fair to say.

23 Q. Yeah, and you were a little bit angry at [REDACTED]
24 because he's -- correct?

25 A. I was annoyed with [REDACTED]

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1 Q. Right. Because he sort of flubbed this thing; it
2 seemed like it.

3 MR. [REDACTED] Objection.

4 THE COURT: Sustained. It's argumentative.

5 MR. CREIZMAN: Okay.

6 Q. Two lines down you say, "We need to know where this
7 guy is. We want the drugs. We don't care about the
8 money." Correct?

9 A. Correct.

10 Q. And that was your understanding at the time? That is
11 how you felt at the time? You wanted the -- I'm sorry, I
12 am just getting this here -- you wanted to get the drugs.
13 You don't care about the money from the deal; right?

14 A. Not necessarily. I was trying to express to [REDACTED]
15 how we prioritize things in a narcotics transaction
16 (indiscernible).

17 Q. Fair enough. So you're saying that it's more
18 important for us to get the drugs than the money.

19 A. That's fair to say.

20 Q. That's the reason you were asking [REDACTED] these
21 questions previously; who is the guy with the heroin;
22 right?

23 A. Yes.

24 Q. And should I pull over the red Murano?

25 A. Yes.

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1 Q. Okay. Now I want to go -- I am going to play another
2 clip or at least the government is going to kindly,
3 graciously play another clip. This is one -- it starts
4 at 1:45:05 to 1:47:10. It starts from page 6 right at
5 the bottom, "All right. What's going on. Tell ██████
6 what's going on," on page 6 to page 9 it goes through to
7 the pink building.

8 MS. ██████ What is the time to stop it?

9 MR. CREIZMAN: What? Oh, the time it should
10 stop is 1:47:10. And you'll see it on page 9, two rows
11 from the bottom.

12 (Audio recording played.)

13 Q. So now it's -- you get ██████ on the phone; correct?

14 A. Yes.

15 Q. And because he could speak ██████ language.

16 A. He could speak Spanish.

17 Q. Right. He could speak Spanish. You also can speak
18 Spanish but you're Spanish is not -- you're not as fluent
19 as ██████ correct?

20 A. Correct.

21 Q. And you called in ██████ because you needed help.
22 You thought there was a miscommunications going on with
23 ██████ correct?

24 A. Correct.

25 Q. And you thought that if ██████ intervened and

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1 translated, perhaps it would go better, the
2 communications. It would be clearer.

3 A. Yes.

4 Q. Okay. Now I am going to go down to -- on page 8, do
5 you have it in front of you, fourth row from the bottom.
6 "Who were the -- who are the buyers?" The -- [REDACTED] --
7 that's what you say; correct, Agent? You say, "Who were
8 the -- who are the buyers?"

9 A. Correct.

10 Q. And [REDACTED] responds, "The buyers. The buyer is right
11 here."

12 Then you say, "All right. That doesn't do. I asked
13 him if he should pulled over the Murano. He said no."

14 At that point, fair to say you're still annoyed with
15 [REDACTED]

16 A. I am just trying to figure out exactly what was going
17 on.

18 Q. Fair to say you were unhappy with the way that the --
19 that this was going?

20 A. I was --

21 MR. [REDACTED] Objection.

22 THE COURT: Is somebody waiting for me?

23 MR. CREIZMAN: Do you know what? I will
24 proceed. I will proceed.

25 Q. Let's go to page 9, second row. "Because you told

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1 him you wanted to get the customers, Mike." So this was
2 in -- that's what ██████ said; correct?

3 A. Yes.

4 Q. And that was in response to your question is, "Why
5 did he tell you no to pulling over the Murano?" Right?
6 And you say, "Yeah, but I want the drugs -- I mean the
7 customers. Where are the customers?" Right?

8 A. Yes.

9 Q. And the response is, "The customer is right here on
10 the building. They're inside the building." Correct?

11 A. Correct.

12 Q. And your response is -- well can we say it's -- you
13 were a little frustrated with his response.

14 A. Yes.

15 Q. You were -- you weren't pleased with how this
16 situation was going.

17 A. I was not.

18 Q. I want to go down -- now -- down to the three --
19 actually four lines above the bottom of the page. Now at
20 this point, you are trying now to focus on the people
21 coming out of the building; correct?

22 A. Correct.

23 Q. At this point, what's done is done.

24 A. Yes.

25 Q. Okay. ██████ so you ask -- I am sorry, I am going

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1 to take you up a little higher. I apologize. This is --
2 five, six, seven; okay. Seven lines -- seven rows up.
3 Mike, "Well, all right. So where's the -- who is coming
4 out with the money in what building?"

5 I'm going to skip over these next two lines because I
6 -- I am not sure I am familiar enough with Spanish to
7 speak it properly but ultimately [REDACTED] is -- but that's
8 [REDACTED] communicating your question to [REDACTED] right?

9 A. Yes.

10 Q. Okay. And then [REDACTED] provides an answer to [REDACTED]
11 true?

12 A. Yes.

13 Q. And [REDACTED] says, "He said they're in 319. They're in
14 the building, the pink building, numerical number 319."
15 Correct?

16 A. Yes.

17 Q. And at that point, there could be no
18 miscommunication; correct?

19 A. Correct.

20 Q. It's not a language barrier at that point.

21 A. Correct.

22 Q. Okay. I would like to play track 4, it's short.
23 1:49:17 to 1:49:40. And we're moving all the way now to
24 page 12.

25 (Audio recording played.)

Mr. [REDACTED] - Cross - Mr. Creizman

1 Q. You are interested in finding the apartment; correct?
2 Where the transaction happened.

3 A. Yes. Right.

4 Q. That's your goal at this point.

5 A. One of our goals; correct.

6 Q. Right. And you asked [REDACTED] whether he could go into
7 the building or whether he could get access to --
8 actually whether he could find out what the apartment
9 number was; right?

10 A. Yes.

11 Q. That's all you were asking. He wanted -- you wanted
12 him to ask what apartment you were in, so I -- because I
13 have to go to the bathroom.

14 A. Yes.

15 Q. Okay. And he says he will see. Correct? I will say
16 the actual quote; [REDACTED] "Okay, okay. Let me see."

17 A. Yes.

18 Q. Now we -- on direct, Mr. [REDACTED] asked you --

19 THE COURT: Why did you want to know? You told
20 him before that you couldn't go into an apartment.

21 THE WITNESS: I'm sorry?

22 THE COURT: You told him before or you said
23 before that it's bad that they went into an apartment
24 because I can't get into an apartment.

25 THE WITNESS: For --

Mr. [REDACTED] - Cross - Mr. Creizman

1 THE COURT: And now you want to know what -- it
2 becomes critical to know which apartment?

3 THE WITNESS: Well for -- at first, we just --
4 we can't just go into an apartment if we didn't see the
5 -- physically drugs, walk in there without a search
6 warrant but what we would have done, our plan would have
7 been to set up surveillance on the apartment, maybe get
8 consent or see who comes or goes out of the apartment
9 carrying anything that may have been interested to --
10 interesting to us.

11 Q. I am not going to play the next few lines. That was
12 played on direct. I think you recall that.

13 A. Yes.

14 Q. There was also a discussion -- after you hung up the
15 phone with [REDACTED] there was silence; correct?

16 A. Yes.

17 Q. Some period of silence.

18 A. Yes.

19 Q. It remains in dispute between me and Mr. [REDACTED] but
20 there was a silence. And that -- the recording is not in
21 your car; correct?

22 A. Correct.

23 Q. The recording is in [REDACTED] car; right?

24 A. Yes.

25 Q. Did you hear him make a call? On listening to this

Mr. ██████ - Cross - Mr. Creizman

1 tape, did you hear him make any call?

2 A. No, he did not.

3 Q. Okay. I'm sorry. I would like to go to 1:50:54 to
4 1:51:45. I'm sorry. And the page is 13, it's just a
5 couple of lines down. It's after the -- I don't know how
6 long of a pause. Actually, I do. It's about over a
7 minute, let the record reflect.

8 MS. ██████ What is it?

9 MR. CREIZMAN: 1:50:54 to 1:51:45.

10 (Audio recording played.)

11 Q. Now, I think you could accept my representation after
12 having the government so kindly get to the next clip for
13 me that there was a one -- over a minute of silence
14 between the time you hung up on the phone with ██████
15 until he called you back.

16 A. Correct.

17 Q. Okay. And during that time again, you had not heard
18 ██████ -- a peep out of ██████ If you listen to the tape,
19 you don't hear a peep. It's complete silence.

20 A. Correct.

21 Q. So he didn't call up to any -- to ██████ and ask
22 where is the apartment.

23 A. Correct.

24 Q. That's fair to say. Now you get back on the phone
25 and you go four lines down and ██████ says, "Yeah, the

Mr. [REDACTED] - Cross - Mr. Creizman

1 building is 322 or 320, after the -- after building the
2 321, he got the money. [REDACTED] has the money."

3 If I am not mistaken, that's three addresses;
4 correct?

5 A. Correct.

6 Q. And [REDACTED] did not respond to your question which is
7 what is the apartment; right?

8 A. Not entirely.

9 Q. Right. I mean I guess if he gets you a building but
10 there could be a lot of apartments in that building.

11 A. Correct.

12 Q. So he never told you the building -- I mean the
13 apartment; correct?

14 A. No, he did not.

15 Q. Okay. Oh, okay. Now just going to the top of page
16 14, [REDACTED] says, "No, no, no. The building after 321. I
17 don't see the number."

18 Is [REDACTED] referring -- to your understanding, was
19 [REDACTED] referring to the building where the transaction had
20 -- was taking place?

21 A. I believe he was trying to refer to that.

22 Q. Okay. And you said the building after 321, what --
23 and I think that means what street; right?

24 A. Yes.

25 Q. Okay. Then he answers just a couple of lines down,

Mr. [REDACTED] - Cross - Mr. Creizman

1 "Ellery, Ellery." Right?

2 A. Yes.

3 Q. Okay. I would like to go to clip 1:52:18 to 1:52:51.

4 Oh, I am sorry, let me tell you where that is. It's on
5 page 15 starting with, "All right, [REDACTED] and towards
6 the second row from the bottom, "Oh, Ellery, Ellery."

7 (Audio recording played.)

8 Q. Starting on page 15, line, one, two, three, four,
9 five, six, seven -- seventh row. You come back to [REDACTED]
10 "What apartment were they in?" Is that what you say?
11 I'm sorry, it's page 15 and it's about -- I think it's
12 seven lines from the top.

13 A. Yes.

14 Q. Okay. And then there's two lines down, [REDACTED]
15 responds, "I don't know what apartment. I know." Okay.
16 Then going down to four rows from the bottom, "Now they
17 in Beaver, Beaver."

18 And you ask, "The building? The building?"

19 His response is, "Oh, Ellery, Ellery. The building
20 after 321. That building." Correct?

21 A. Yes.

22 Q. Okay. I would like to -- sorry. Okay. 1:54:17,
23 sorry, to 1:55:53. And that starts on page 17 --

24 MS. [REDACTED] Sorry, can you give me that again?

25 THE COURT: I'm sorry?

Mr. ██████ - Cross - Mr. Creizman

1 MS. ██████ Can you give me the numbers again?

2 MR. CREIZMAN: Yes, 1:54:17 to 1:55:53 and it's
3 page -- just for the witness' understanding, it's page 17
4 in the middle of the page starting, ██████ "I don't know.
5 He -- he going to give it to me now." And we're going to
6 go through to page 18 where ██████ says basically in the
7 middle of the page, "No, no, no." Right? Okay.

8 (Audio recording played.)

9 Q. Let's turn to page 17.

10 THE COURT: Did you ever find out what the
11 apartment number was?

12 THE WITNESS: We approached the building and
13 got consent to go into one of the apartments. I think we
14 did our best to narrow it down and we didn't find
15 anything.

16 Q. Agent, just while we're on that subject, isn't it
17 true that my client pointed out the apartment, Mr. ██████
18 sitting over there?

19 A. He was trying to. I don't -- he helped in us
20 narrowing down the apartment.

21 Q. Let's go nine -- I think nine lines down.

22 THE COURT: And so you never recovered the
23 drugs.

24 THE WITNESS: No, we did not.

25 Q. Sorry. It's after -- here on this tape it's very

Mr. ██████ - Cross - Mr. Creizman

1 hard to hear what you're saying; correct?

2 A. Yes, it is.

3 Q. But ██████ voice is basically you can hear -- you
4 can hear ██████ voice.

5 A. Yes, you can.

6 Q. Going down to where ██████ says, "I don't know. He --
7 he going to give it to me now." That's what you heard
8 him say?

9 A. Yes.

10 Q. Okay. And then the next line is another
11 unintelligible and then ██████ says, "He don't tell me
12 because that's his customer. He do it his own business.
13 I think for fifty-something."

14 Do you know what he is referring to there?

15 A. I believe he is referring to the amount of money that
16 was supposed to be part of the drug transaction.

17 Q. So he was asking -- you were asking him perhaps --
18 well do you have a recollection? If you don't, I don't
19 want you to guess.

20 A. Not verbatim.

21 Q. Okay. And generally though, do you think that that
22 was what you were discussing?

23 A. I believe so.

24 Q. I am going to go to page 18. At the top of the page,
25 ██████ says, "Yeah, but I confused because I think you

Mr. ██████ - Cross - Mr. Creizman

1 want the customer, too." Is that right?

2 A. Yes, it is.

3 Q. And it's fair to say that he was responding to
4 something that you said about what happened earlier?

5 A. Yes.

6 Q. That you had asked him to pull over the -- you had
7 asked him to identify the person with the product.

8 A. Correct.

9 Q. And that when he told you that there was product in
10 the red Murano, you told him to pull it over and he --
11 you asked him if he would pull it over and he said no.

12 A. Correct.

13 Q. And do you think -- and that's what you were talking
14 about it here, it seems --

15 A. It may have been, yes.

16 Q. Okay. I am going to go then two lines -- two rows
17 down. "I know, I know, I know, I know, man, I know. But
18 I -- I think -- I think you told me something different.
19 They confused me. That's right, man. They should be in
20 the Murano for when we coming from over there. You don't
21 see the Murano over there on the gas station?"

22 Were you -- that's what ██████ said; correct?

23 A. Correct.

24 Q. Were you expressing any annoyance with ██████ at that
25 point?

Mr. ██████ - Cross - Mr. Creizman

1 A. Not at this point; no.

2 Q. Okay. You were just -- it's fair to say you were
3 telling him what he should do better -- how he should do
4 better in the future perhaps?

5 A. Not at that point; no.

6 Q. Okay. Do you know what he is saying, "I know, I
7 know, I know," to? You were telling him something.

8 A. If I had to -- if I had to stage a guess, it would
9 be --

10 Q. No, that's okay. That's fine.

11 Let's go on --

12 THE COURT: How much money was in the bag that
13 was recovered?

14 THE WITNESS: I don't know the exact. I think
15 it was maybe 49 or -- between 49 and 50. I don't have
16 the exact number right now. I'm sorry, 49 or 50,000
17 maybe.

18 Q. Two lines down; "Okay, okay. But you know something,
19 they said we going to do it, another key because they do
20 it one by one." That's what ██████ said?

21 A. Yes, it was.

22 Q. And your -- and I believe you even testified about
23 this on direct that he told you that there was going to
24 be another heroin transaction, right, at that point?

25 A. I think that's what he was trying to tell me; yes.

Mr. ██████ - Cross - Mr. Creizman

1 Q. Okay. And he was trying to say -- did you understand
2 him to be saying that the red Murano has another kilo of
3 heroin?

4 A. I didn't believe that it did.

5 Q. You did not believe that it did. Okay. Then two
6 lines down it said -- ██████ says again, "No, no, no. We
7 supposed to do it today, another key today." Right?

8 A. Yes.

9 Q. Now he had -- this is the first time you're hearing
10 this that day about another one kilo transaction?

11 A. Yes.

12 Q. Okay. Thanks. I am going to go on to another topic.
13 After you got to the gas station, Mr. ██████ had
14 already been arrested?

15 A. I believe so.

16 Q. Okay. And you arranged -- you asked the police
17 officer to put Mr. ██████ in your car or you went into his
18 car?

19 MR. ██████ Objection. There was no direct
20 testimony on this.

21 MR. CREIZMAN: Okay.

22 Q. Well then let me ask you this. Did you sit in the
23 car and question Mr. ██████

24 MR. ██████ Objection. That wasn't any
25 direct.

Mr. [REDACTED] - Cross - Mr. Creizman

1 THE COURT: I'm sorry?

2 MR. [REDACTED] Objection. There was no direct
3 testimony on that.

4 THE COURT: So what?

5 MR. CREIZMAN: Okay.

6 THE COURT: I will let him go a little bit.

7 A. Can you repeat the question?

8 Q. Did you interview Mr. [REDACTED] in an automobile?

9 A. Yes, I did.

10 Q. And there was another agent with you?

11 A. Yes, there was.

12 Q. Is it safe to say it was [REDACTED]

13 A. Mr. [REDACTED] I believe, was sitting in the backseat of
14 the NYPD vehicle and I did another three-way call and put
15 [REDACTED] on the phone to speak Spanish with Mr. [REDACTED]

16 Q. I see. And but there wasn't -- can you tell me who
17 the other agent was with you in that car or do you not
18 remember?

19 A. I was standing outside of the NYPD vehicle at that
20 time but Mr. [REDACTED] eventually got in the backseat of my
21 car. It would have been Agent [REDACTED]

22 Q. Okay.

23 THE COURT: Who owned --

24 Q. And --

25 THE COURT: Who owned the red -- what is it,

Mr. [REDACTED] - Cross - Mr. Creizman

1 Murano?

2 MR. CREIZMAN: Someone who is not involved in
3 the case, I think. Mr. [REDACTED] could probably answer
4 that better.

5 MR. [REDACTED] I can't. But I do have an
6 objection, your Honor. This doesn't go to any of the
7 live issues at the suppression hearing. By this time,
8 it's all done.

9 MR. CREIZMAN: I think it -- well, I mean I
10 think it goes to credibility actually, this line of
11 questioning.

12 THE COURT: Whose credibility?

13 MR. CREIZMAN: The agent's credibility. I do.
14 If you let me continue just a little bit and we can see
15 how it goes.

16 THE COURT: By the way, what's the standing of
17 your client to object to the search and seizure?

18 MR. CREIZMAN: Probable cause.

19 THE COURT: No, no. Standing deals with
20 whether his rights were violated.

21 MR. CREIZMAN: Oh, I understand. You're
22 talking about the car?

23 THE COURT: Yes. In other words, he didn't own
24 the car.

25 MR. CREIZMAN: I could brief that, your Honor,

Mr. [REDACTED] - Cross - Mr. Creizman

1 but my understanding is that that's -- that is irrelevant
2 to whether --

3 THE COURT: It may be but --

4 MR. CREIZMAN: Right.

5 MR. [REDACTED] I don't think it's irrelevant.

6 He was a passenger in a car that's conceded that he
7 didn't own. His rights under those circumstances are
8 diminished. I think the law on that is clear.

9 THE COURT: Well, it all depends.

10 MR. CREIZMAN: Well I think, your Honor, that
11 his rights may or may not be diminished but the
12 circumstances of how he was removed from the car, I think
13 go to the legality of the search.

14 MR. [REDACTED] I don't see how the witness'
15 credibility is an issue when he is being asked to give
16 testimony on facts that don't relate in any way.

17 THE COURT: Well, I will give him a few
18 minutes.

19 MR. CREIZMAN: Thank you.

20 Q. You questioned Mr. [REDACTED] in your car?

21 THE COURT: So they reach into the car. Is
22 that what happened? You weren't there when the police --

23 THE WITNESS: No, I didn't make the vehicle
24 stop or remove Mr. [REDACTED] from the red Murano.

25 THE COURT: But the information you have is

Mr. [REDACTED] - Cross - Mr. Creizman

1 that -- how was this effectuated? They reached into the
2 car and they took -- they saw -- it was either in plain
3 view or they reached in and just grabbed the bag that was
4 not closed?

5 THE WITNESS: I wasn't --

6 MR. [REDACTED] Your Honor?

7 THE COURT: No, no.

8 MR. [REDACTED] Are you asking me the question?

9 THE COURT: I am asking -- yes.

10 MR. CREIZMAN: Yes.

11 MR. [REDACTED] Agent Riley was not there.

12 THE COURT: I mean he wasn't there but you must
13 know.

14 MR. [REDACTED] We have evidence that -- the
15 evidence would show that the officers -- the NYPD
16 officers approached the car.

17 THE COURT: Right.

18 MR. [REDACTED] That the passenger, who was the
19 defendant, began to get out of the car, opened the door
20 and began to get out of the car.

21 THE COURT: Right.

22 MR. [REDACTED] At that point, at least one of
23 the officers had visibility into the car and could see
24 the bag containing the cash on the floor of the passenger
25 seat, in addition to cash in the passenger's pocket. I

Mr. [REDACTED] - Cross - Mr. Creizman

1 mean in his lap.

2 MR. CREIZMAN: Your Honor, Mr. [REDACTED] left
3 one thing out. Apparently the officers have said that
4 Mr. [REDACTED] was carrying a great amount of money. He was
5 carrying something like \$750 in his hands and that he
6 seemed to be flooded with money. He was counting money
7 while sitting in the passenger seat.

8 MR. [REDACTED] I think I fairly characterized
9 what I understand the evidence to be.

10 THE COURT: No, no. So he got up with all of
11 this -- he just opened the door while he had all of this
12 money --

13 MS. [REDACTED] No.

14 MR. [REDACTED] No.

15 MS. [REDACTED] Your Honor?

16 THE COURT: -- on his lap?

17 MR. [REDACTED] No, no, no. There was a bag of
18 money on the floor in front of him --

19 MS. [REDACTED] The money --

20 MR. [REDACTED] -- which corresponds to the bag
21 that the officer would testify he observed Mr. [REDACTED]
22 bring into the car.

23 THE COURT: Right. Right.

24 MR. [REDACTED] There was also -- the majority
25 of the money is in the bag, okay? And he's holding a wad

Mr. [REDACTED] - Cross - Mr. Creizman

1 of money in his hands which is not unusually large or
2 flowing over or anything. It's just he is holding money
3 in his hands.

4 THE COURT: Okay.

5 MR. CREIZMAN: Well there's --

6 THE COURT: And he gets out of the car and
7 that's when they arrest him?

8 MR. [REDACTED] Correct. He actually doesn't
9 get out of the car.

10 THE COURT: I'm sorry. He starts to get out of
11 the car.

12 MR. [REDACTED] And they say please stay in the
13 car and then they put him under arrest.

14 MR. CREIZMAN: Your Honor, my client submitted
15 affidavits in support of two motions to the contrary that
16 tells a completely different story.

17 THE COURT: And what does your client say?

18 MR. CREIZMAN: My client says that he was
19 sitting in his seat and noticed -- and this is the best I
20 can recollect but there's two -- one or two -- one car in
21 the front and two cars in the back which one turns out to
22 be, I think police officers, another one has ICE
23 officers, agents in there. He does not get out of the
24 car. The door is not opened. This is -- this was maybe
25 two minutes away from the location where they were.

Mr. [REDACTED] - Cross - Mr. Creizman

1 He -- his window was opened and he -- Detective
2 Levy reached in, pushed his head down, reached down to
3 the floor and pulled out the bag.

4 MR. [REDACTED] Your Honor?

5 MR. CREIZMAN: Everything is closed.

6 MR. [REDACTED] Your Honor, if I may, I think we
7 can demonstrate that that's inherently implausible. We
8 have taken measurements of a 2006 red Murano that we
9 would be prepared to introduced into evidence that it's
10 an SUV. It's a big car and the window, even assuming it
11 was opened, and I am not a tall guy but it comes up to
12 the chest of an average man. You would have to be a
13 giant to reach in, grab somebody's head, push it down and
14 grab a bag from the floor of the passenger seat.

15 MR. CREIZMAN: I would agree with Mr. [REDACTED]
16 that it -- because I am actually shorter than him -- I
17 would consider that person a giant. But I think that
18 it's also implausible to think that in Bushwick,
19 Brooklyn, only two minutes away from where he supposedly
20 was engaged in a heroin transaction that money would be
21 -- that his door would be opened, money would be in an
22 open bag and money in his hands or close to \$1,000 at a
23 gas station in Bushwick.

24 I mean that's why I would like to cross-examine
25 the police officers.

Mr. [REDACTED] - Cross - Mr. Creizman

1 MR. [REDACTED] Your Honor, I don't see how any
2 of this is relevant to the question of probable cause.

3 THE COURT: Will you stop saying that? You're
4 just adding to the amount of time that it's going to take
5 get things --

6 MR. [REDACTED] I apologize, your Honor.

7 THE COURT: Did your client say he owned the
8 bag?

9 MR. CREIZMAN: No, he did not.

10 THE COURT: So there's no evidence it was his
11 car or his bag.

12 MR. CREIZMAN: He had permission from a friend
13 to drive the car. That is what I understand. Is it in
14 here? I don't -- I think it's in one of the descriptions
15 in the arrest -- one of the arrest reports. That's my
16 understanding.

17 MS. [REDACTED] I think it says it's friend's car
18 but he doesn't --

19 MR. CREIZMAN: His friend's car. Oh, so --
20 okay. Well he wasn't arrested for stealing.

21 THE COURT: All right. Give me a short memo
22 just on the issue of standing. I mean he may very well
23 have standing. I haven't dealt with this issue in a long
24 time. So it just sort of tends to present itself when
25 somebody claims neither ownership of the bag or the car.

Mr. [REDACTED] - Cross - Mr. Creizman

1 And when they're objecting to a search of -- well I don't
2 even know whether you would call it a -- you know,
3 somebody sticking their whatever, when they're objecting
4 to a search of the car and the seizure of a bag, neither
5 of which they own but they may have standing anyway by
6 virtue of his presence in the car but I don't know.

7 MR. CREIZMAN: Okay. We will definitely brief
8 it.

9 THE COURT: I only know how to identify issue.
10 I don't always know the answers. Go ahead.

11 MR. CREIZMAN: I can't do both, so that's my
12 problem.

13 Q. Okay. Agent, we were in the car. You and Mr. [REDACTED]
14 and another agent; is that right? You were in the car?
15 That's where we were before we stopped talking earlier.

16 A. I initially interviewed -- I initially interviewed or
17 not interviewed but began to speak with Mr. [REDACTED] when he
18 was sitting in the backseat of one of the NYPD cars.
19 That's when I gave him a phone that [REDACTED] was doing the
20 translation on.

21 Q. You asked him if he had heroin in his car?

22 A. I don't -- I don't remember.

23 Q. You didn't ask if he was hiding heroin anywhere in
24 the car?

25 A. I don't remember.

Mr. ██████ - Cross - Mr. Creizman

1 Q. You asked Mr. ██████ if he would show you the
2 apartment that he went to?

3 A. Yes.

4 Q. Okay. And Mr. ██████ agreed to take you back to the
5 building?

6 A. I believe he did.

7 Q. And you went in there with him?

8 A. No.

9 Q. Detective Levy went in there with him? I don't know
10 if you know Detective Levy, I am sorry.

11 A. Mr. ██████ didn't get out of the backseat of my car.

12 Q. He didn't get out of the backseat. But he did tell
13 you with some sort of approximation as to where the
14 apartment was?

15 A. I believe so.

16 Q. There were -- you returned to the gas station after
17 there was -- I think -- did you leave the car in front of
18 the building to check out Mr. ██████ story? I'm sorry,
19 Mr. ██████ identified -- helped narrow down some
20 apartments where the transaction took place. I think
21 that's right; correct?

22 A. Correct.

23 Q. And did you leave the car and go check it out?

24 A. Yes, I did.

25 Q. Okay. And then you came back to the car.

Mr. ██████ - Cross - Mr. Creizman

- 1 A. Yes.
- 2 Q. And you drove back to the gas station.
- 3 A. I don't believe I drove back to the gas station; no.
- 4 Q. Did you transfer Mr. ██████ over to the NYPD?
- 5 A. Yes, I did.
- 6 Q. Okay. And when you did that, you gave Mr. ██████ your
7 business card?
- 8 A. Yes, I did.
- 9 Q. You never took any notes on any of this?
- 10 A. No, I did not.
- 11 Q. Not a single word?
- 12 A. Not a single word.
- 13 Q. Your partner, did he take any notes?
- 14 A. No, he did not.
- 15 Q. Did the prosecutors, and you understand I am talking
16 about Mr. ██████ and Ms. ██████ did they ever ask you
17 if you had notes?
- 18 A. Yes, they --
- 19 Q. Before today?
- 20 A. Yes, they did.
- 21 Q. You never kept a file on Mr. ██████ after July 14?
- 22 A. No, I did not.
- 23 Q. Okay. Now I am going to ask you questions about the
24 recordings, the recordings that we played earlier. Do
25 you understand?

Mr. [REDACTED] - Cross - Mr. Creizman

1 A. Yes.

2 Q. Okay.

3 THE COURT: How many questions did you leave
4 out the first time you went through this.

5 MR. CREIZMAN: Sorry. I'm sorry, your Honor,
6 there's not much more to go.

7 THE COURT: Good.

8 MR. CREIZMAN: I do apologize. We had prepared
9 for a broad hearing.

10 Q. At some point after -- I'm sorry. I remember what
11 happened on direct, so I am going to cut it down.
12 Essentially, there was a recording sitting in your desk
13 drawer for over a year.

14 A. Yes, there was.

15 Q. Okay. And you only recalled it because Mr. [REDACTED]
16 spoke with you by phone about it?

17 A. No.

18 MR. [REDACTED] Objection. Misstates the
19 testimony. I spoke with him in person.

20 MR. CREIZMAN: Oh, okay. I am sorry.

21 Q. So you were meeting with Mr. [REDACTED] in person.

22 A. I was.

23 Q. And as he asked you questions, it occurred to you
24 that the recording that's in your desk drawer might be
25 related to this?

Mr. [REDACTED] - Cross - Mr. Creizman

1 A. Yes.

2 Q. Okay. And when -- you could not go back to your
3 office and retrieve it; correct?

4 A. Could not.

5 Q. So someone else from your office, a colleague, had to
6 go and retrieve it.

7 A. Yes, they did.

8 Q. And he or she found two CDs.

9 A. Yes.

10 Q. One marked July 13, 2009?

11 A. Yes.

12 Q. And one marked July 14, 2009. Incidentally, these
13 were consensual recordings; right?

14 A. They were.

15 Q. The July 14 recording and the July 13 recording has
16 no introduction by the witness identifying who he is or
17 that the recording is consensual. Are you aware of that?

18 A. I am aware of that.

19 THE COURT: I don't understand. It's a
20 recording with a police officer.

21 MR. CREIZMAN: Well --

22 THE COURT: You would normally worry about
23 putting in that it was consensual?

24 MR. CREIZMAN: I mean there could be some sort
25 of surveillance of some kind other than a recording.

Mr. [REDACTED] - Cross - Mr. Creizman

1 Q. Let's go back to the recordings and it being in your
2 desk drawer. Doesn't ICE have policies and procedures
3 for store -- for preserving consensual recordings?

4 A. We have policies and procedures for storing evidence;
5 correct.

6 Q. Okay.

7 THE COURT: Is there any -- before we get into
8 this, is there any question about the authenticity of
9 this tape?

10 MR. CREIZMAN: That's what I am trying to get
11 to. I mean I know that we hear certain people speaking,
12 but I am interested to know what the chain of custody was
13 since the time he got it.

14 THE COURT: I thought you thought this was all
15 helpful to you which is why we listened to the -- we went
16 through this.

17 MR. CREIZMAN: It could have been.

18 THE COURT: I mean --

19 MR. CREIZMAN: For a different topic it's
20 helpful.

21 Q. A recording -- doesn't a recording have to be
22 identified and sealed; isn't that what the ICE rules say?

23 A. I guess it would depend on the situation.

24 Q. A situation where you have a cooperating witness who
25 is consensually recording conversations in a narcotics

Mr. ██████ - Cross - Mr. Creizman

1 investigation; would it apply to that situation?

2 A. In hindsight it certainly would but at the time, he
3 wasn't a cooperating witness in any case that I had
4 opened or was investigating.

5 Q. Okay. It's also true that under ICE procedures that
6 if a duplicate of a recording is made, it must be marked
7 duplicate in front on the CD; are you aware of that?

8 A. It can.

9 Q. Okay. And the duplicates must be stored under lock
10 and key; correct?

11 A. We have an evidence room where we store all sorts of
12 evidence.

13 Q. There are no guidelines or procedures that allow you
14 to leave audio recordings in your desk drawer; is that
15 correct?

16 A. I don't know.

17 Q. Okay. For over a year?

18 A. I don't know.

19 Q. Okay. Now that text message that we talked about
20 earlier between you and Mr. ██████ in July -- July 14,
21 2009, did you not preserve that evidence either?

22 A. No, I did not.

23 Q. that was significant evidence for this case, it turns
24 out.

25 A. As it turns out.

Mr. [REDACTED] - Cross - Mr. Creizman

1 Q. You didn't provide it to the NYPD?

2 A. No.

3 Q. Did Mr. [REDACTED] ask you for it -- to produce those
4 notes if you could find them -- I'm sorry, the text?
5 Okay. Did he ask you if you still had it?

6 A. He did.

7 Q. Okay. Did you search or did you have someone search
8 your office for it?

9 A. Search my office for what?

10 Q. The text message. Perhaps it was -- it's in a desk
11 drawer. Perhaps it's --

12 THE COURT: I thought he said he -- testified
13 that he destroyed it.

14 MR. CREIZMAN: Okay.

15 THE COURT: I mean am I wrong?

16 MR. CREIZMAN: Right.

17 THE COURT: Didn't you --

18 THE WITNESS: The text message would be on my
19 phone which is carried on my person. I wouldn't have a
20 printed out copy of it. I wouldn't even know how to do
21 that.

22 THE COURT: Okay.

23 MR. CREIZMAN: No further questions.

24 MR. [REDACTED] Your Honor, just a few questions
25 on redirect.