

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. 05-CR-084-JHP
)	
TONY MAURICE BECKNELL, JR.,)	
)	VOLUME II
Defendant.)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JAMES H. PAYNE
UNITED STATES DISTRICT JUDGE

JUNE 29, 2012

A P P E A R A N C E S

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REPORTED BY: **BRIAN P. NEIL, RMR-CRR**
United States Court Reporter

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Friday, June 29, 2012

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THE COURT: Call Case No. 05-CR-084, USA v. Tony Maurice Becknell, Jr. It's a continuation of a hearing.

Is the U.S. attorney ready to proceed?

MS. REINCKE: U.S. attorney's ready, Your Honor.

THE COURT: Defendant ready to proceed?

MR. DEMURO: May it please the court, good morning, Your Honor. We are ready.

THE COURT: Okay. You may call your next witness.

MR. DEMURO: Your Honor, I have a preliminary matter that I would like to take up at the bench, if I might.

THE COURT: You may.

(Bench conference outside the hearing of the jury)

MR. DEMURO: At the beginning of the last hearing, the United States attorney mentioned that -- or made a representation that the government had come into some information that they were investigating that could possibly lead them to identify the identity of the confidential informant in this case, which is of course --

1 THE COURT: Yes, I recall that.

2 MR. DEMURO: -- which is in dispute.

3 At the conclusion of the discussion we
4 had at the bench, Your Honor said, you know, we
5 won't mention it in open court at this time. So
6 that's why I'm coming up in an abundance of caution
7 and have this hearing -- having this discussion at
8 the bench because there's quite a lot of people in
9 the gallery.

10 THE COURT: Yes.

11 MR. DEMURO: I don't necessarily think it
12 needs to be at the bench, but the reason I'm coming
13 up, Your Honor, is the government has since advised
14 me that they have not been able to identify the
15 confidential informant as a result of that
16 investigation and it was essentially a dead-end. I
17 think that's an important point to put on the
18 record.

19 THE COURT: I agree, it is.
20 Notwithstanding the comments of the U.S. attorney;
21 is that correct?

22 MS. REINCKE: That's right, Your Honor.
23 As soon as we made that determination, I e-mailed
24 Mr. DeMuro and I called your clerk and advised her
25 so that she could advise Your Honor, as I indicated

1 I would after our last hearing.

2 THE COURT: All the things that both you
3 have said are correct and we have it now on the
4 record.

5 MR. DEMURO: My only other comment, Your
6 Honor, is I don't know -- I think there's an
7 interest in the public hearing, whatever it is
8 that's allowed to be heard in this matter, and since
9 this investigation came up empty and no one's
10 identified, and therefore, no security concerns are
11 implicated, I would like to make the statement in,
12 quote, open court, end quote.

13 THE COURT: Counsel.

14 MS. REINCKE: I have no objection to
15 that.

16 THE COURT: I don't see any reason that
17 shouldn't be public information. We don't -- you
18 can't be endangering someone if we don't know who
19 they are. There's a time -- this is a -- at least
20 in '05 or later involved whoever, if -- if and
21 whoever the confidential informant was shouldn't be
22 compromised if we can't mention their name.

23 MR. DEMURO: That's all I have, Your
24 Honor.

25 MS. REINCKE: Right. And just for the

1 record, Your Honor, the government wasn't -- didn't
2 have a full-scale investigation, we had just been
3 provided with information that we believed, as I
4 said last time, we needed to follow up on because of
5 Your Honor's determination that this was something
6 you were considering under Federal Rules of Civil
7 Procedure 60(b)(3). So it wasn't as though the
8 government took on any investigation, we just
9 received information that we felt duty-bound to
10 follow up on.

11 THE COURT: Comment?

12 MR. DEMURO: I don't want to mince words,
13 but the government's words at the last hearing was
14 we are, quote, investigating this. I think I
15 understand what counsel is saying, that they didn't
16 probably hire ATF to go out and engage them but --

17 THE COURT: Well, it was reported in
18 court by the U.S. attorney that there was a
19 possibility that they had located the informant, and
20 we went through that procedure that I devised that
21 if that was the case, I would receive the
22 information in camera. If we then were satisfied
23 that it perhaps was an informant, we would seal the
24 courtroom and allow the counsel for the defendant
25 and the government to inquire so -- inquire of the

1 confidential informant. Since we don't have one, we
2 won't be doing that procedure but I don't see any
3 reason not to make that public.

4 MR. DEMURO: Okay.

5 MS. REINCKE: Thank you, Your Honor.

6 *(Bench conference concluded)*

7 MR. DEMURO: May it please the court,
8 Your Honor, I would like to put on the record what
9 we just discussed at the bench in brief.

10 At the beginning of our last evidentiary
11 hearing, the government represented that it had
12 obtained some information about the possible
13 identity of the confidential informant at issue in
14 this case used in the affidavits -- or referenced in
15 the affidavits by Mr. Henderson and that the
16 government was going to investigate that lead or
17 follow up on that lead to determine if, in fact,
18 that was credible information.

19 I have been advised since the last
20 hearing by the government that that investigation
21 turned up no identifiable confidential informant and
22 so we're in the same position that we were in before
23 and I believe that's a relevant fact.

24 Thank you.

25 THE COURT: Any response from the

1 government?

2 MS. REINCKE: No, Your Honor. Mr. DeMuro
3 has accurately set forth what occurred. And also
4 for the record, the government was not actively
5 investigating but did come into some information
6 that we felt honor-bound we needed to provide to the
7 court.

8 THE COURT: You may call your next
9 witness.

10 MR. DEMURO: Thank you, Your Honor. May
11 it please the court, Mr. Becknell calls Jeff
12 Henderson.

13 Your Honor, before I begin, may I hand
14 the witness an exhibit notebook of the exhibits that
15 have already been entered?

16 THE COURT: You may.

17 MR. DEMURO: Thank you, Your Honor. Your
18 Honor, I've handed Mr. Henderson a notebook. I
19 noticed he's in handcuffs. It might be cumbersome
20 for him to handle the notebook, and I would request
21 that if the marshals consent that he be relieved of
22 those handcuffs.

23 THE COURT: I think for the record I
24 consulted with the marshal and the marshal feels
25 there's not a security issue by undoing one of the

1 handcuffs so that he can manipulate the exhibits.

2 MR. DEMURO: Thank you, Your Honor. I
3 also have a notebook of the exhibits for the court
4 as for your convenience, if that would help.

5 THE COURT: Yes. If you'll hand it to
6 the clerk.

7 **JEFF HENDERSON,**
8 ***after having been first duly sworn, says in reply to***
9 ***the questions propounded as follows, to-wit:***

10 **DIRECT EXAMINATION**

11 **BY MR. DEMURO:**

12 Q. Mr. Henderson, could you please state your full
13 name for the record?

14 A. Jeff Henderson.

15 Q. And I understand, Mr. Henderson, that you are
16 currently an inmate at the federal correctional
17 institution in Yankton, South Dakota?

18 A. Yes, sir.

19 Q. Mr. Henderson, have you reviewed any documents
20 in preparation for your testimony here today?

21 A. No, sir.

22 Q. And outside of your own personal counsel, have
23 you visited with anybody else about your testimony
24 here today?

25 A. No, sir.

1 Q. Do you have a general understanding of what
2 you're here today to testify about?

3 A. No, sir.

4 Q. Is it your testimony that you don't understand
5 that you're here today to talk about the affidavits
6 that you signed in connection with the arrest of
7 Mr. Becknell in 2005?

8 A. There's been nothing told to me. My attorney
9 was not aware of the details other than it involved
10 an individual by the last name of Becknell who I
11 know now as Tony. He was told by the U.S.
12 Attorney's Office that he would get copies of the
13 reports and never did so I -- I've not seen any or
14 not aware of the details you're wanting.

15 Q. And I want to be careful not to invade what
16 you've talked to your own attorney about, but I just
17 wanted to get an idea of what your understanding was
18 about these proceedings.

19 Did you have an understanding before you
20 came into court today that you would be -- that we
21 would be talking about Mr. Becknell's investigation
22 and arrest?

23 A. Yes.

24 Q. And the search warrants that you presented to
25 the state court in those investigations?

1 A. I presumed that's what it was going to be.

2 Q. Have you reviewed those search warrants at all
3 in preparation for your testimony?

4 A. I've seen absolutely nothing.

5 Q. Now, as I understand it, Mr. Henderson, you're
6 currently serving a 42-month sentence imposed
7 pursuant to your recent convictions in the police
8 corruption trial that just took place -- or took
9 place in August of 2011?

10 A. That's correct.

11 Q. And for the record, is that Case No. 10-CR-177?

12 A. I don't know.

13 Q. Excuse me. 117. Does that sound right?

14 A. I don't know.

15 Q. Okay. And is it true that in that case, you
16 were convicted of several counts of misconduct in
17 that case?

18 A. Well, it wasn't an unanimous verdict. I know
19 there's at least one juror that said I was not
20 guilty but I was sentenced to perjury.

21 Q. Well, I understand that there's an issue that
22 you're pursuing on appeal about a juror who came up
23 afterwards, after the verdict had been announced and
24 polled. That's what you're referring to?

25 A. Yes.

1 Q. But as the record stands now -- and I
2 understand you were convicted of Count 39. Do you
3 recall that?

4 A. Yes.

5 Q. And that involved an allegation made by the
6 government that you fabricated the existence of a
7 confidential informant in securing a search warrant.

8 A. I believe that's what they said.

9 Q. And you're convicted of Count 45, deprivation
10 of civil rights of Randall Crawford?

11 A. Yes.

12 Q. And that also involved a similar allegation of
13 fabricating evidence in support of a search
14 warrant?

15 A. Yes.

16 Q. And you were also convicted of, I believe, six
17 counts of perjury related to testimony that you gave
18 in a *Franks* hearing. Do you recall that?

19 A. Yes, sir.

20 Q. And, again, those convictions involved
21 allegations for which you were convicted and
22 involved allegations by the government that you had
23 falsified information to secure a search warrant; is
24 that correct?

25 A. That's correct.

1 Q. All right. Now, I want to talk a little bit
2 about your history with the Tulsa Police Department.
3 I understand that you were -- you came to be
4 employed at the Tulsa Police Department on June 5th,
5 1995?

6 A. Correct.

7 Q. And, sir, when were you discharged by the Tulsa
8 Police Department or terminated?

9 A. I believe July 20th of 2010.

10 Q. Now, I want to get right to the core of the
11 issue in this hearing anyway and talk about
12 Mr. Becknell's investigation.

13 Without going into the details, do you
14 remember Mr. Becknell or the investigation at all?

15 A. Parts of it.

16 Q. What parts do you remember?

17 A. The report that I'm looking at as documented,
18 but I would have to look at it to refresh my memory
19 as far as the details.

20 Q. And what exhibit number are you looking at,
21 sir?

22 A. And at this time --

23 THE COURT: Hold on, Counsel. Just a
24 minute. There's a gentleman on the back row who's
25 standing up and motioning.

1 Sir, are you counsel for the --

2 MR. WYATT: (Nods head)

3 THE COURT: Well, you may come forward
4 and take a position closer to your client.

5 MR. DEMURO: I'd be happy to surrender
6 the podium to counsel if he needs to make a record
7 of something.

8 MR. WYATT: Your Honor, I would just
9 instruct my client at this point now that they're
10 going into information that --

11 THE COURT: Let me ask you to identify
12 yourself for the record.

13 MR. WYATT: Certainly. I apologize, Your
14 Honor. Robert Wyatt. I'm counsel to Jeff
15 Henderson. I was counsel in the previous case, Your
16 Honor, and I have instructed him that these matters
17 do not involve matters that were previously
18 addressed in the 62-count indictment from last year.
19 As a result of that, I've instructed him that under
20 *United States v. Grunewald* and under the Fifth
21 Amendment of the United States, that he should
22 invoke privilege with respect to a separate
23 investigation. The matters up to this point haven't
24 involved privilege, but at this point I would ask
25 that he invoke his rights under the United States

1 Constitution and I have instructed him to do so.

2 MR. DEMURO: Your Honor, I want to
3 inquire of Mr. Wyatt about just a housekeeping thing
4 first and then we'll go further. But one of the
5 questions I asked that I didn't get an answer to
6 from the witness, Mr. Henderson referred to a
7 document that he was looking at. I just wanted to
8 make sure the record was clear what document that
9 was that he was looking at on the stand.

10 THE COURT: You may inquire.

11 Q. (BY MR. DEMURO) Mr. Henderson, what document
12 were you referring to that might refresh your
13 memory? I think you said it was a report of one of
14 these incidents.

15 A. At this time, I'd like to invoke my right to
16 the Fifth Amendment.

17 Q. On that question as well?

18 A. Yes.

19 MR. DEMURO: Your Honor, I don't see how
20 asking him when he referred to a document in his own
21 testimony when he's looking at an exhibit notebook
22 could possibly be incriminating; and if it is, he's
23 waived it with respect to saying that there's a
24 document that might refresh my recollection. I'm
25 just trying to keep the record --

1 THE COURT: I understand, Counsel.

2 MS. REINCKE: May we approach?

3 THE COURT: You may.

4 *(Bench conference outside the hearing of the jury)*

5 MS. REINCKE: There's a motion, Your
6 Honor, we received yesterday from the Department of
7 Justice of immunity for Mr. Henderson. Here's a
8 proposed order. I do have copies for each of
9 Mr. Wyatt and Mr. DeMuro.

10 THE COURT: Okay. Counsel, were you
11 aware of this before just now?

12 MR. WYATT: I was told this morning that
13 they had sought that and that it had been approved.

14 THE COURT: I'll take a recess and give
15 you an opportunity to talk to your client. Or do
16 you --

17 MR. WYATT: I have explained to him that
18 they have sought immunity and the court may order
19 that so he is aware of that as a possibility.

20 THE COURT: That would be my intention.

21 MR. WYATT: Yes, sir.

22 THE COURT: Do you need any break in the
23 action then?

24 MR. WYATT: I don't believe so.

25 MR. DEMURO: I'd like a moment to at

1 least review the papers. I wasn't aware of it until
2 right before we started.

3 THE COURT: Did you get copies of --

4 MR. DEMURO: I have not, Your Honor.

5 THE COURT: Do you have them now?

6 MR. DEMURO: I do not.

7 THE COURT: Do you have --

8 MS. REINCKE: Yes, I have extras. I
9 could have brought them up here but I didn't think
10 about it.

11 MR. DEMURO: It doesn't need to be a
12 lengthy recess.

13 THE COURT: We'll take about ten minutes.

14 MR. DEMURO: Okay.

15 *(Bench conference concluded)*

16 *(Short break)*

17 THE COURT: Counsel for the witness has
18 been provided a copy of the government's motion for
19 order granting testimonial immunity and a proposed
20 order.

21 Do you have any objection to either of
22 those?

23 MR. WYATT: No, Your Honor.

24 *(Discussion held off the record)*

25 THE COURT: I'll file the government's

1 motion for order granting testimonial immunity and
2 the court has signed the order granting the
3 immunity. I'll ask the clerk to file both of
4 record.

5 You may proceed.

6 Q. (BY MR. DEMURO) May it please the court,
7 Mr. Henderson, before you invoked your Fifth, I'd
8 asked you some questions about what report you were
9 looking at that may be able to refresh your
10 recollection. Can you please identify that?

11 A. It's in your folder you gave me, and it appears
12 to be a copy of the narrative of the report incident
13 that occurred on March 29th of 2005 in reference to
14 Tony Becknell.

15 Q. And, sir, the notebook that I gave you are
16 copies of the exhibits that have already been
17 entered in these proceedings with Mr. Becknell.
18 They should bear a number or a tab that can help you
19 identify what exhibit number it is, if you could do
20 that. I'm assuming it's Exhibit No. 7; is that
21 correct?

22 A. That's where I am right now.

23 Q. Okay. And we had about a ten-minute recess.
24 During that recess, did you review any other
25 documents to help refresh your recollection?

1 A. I've scanned through most of the folder. I've
2 looked at the affidavit, the search warrant, and the
3 narrative.

4 Q. Okay. And as I understand it, the affidavits
5 that are at issue in this case that have been
6 entered as exhibits, today is the first time you've
7 seen these affidavits since 2005; is that correct?

8 A. You're saying "affidavits" as in plural? I
9 only have one affidavit in here --

10 Q. Okay.

11 A. -- that I see right here.

12 Q. Sure. Turn to Exhibit 5 and Exhibit 6. First,
13 Exhibit 5. Do you have Exhibit 5 in front of you,
14 sir?

15 A. Yes.

16 Q. Now, is that a true and correct copy of the
17 affidavit that you signed on March 29th, 2005, in
18 relation to the Becknell prosecution?

19 A. It appears to be, yes.

20 Q. And Exhibit 6, is that a second and separate
21 affidavit that you filed -- that you swore and
22 signed on March 29th, 2005, in connection with the
23 investigation of Mr. Becknell?

24 A. It appears to be, yes.

25 Q. All right. And when's the last time you've

1 seen either of these affidavits before you came to
2 court today?

3 A. I would say March 29th, 2005.

4 Q. Now, if you go back to Exhibit 7, which is the
5 police report, the Tulsa Police Department original
6 report, this is the report that you had scanned in
7 your prior testimony today; correct?

8 A. Yes, sir.

9 Q. And it says in the first -- well, strike that.

10 This report was prepared by you; is that
11 correct?

12 A. Yes, sir.

13 Q. And this report states in the first sentence
14 that -- and I'm paraphrasing -- on March 29th, 2005,
15 officers of the UDN Street Crimes unit served a
16 Tulsa County warrant. Do you see that?

17 A. Yes, sir.

18 Q. And "UDN" refers to Uniform Division North
19 Street Crimes?

20 A. Correct.

21 Q. And that was -- you were working with that unit
22 at the time you served this warrant?

23 A. Yes, sir.

24 Q. Now, let's start with Exhibit 4, which is the
25 search warrant for the residence on East 21st Place.

1 Excuse me. Exhibit 5. I apologize.

2 Do you have that in front of you?

3 A. I do now, yes.

4 Q. And do you recall if there were -- that you
5 signed and executed two affidavits for the search
6 for two separate search warrants that were executed
7 that same day?

8 A. I do recall both of the affidavits and search
9 warrants for two different locations. I only recall
10 going to the apartment at this time. I don't know
11 if I went to the 21st Place residence.

12 Q. And before we delve into the search warrant, do
13 you recall why it was that you chose to be present
14 and to help serve the search warrant on the
15 apartment as opposed to the search warrant at the
16 21st Street location?

17 A. It may have been just an order from my
18 sergeant. Due to manpower, we had to split up to go
19 to both locations.

20 Q. Do you recall that as a fact or are you just
21 speculating?

22 A. That's just how we operated, so I would assume
23 that my sergeant advised the teams of where we would
24 go.

25 Q. And I appreciate that's your assumption. But

1 what I'm asking is --

2 A. No, I don't remember how I got to the -- or why
3 I was put at the apartment.

4 Q. Okay. Let's get right at the heart of this
5 matter.

6 If we go to Exhibit 5 -- and this is the
7 affidavit on East 21st Place -- have you had a
8 chance to review this affidavit?

9 A. No, sir.

10 Q. Take a moment to review it in its entirety and
11 let me know when you're done.

12 A. I've reviewed it.

13 Q. Okay. Directing your attention to the
14 paragraph at the bottom, the next to the last
15 paragraph --

16 A. On the first page?

17 Q. Excuse me. Yes. The last paragraph on the
18 first page references -- it says "Your
19 affiant . . ." -- and that obviously refers to you,
20 Jeff Henderson; correct?

21 A. Yes, sir.

22 Q. -- "further states that within the past 72
23 hours he was contacted by a reliable confidential
24 informant" --

25 A. Yes, sir.

1 Q. -- "referred to as RCI," and that this RCI has
2 given information to you and other law-enforcement
3 agencies in excess of six occasions and all of those
4 occasions -- and I'm paraphrasing -- led to
5 successful arrests.

6 Do you see that?

7 A. I do.

8 Q. Now, Mr. Henderson, who was the reliable
9 confidential informant that you stated in this
10 affidavit?

11 A. An individual by the name of Bobby Scott.

12 Q. Okay. And anybody else?

13 A. No.

14 Q. Okay. And how many -- approximately how many
15 cases have you used Mr. Scott on?

16 A. More than six.

17 Q. Did you use Mr. -- did you consider Bobby Scott
18 to be a reliable confidential informant?

19 A. He was a reliable confidential informant.

20 Q. And can you recall any of the other
21 former -- any of the other cases that you used Bobby
22 Scott on to provide the information to you?

23 A. Yes.

24 Q. Okay. And can you name those for me, please?

25 A. Creason Reed, Marquilen Glover, Dusty Glover.

1 And I think that's all at this point that I can
2 recall offhand just looking back on eight or nine
3 years ago.

4 Q. Now, Mr. Henderson, did you use Mr. Bobby Scott
5 as a confidential informant after this Becknell
6 investigation for any further -- any additional
7 investigations?

8 A. I may have. I don't recall if I have. I don't
9 know at this point.

10 Q. And can you please identify what Mr. Bobby
11 Scott looks like?

12 A. He's a black male, probably 5-8 at the time
13 back then, 150 pounds, was a certified Hoover Crip,
14 he has a street name of YB, "Young Buck."

15 Q. YB as in "boy"?

16 A. YB as in "Young Buck." He stayed in the 4900
17 block of North Trenton or Troost, one of those.

18 Q. And when's the last time you recall having any
19 contact with the alleged reliable confidential
20 informant, Bobby Scott?

21 A. Well, it's not alleged, it's a fact. And the
22 last time I recall would have been around this time
23 frame of these investigations in 2005.

24 Q. Well, I guess it's for the court to determine
25 whether it's alleged or not but we'll get to that in

1 a minute.

2 A. Okay. I'm not trying to argue. I'm just
3 letting you know it's a fact.

4 Q. Now, let's go through -- what do you recall in
5 this particular case the circumstances upon which
6 Mr. Scott came to provide this information to you?

7 A. What's inside the affidavit, that we were
8 directed to these locations. He advised us of the
9 information that he had observed, as far as cocaine
10 being sold by Tony Becknell. Maurico Smith lives
11 about a block away from him. That's how he became
12 involved in this investigation, being an associate
13 to Maurico Smith. He goes by "Suave," S-u-a-v-e.
14 That is how he initiated the investigation or the
15 connection to it; he became familiar with Tony
16 Becknell and the other individual, Julius McClellon,
17 just from being around Maurico Smith.

18 Q. Okay. I appreciate that. What I'm really
19 interested in first is, how did he contact you? You
20 say in your affidavit that the alleged RCI contacted
21 you within the past 72 hours.

22 A. By phone.

23 Q. By phone. And was there anybody with you
24 during that telephone conversation that could
25 corroborate your testimony?

1 A. I don't know. At the time of the phone call?

2 I don't know.

3 Q. And I apologize if I asked this before: Do you
4 recall the last time you had any contact with
5 Mr. Scott?

6 A. I couldn't give you a date, no. This time
7 frame.

8 Q. Give me a year, a time frame?

9 A. Around 2005.

10 Q. And do you know his current whereabouts?

11 A. No.

12 Q. Okay. Now, is the statement true in your
13 affidavit here, sir, that you said you'd used this
14 alleged RCI in excess of six occasions prior to this
15 affidavit?

16 A. Everything in this affidavit is true.

17 Q. Okay. So that's a "yes"?

18 A. That's a "yes."

19 Q. All right. And so, therefore, this would have
20 made it the eighth time -- at minimum eighth time
21 that you had used Mr. Scott?

22 A. No. It would make it in excess of six, just as
23 it says.

24 Q. Well, in excess of six is seven and then this
25 makes eight.

1 A. Ten, eleven, twelve are in excess of six too.
2 In excess of six is just a statement. It could have
3 been 20 or 30. It's nothing to pinpoint his
4 identity or how many times he's provided
5 information, but in excess of six I'm positive of.

6 Q. Okay. Well, my question, sir, was it's at
7 least -- this affidavit represents at least the
8 eighth time that you used -- allegedly used
9 Mr. Scott?

10 A. Or the seventh. One of these is the seventh or
11 the eighth, I would presume, yes.

12 Q. Okay. And approximately how many times do you
13 think you used him -- I mean, you said this is an
14 approximation. Do you have a sense or a
15 recollection that you used him more than eight
16 times?

17 A. Well, what you're not reading into is what it
18 says. It says he has provided or given information
19 in excess of six occasions. He's provided
20 information to me and the Tulsa Police Department in
21 excess of six occasions that has proven him to be
22 reliable based on the information that was
23 corroborated at the time.

24 So you're saying deals. This doesn't
25 mean he's given me six search warrants or fifteen

1 search warrants or bought fifteen different times.
2 It's provided information that I corroborated to be
3 true and correct.

4 Q. I get that. That's not my question. My
5 question is, how many times -- give me your best
6 estimate of how many times you've allegedly used
7 Mr. Scott as a confidential informant.

8 A. For what? A search warrant? Just receiving
9 information? Or controlled buys?

10 Q. Anything. Anything and everything. We'll
11 start there.

12 A. In excess of six. That's the best I can do for
13 you.

14 Q. And how many times for a search warrant?

15 A. I don't recall.

16 Q. Could it have been all six times?

17 A. I don't recall.

18 Q. You don't recall one way or the other?

19 A. I don't know how many times I've typed search
20 warrants based on information from Bobby Scott.

21 Q. But it could have been in excess of six?

22 A. Sir, I've answered your question. I don't
23 know.

24 Q. My question is, could it have been in excess of
25 six?

1 A. And I don't know. It could have been, if
2 that's what you're wanting me to say. I don't know
3 the number.

4 Q. I'm just wanting you to tell the truth. That's
5 all I'm wanting --

6 A. That's all I'm doing. When I say "I don't
7 know," I don't know.

8 Q. Now, let's move on to the next affidavit, the
9 affidavit that's reflected in Exhibit No. 6. Do you
10 see that?

11 A. I do.

12 Q. Take a moment to review that affidavit.

13 A. I've reviewed it.

14 Q. And you'll notice that the wording of the
15 affidavit in Exhibit 5 and affidavit 6 is virtually
16 identical?

17 A. Some of the wording is, yes.

18 Q. Did you -- well, let's go through it. Other
19 than the -- other than the identification of the
20 place to be searched and the identification of the
21 suspects, the wording of these affidavits is
22 virtually identical, is it not?

23 A. Correct.

24 Q. All right. So I'm assuming that you cut and
25 paste a lot of the wording from one to the other?

1 A. It's a template that the Tulsa Police
2 Department used at the time and probably still does.
3 But yes, it was cut and pasted.

4 Q. Okay. And if you notice in affidavit
5 No. 5 -- well, strike that.

6 Affidavit No. 6 -- excuse me. The
7 affidavit that's been marked as Exhibit No. 6, which
8 is the affidavit for the apartment on South 145th
9 East Avenue, who was the alleged confidential
10 informant that you used in this affidavit?

11 A. Bobby Scott.

12 Q. And what time of day did Bobby Scott allegedly
13 call you and give you this information?

14 A. I couldn't tell you when he called me seven
15 years ago.

16 Q. Okay. In relation to when you served the
17 search warrant, was it a day before? Two days
18 before? A night before?

19 A. It was within 72 hours of me typing the
20 affidavit and the search warrant.

21 Q. And that's the best you can give me?

22 A. That's the best I can give you.

23 Q. All right. And in that -- was it one
24 conversation or two? Did he provide you the same
25 information in one conversation that you used for

1 both affidavits or were there separate
2 conversations?

3 A. Well, I picked him up. There were multiple
4 conversations. Now, by phone? I don't know how
5 many conversations I've had with Bobby Scott in
6 reference to this investigation.

7 Q. Well, here's my point. When you gathered the
8 information from Bobby Scott to go back and do the
9 search warrants, did you have one group of
10 conversations and then go back and do your search
11 warrants, or were there multiple back-and-forths?

12 A. I'm sure it was a multiple back and forth
13 between the surveillance, the corroboration, the
14 investigation itself, and the ongoing -- at the time
15 the ongoing investigation.

16 Q. Now, if you look at Exhibit No. 5 in the second
17 page -- and this is the affidavit for the
18 121st -- excuse me -- for the 21st Place
19 residence -- the first full paragraph on the second
20 page, if you could look at that for a moment.

21 Down towards the bottom of the paragraph,
22 you say that the RCI told you that the CRI has
23 observed Tony Becknell, a/k/a "Smoke," conducting
24 drug transactions from his residence. Do you see
25 that?

1 A. From this residence, yes.

2 Q. Right. And then if you look at Exhibit No. 6,
3 the same paragraph that's the first full paragraph
4 on the second page of Exhibit No. 6, which is an
5 apartment search warrant --

6 A. Yes, sir.

7 Q. -- when you're describing Tony Becknell, you
8 described him as, quote, Tony Becknell, Jr. Do you
9 see that?

10 A. Yes.

11 Q. Why didn't you use the same description in both
12 affidavits?

13 A. I don't know. Maybe it was a misprint or I
14 realized it was junior when I was typing this
15 affidavit.

16 Q. Did you have more than one confidential
17 informant provide you information for these
18 warrants?

19 A. No, sir.

20 Q. Now, you were aware as a member of the Street
21 Crimes unit at the Uniform Division North that there
22 were certain policies regarding documentation of the
23 use of confidential informants?

24 A. Yes.

25 Q. And we've had Sergeant Meek speak to that in

1 this proceeding. Sergeant Meek testified that the
2 uniform -- excuse me -- the Street Crimes division
3 of the Uniform Division North was expected to run
4 their search warrants and follow the procedures of
5 the SID division. Do you recall -- do you agree
6 with that?

7 A. No, I don't agree with that.

8 Q. Okay. What bit don't you agree with?

9 A. There is no policy that says SID and Street
10 Crimes were under the same umbrella of policies.
11 The Street Crimes unit at the time, 2004, was under
12 the developmental policy of the informants, which is
13 different from the Special Investigations division's
14 policy.

15 Q. Okay. So you differ with Sergeant Meek who was
16 at the time --

17 A. I don't differ. That's what's in black and
18 white in the policy.

19 Q. Sir, could you please let me finish my question
20 before you jump in? Is that all right? I'll let
21 you finish your answers before I jump in.

22 A. Sure.

23 Q. Okay. So you disagree with Sergeant Meek if he
24 testified that in March 2005 that the Street Crimes
25 division of Uniform North was held to the same

1 policies with respect to documenting confidential
2 informants?

3 A. Yes, I would.

4 Q. And did you ever pay Mr. Scott for his
5 confidential informant work?

6 A. No, sir.

7 Q. So there wouldn't be any vouchers or anything
8 like that?

9 A. Not from me.

10 Q. Now, Mr. Henderson, did you ever document in
11 any way, shape, or form your use of Bobby Scott?

12 A. No, sir.

13 Q. Not --

14 A. Not that I know of.

15 Q. So if Sergeant Meek testified that the practice
16 of SID and Street Crimes at the time was to document
17 the confidential informant or reliable confidential
18 informant with firstly assigning that confidential
19 informant a number, that's not something that you
20 did with this confidential informant?

21 A. That's not something that was the policy.

22 You're not stating the entire policy. There's two
23 different criterias that needed to be met that did
24 compare with SID. One, if they were being paid,
25 they needed to be documented; or if they were

1 working charges off through the district attorney's
2 office, they were documented. That's the only
3 comparison to the SID policy.

4 As far as working an individual who is
5 just a reliable confidential informant providing
6 information, not receiving any benefits as far as
7 monetary value or working charges off, they did not
8 need to be documented. That was in black and white
9 in the policy for the department.

10 Q. Okay. Are you finished? Would you like to
11 describe anything else about the policies?

12 A. No. You asked a question, sir. I'm just
13 letting you know there's a difference in what you're
14 saying so that you're clear in the two policies and
15 what they state.

16 Q. I'm clear. It wasn't the question I asked. I
17 just wanted to make sure you're finished so we can
18 get it out of the way. Are you finished with your
19 explanation of what the difference --

20 A. Your question was, do I agree with Sergeant
21 Meek's description of the -- that SID and TPD Street
22 Crimes policies were the same. They were not the
23 same; only in those two criterias.

24 Q. Got it. That wasn't my question, but I just
25 wanted to make sure you got it all off your chest,

1 all right?

2 The bottom line is, did you assign this
3 alleged confidential informant, Bobby Scott, a
4 confidential informant number?

5 A. No. Bobby Scott was not documented --

6 Q. Yes or no, did you assign him a number?

7 A. No.

8 Q. Did you fill out a questionnaire -- a
9 confidential informant questionnaire form to
10 document any of the times that you allegedly used
11 Bobby Scott, yes or no?

12 A. No, sir.

13 Q. Did you take a photo of Bobby Scott and stick
14 him in a confidential informant file?

15 A. No.

16 Q. Did you ever fill out a case information sheet
17 for Bobby Scott such that the -- your use of him
18 would be documented?

19 A. No, sir.

20 Q. So your testimony is that there's not a single
21 scrap of piece of paper that would document your use
22 or corroborate your use of Bobby Scott as a
23 confidential informant in this case; is that right?

24 A. That's correct.

25 MR. DEMURO: No further questions, Your

1 Honor.

2 THE COURT: Cross-examination.

3 MS. REINCKE: No questions, Your Honor.

4 THE COURT: Bobby Scott have a middle
5 name that you recall?

6 THE WITNESS: I don't recall at this
7 time, Your Honor.

8 THE COURT: When did your career with the
9 Tulsa Police Department -- when did you initiate
10 that career?

11 THE WITNESS: June 5th, 1995.

12 THE COURT: From the time you started
13 until 2005, was there any policy changes, one way or
14 the other, about documenting reliable confidential
15 informants? I mean, was there one policy when you
16 started and a change in the middle or anything like
17 that?

18 THE WITNESS: Policies are updated all
19 the time. I couldn't tell you if anything was
20 updated. I do know the policy in 2004 and 5 when I
21 was currently in Street Crimes, the departmental
22 policy that we went by, as far as operating
23 confidential informants and reliable confidential
24 informants, which was different than SID's policy.

25 THE COURT: What was the difference?

1 THE WITNESS: The SID policy is all
2 reliable confidential informants and all
3 confidential informants are to be documented when
4 working at that division. It's a divisional policy,
5 not a departmental policy. So if you're assigned
6 there, you go by the division policy.

7 The departmental policy, which fell under
8 Street Crimes at each other substation in the
9 city -- south side, north side, east side -- went
10 under the departmental policy, which was only if the
11 reliable confidential informant or confidential
12 informant is being paid or if they're working off
13 charges through the district attorney's office do we
14 document them.

15 THE COURT: Is there any practical reason
16 why there was a difference you can offer the court,
17 I mean, as an explanation of why was there? I mean,
18 this is -- you worked there. This is maybe
19 something I just totally don't understand why there
20 would be a different --

21 THE WITNESS: I didn't make the policy,
22 sir.

23 THE COURT: No, I know. I know.

24 THE WITNESS: It's been in effect --

25 THE COURT: I was just trying to ask -- I

1 mean, you've worked there for a long time. Is there
2 some practical reason there was a difference? It's
3 difficult for me to see being a layman, I'm not a
4 police officer, but why there wouldn't be -- maybe
5 you could say, oh, because whatever.

6 THE WITNESS: I know SID is a little more
7 thorough as far as their wanting to know the
8 investigations that the officers under that
9 division, what they're working and who might be
10 cooperating in those investigations. That would be
11 the only thing I could tell you for practicality. I
12 went by the policy at the time and that's all I can
13 say as far as -- I don't know why one is more
14 thorough than the other.

15 THE COURT: Did you ever receive any
16 instructions from prosecutors you worked with that
17 you should be diligent about keeping --

18 THE WITNESS: I have never been told --
19 until all this has come up, documentation of
20 informants has never been an issue, it's never been
21 a question. Even in 2005 at the hearing I had with
22 Judge Cleary, there was never -- I don't believe
23 there was any conversation of documentation of the
24 informant. I brought that person forward in an in
25 camera hearing and that was the only issue that came

1 up, just for the identity of the informant.

2 THE COURT: Any further questions?

3 MR. DEMURO: Yes, Your Honor --

4 THE COURT: Okay.

5 MR. DEMURO: -- if it may please the
6 court.

7 THE COURT: You may.

8 Q. (BY MR. DEMURO) That hearing you're talking
9 about in front of Judge Cleary wasn't in this case;
10 correct?

11 A. No.

12 Q. There's good reasons why a detective or officer
13 or investigator would want to document the existence
14 of a confidential informant, aren't there?

15 A. I don't know.

16 Q. You don't know. So if you had documented that
17 confidential informant, one good reason would be
18 that anybody who wanted to see if there, in fact,
19 was a confidential informant would be able to prove
20 that; right?

21 A. Well, how would you prove it if Bobby Scott
22 takes the stand and says no, like Rochelle Martin in
23 my case where I was indicted and she says, no, I
24 didn't provide that information? Documenting it
25 proves nothing.

1 Q. Okay. That's not my question. If you had
2 documented it, one purpose -- one good purpose of
3 that is at least there would be a record to
4 corroborate what you're saying; correct?

5 A. Well, that was your question. You said it
6 would prove that that person was an informant. That
7 proved nothing.

8 Q. Okay. I don't want to argue with you,
9 Mr. Henderson --

10 A. I mean, I'm just answering your question.

11 Q. That wasn't a question, so, again, you've got
12 this bad habit of interrupting me. And so I'd ask
13 that you please wait until I finish my question --

14 A. Could you repeat the question then, please?

15 Q. Can you do that for me?

16 A. If you can repeat that question, please.

17 Q. All right. Wouldn't you agree, Mr. Henderson,
18 that if you had documented the use of Mr. Scott,
19 that we could go to that document right now and
20 prove it?

21 A. And prove what, sir? That's what I'm asking.

22 Q. Never mind. Let me ask you this.

23 Is it your testimony that you can't
24 identify for the court one single good purpose that
25 a cop would have to keep a record of his use of a

1 confidential informant that he's used as many times
2 as you've supposedly used Mr. Scott? Can you
3 identify one good reason?

4 A. Are you asking, can I tell you why it would be
5 a good reason to document them?

6 Q. Yeah.

7 A. I'm sure it's a good reason to document your
8 activities with individuals, but it wasn't the
9 policy or a requirement; therefore, I did not do it.

10 Q. And why would it be a good reason to document?
11 What good reason can you give the court for
12 documenting your use of confidential informants --

13 A. Maybe from memorization you could look back on
14 any -- any type of investigation where that
15 individual is documented as the informant.

16 Q. Okay. Again, you're cutting me off. Please
17 let me finish my questions, okay? Can we do that?
18 Just wait until I get my question out of my mouth
19 and then you can answer.

20 A. I thought you were done. Go ahead.

21 THE COURT: Okay. I think you both
22 understand I'm the audience.

23 THE WITNESS: Yes, sir.

24 THE COURT: Nobody else has as much
25 responsibility here as I do and I can't follow you.

1 We've got a lot of time. I'm trying to take as much
2 time as necessary to deal with this matter. So I
3 would ask the witness to please wait until counsel
4 has finished the question. Then, Counsel, wait
5 until the witness has finished his answer before you
6 ask another question. So let's start over.

7 MR. DEMURO: Sure.

8 Q. (BY MR. DEMURO) So my question simply is, what
9 are those good reasons that you can think of why a
10 cop would want to document a confidential
11 informant?

12 A. Maybe to look back in the files to see who's
13 connected or related to that investigation.

14 Q. Okay. And were you aware of that type of good
15 reason back in 2005?

16 A. I didn't have a need for it in 2005. It wasn't
17 a requirement. That was my practice. That's how I
18 was trained. We didn't do it.

19 Q. Who trained you on that use of confidential
20 informant -- strike that.

21 Who trained you on the requirements with
22 respect to documenting confidential informants that
23 existed when the Street Crimes unit was assisting
24 SID in an investigation? Who gave you that
25 training?

1 A. In assisting SID?

2 Q. Yeah.

3 A. Well, it was training through the Tulsa Police
4 Academy and then training through the experience in
5 the field and then training when I got to the Street
6 Crimes unit by Sergeant Luke Sherman.

7 Q. And was Sergeant Sherman your administrative
8 sergeant or your supervisory sergeant in March of
9 2005 during this time period?

10 A. Yes, sir.

11 Q. Now, were the warrants in question in here
12 served by -- strike that.

13 It's my understanding that the warrants
14 in question in this case were served in part by
15 officers who also worked for the SID unit. Is that
16 your understanding as well?

17 A. I didn't see anything in the narrative you
18 provided that had an SID officer.

19 Q. Let me hand you --

20 MR. DEMURO: Your Honor, if I may
21 approach, I would like to mark another exhibit.

22 THE COURT: You may.

23 Q. (BY MR. DEMURO) I've handed you what I've
24 marked as Exhibit 10. Do you recognize that as a
25 Tulsa Police Department supplemental offense report

1 for the search warrant that was served on the 21st
2 Street location?

3 A. I see that that's what it is, yes.

4 MR. DEMURO: Your Honor, at this time I
5 move Defendant's Exhibit 10.

6 THE COURT: Any objection?

7 MS. REINCKE: No, Your Honor.

8 THE COURT: Be admitted without
9 objection.

10 Q. (BY MR. DEMURO) Mr. Henderson, was it a
11 practice of the Street Crimes unit at the
12 northern -- at Tulsa north to sometimes participate
13 with the SID division in narcotics investigations?

14 A. Yes.

15 Q. And was it a practice of the Street Crimes unit
16 to participate in serving search warrants in
17 connection with those narcotics investigations in
18 2005?

19 A. Sometimes if manpower was needed, then yes, we
20 would cooperate with each other to help.

21 Q. And did you do -- did you personally do that
22 from time to time?

23 A. Yes.

24 Q. And had you filled out affidavits and obtained
25 search warrants for investigations that were served

1 by this joint type of effort between SID and Street
2 Crimes?

3 A. Yes.

4 Q. In this time period?

5 A. Yes, sir.

6 Q. And was this one of those warrants, either one
7 of these?

8 A. This one appears that there was some SID
9 officers that helped execute this search warrant.

10 Q. So Exhibit No. 10, which is the police report
11 of Officer Brian Comfort related to the Becknell
12 search warrant that was served on the 21st Street
13 residence; correct?

14 A. Yes.

15 Q. All right. And which officers here tell you
16 that the SID participated in a joint operation with
17 Street Crimes for this particular investigation?

18 A. Brian Comfort, Tom Milburn, and the rest appear
19 to be federal agents.

20 Q. All right. So this warrant was, in fact,
21 served by members of the SID division using
22 information based on your alleged confidential
23 informant; correct?

24 A. Yes. They served this search warrant for me,
25 yes.

1 Q. Okay. For you? They served it for you?

2 A. While we were executing the other one, yes.

3 Q. And were you aware at the time that SID's
4 policies with respect to using confidential
5 informants were to document those confidential
6 informants?

7 A. I don't know what SID's policies -- I didn't
8 work there in 2000 -- at this time in 2005.

9 Q. That's not my question.

10 A. No, I was not.

11 Q. In 2005, March of 2005, is it your testimony
12 that you had no idea what the differences were with
13 the SID policy and the Tulsa Police Department
14 policy with respect to confidential informants?

15 A. That's correct.

16 Q. And when did you become aware of that
17 distinction?

18 A. When I went to SID in November of 2005.

19 Q. Okay. And despite the fact that this search
20 warrant was served by SID members, there's not a
21 scrap of documentation to corroborate your testimony
22 that you used Bobby Scott for this affidavit -- for
23 these affidavits; correct?

24 A. No. No, sir.

25 Q. Am I correct?

1 A. The question is, is there a scrap of
2 information that would document Bobby Scott? The
3 answer is no.

4 MR. DEMURO: Thank you, Your Honor.
5 Nothing further.

6 **CROSS-EXAMINATION**

7 **BY MS. REINCKE:**

8 Q. Whose case was this?

9 A. Mine.

10 Q. If it's your case, what is the involvement with
11 SID?

12 A. They were only there to assist for the manpower
13 of the execution. They had nothing to do with the
14 investigation as far as how the information was
15 obtained.

16 Q. What about the federal agents?

17 A. Same. They were there for manpower as well.

18 Q. Thank you.

19 MS. REINCKE: Nothing further.

20 THE COURT: If I understood your
21 testimony correctly, the Street Crimes division had
22 a more -- my words, not yours -- a more lenient
23 policy, or not as strict a policy, on keeping up
24 with confidential informants; is that correct?

25 THE WITNESS: Yes, in a way, with your

1 words. We just -- we didn't require the same
2 documentation that SID did.

3 THE COURT: Now, in this case, the search
4 warrant based on what your testimony is was
5 originated with you as a Street Crimes -- as a
6 member of the Street Crimes division?

7 THE WITNESS: Yes, sir.

8 THE COURT: But the affidavit was also
9 used by Special Investigations in this case because
10 you said they were helping you --

11 THE WITNESS: Well, they had no part of
12 the investigation as far as the preparation of the
13 affidavit.

14 THE COURT: But they executed the search
15 warrant?

16 THE WITNESS: That is all they did,
17 yes.

18 THE COURT: I know this probably gets to
19 be a technical question, but we had a Street Crimes
20 search warrant being served by Special
21 Investigations. So technically if Street Crimes was
22 more particular or had a different, more stringent
23 set of rules about confidential informants, then
24 they were actually violating their own rules by
25 serving a search warrant less --

1 THE WITNESS: No, sir, not at all. They
2 didn't violate any policy or rule.

3 THE COURT: I mean, my point is, if their
4 policy was more strict than Street Crimes, they were
5 serving a Street Crimes --

6 THE WITNESS: Their policy was only to
7 document informants of their investigation. That's
8 what the policy is.

9 THE COURT: Okay. So you distinguish
10 this? This was a Street Crimes investigation they
11 were helping out on?

12 THE WITNESS: One hundred percent this
13 was a north side Street Crimes investigation. All
14 they did was fill in for body -- for manpower to
15 execute the warrants. So we don't deplete the
16 field, SID units are who we call first so we don't
17 take officers out of patrol.

18 THE COURT: So it would be -- again, my
19 words -- it would be so strange it never happened
20 for SID to call and say, hey, wait a minute, this
21 search warrant doesn't meet our standards because
22 you document the --

23 THE WITNESS: No. That has never
24 happened in the dozens of times that SID has
25 assisted us.

1 THE COURT: Okay. Further questions?

2 MR. DEMURO: One other question.

3 **REDIRECT EXAMINATION**

4 **BY MR. DEMURO:**

5 Q. I may have asked this; and if I did, I
6 apologize. Have you ever paid Bobbie Scott money?

7 A. No, sir.

8 Q. Are you aware of any other officers who had
9 used Mr. Scott as a confidential informant?

10 A. Well, besides Officer Yelton, who was my
11 partner, and the cooperation with this investigation
12 that overlapped into the ATF investigation, I don't
13 know what other officers might have used him.

14 Q. And did you ever -- so you can't recall whether
15 or not there's any other TPD officers who have used
16 Mr. Scott; is that right?

17 A. I don't recall at this time, no, sir.

18 Q. And did you ever offer Mr. Scott any leniency
19 in pending cases in return for his cooperation?

20 A. No.

21 MR. DEMURO: Nothing further, Your Honor.
22 Your Honor, I'm sorry, I have one other brief
23 area.

24 THE COURT: You may.

25 Q. (BY MR. DEMURO) Mr. Henderson, the affidavit

1 for the residence search warrant that you did not
2 participate in serving but members of SID did, I
3 want to talk about that for a minute.

4 How did you get that affidavit to the SID
5 officers who served the warrant?

6 A. I don't recall. I would presume they came to
7 Uniform Division North where we briefed for the
8 warrants.

9 Q. Okay. And do you recall anybody specifically
10 telling you that the reason SID was involved was
11 because of a manpower issue? Do you have a specific
12 recollection of that on this investigation?

13 A. It was my reason. We had to have manpower, so
14 I made the decision we needed extra people.

15 Q. Okay. So you recall that. And who do you
16 recall calling or telling?

17 A. Probably Sergeant Sherman who got a hold of SID
18 for the individuals to help us.

19 Q. So your testimony is you have a specific
20 recollection that you told Sergeant Sherman in this
21 investigation that you wanted SID to cooperate?

22 A. Yes.

23 MR. DEMURO: Okay. Nothing further.

24 THE COURT: Further questions?

25 MS. REINCKE: Court's indulgence.

1 (Discussion held off the record)

2 **RECROSS-EXAMINATION**

3 **BY MS. REINCKE:**

4 Q. Were you ever told that if SID cooperated or
5 worked with you or was additional manpower for one
6 of your cases, that you had to comply with their
7 requirements concerning informants or anything else?

8 A. No.

9 MS. REINCKE: Nothing further.

10 THE COURT: Further questions, Counsel?

11 MR. DEMURO: No, Your Honor. Thank you.

12 THE COURT: May this witness be excused
13 for the government?

14 MS. REINCKE: As far as the government's
15 concerned, Your Honor.

16 MR. DEMURO: Yes, Your Honor.

17 THE COURT: Sir, thank you for your
18 testimony. You may step down. You may be excused.

19 THE WITNESS: Thank you.

20 THE COURT: Further witnesses?

21 MR. DEMURO: Not at this time, Your
22 Honor. However, in light of this testimony in which
23 for the first time in seven or eight years the
24 identity of a confidential informant has been
25 allegedly identified in this case, I'd like a moment

1 or two to confer with my client about whether or not
2 we need to call additional witnesses to --

3 THE COURT: Well, I'll give -- I mean,
4 this is a long, involved -- I don't want to use time
5 as a limiting factor. I mean, we have a lot of time
6 invested in this case so I'm not disturbed if you
7 want a few days to think about that.

8 MR. DEMURO: Well, what my preference
9 would be, Your Honor, is that we -- if it's your
10 pleasure, if you were anticipating having closing
11 arguments or additional briefing, that you set
12 whatever that schedule is. In the next couple days,
13 I'll confer with my client and if we do deem it
14 necessary to develop additional evidence, I can
15 notify the court of that within the next, you know,
16 72 hours or three business days, whatever Your
17 Honor's pleasure is, but that we try to keep it
18 moving along towards a resolution.

19 THE COURT: Counsel have any objection?

20 MS. REINCKE: No, Your Honor.

21 THE COURT: What I plan to do is to give
22 you 15 days from the close of the evidence, which
23 would incorporate counsel's three-day time period to
24 consult with his client about whether there are
25 additional witnesses. Assuming there's not, then 15

1 days from Thursday of next week would be the
2 beginning date.

3 There are questions that I would ask the
4 U.S. attorney to address that we've had some
5 discussion about or are general in nature, I
6 realize, and the U.S. attorney's answer could be,
7 those questions have nothing to do with this case.

8 But maybe I'm saying this one more time:
9 I'm asking the U.S. Attorney's Office for the
10 Northern District whether or not they have made an
11 independent review based on *Buchanan* of all their
12 cases to determine if a constitutional violation has
13 occurred due to police misconduct. I'm talking
14 about 2005 forward as a time frame, 2005 until now.

15 I bring that up because I know, as the
16 U.S. attorney is aware, there were at least -- my
17 portion of the cases there were 14 cases filed under
18 seal that we've now unsealed and given notice to the
19 defendants in those cases. This case is one of
20 those, as I recall.

21 MS. REINCKE: That's correct.

22 THE COURT: That's correct. Okay. So
23 that's the reason -- that's the reason for that
24 question. And if -- I'm not suggesting there is,
25 but is there any inherent conflict in the U.S.

1 Attorney for the Northern District reviewing those
2 cases in regard to *Buchanan*?

3 I know we've had some discussion from
4 time to time where the U.S. attorney for the
5 Northern District has indicated that they have
6 recused from the cases that were being investigated
7 by the U.S. attorney for -- I can't remember --
8 Eastern or Western District of Arkansas that
9 obviously you recused from that criminal
10 investigation.

11 As I understand it, that criminal
12 investigation is over so there's no recusal issue?

13 MS. REINCKE: If I may, Your Honor.

14 THE COURT: You may.

15 MS. REINCKE: The recusal was from being
16 involved in any of the ongoing investigation of any
17 police officer for corruption, whether it was the
18 trial of Harold Wells and Nick DeBruin and Bruce
19 Bonham or whether it was the case of Jeff Henderson
20 and Bill Yelton. We weren't allowed to do anything
21 in connection with that investigation.

22 But as the Eastern District of Arkansas
23 obtained information, it was provided generally to
24 us so that we would have an opportunity to go
25 through and look at all of the cases any of those

1 officers were involved in for purposes of
2 determining whether any of them would be
3 *Giglio*-impaired under *Buchanan*.

4 THE COURT: Okay. And then it was my
5 understanding -- and I think this was the
6 information I had about the 14 cases I had that were
7 filed under seal -- that those 14 cases came out of
8 a group of cases that the Eastern District U.S.
9 Attorney referred -- I guess I'll say "referred" --
10 back to or referred to --

11 MS. REINCKE: No. What happened was,
12 when they told us what the time frame was for each
13 of the five officers, we went through at the
14 direction of our U.S. attorney -- those of us who
15 were still in the office who had prosecuted those
16 cases went through and evaluated those cases based
17 on a number of criteria. It was all done in
18 connection with whether or not any of those officers
19 would have been *Giglio*-impaired at the time which
20 was the issue in *Buchanan*.

21 And so all of the cases of all of the
22 officers were reviewed. Your Honor had a number of
23 them as did Judge Kern had some, Judge Eagan had
24 some, and I think some of them went back to Judge
25 Cook.

1 THE COURT: Let me stop you there. So
2 you got a number of cases referred from the U.S.
3 Attorney for the Eastern District and then you all
4 went through and culled them down to ones you
5 thought were --

6 MS. REINCKE: No. We looked at all the
7 cases that all five of these officers were involved
8 in. We looked at every single case that the
9 officers were involved in during a time frame and
10 each officer had a different time frame.

11 For instance, as an example, if we were
12 supposed to look at the cases that Officer Henderson
13 was involved in beginning in 2004, starting January
14 2001 -- or January 1 of 2004, every case that
15 Officer Henderson was involved in in any way was
16 reviewed. It was -- we routinely did the same thing
17 for the other officers.

18 We got the time frame from the Eastern
19 District of Arkansas, they provided us the time
20 frame. They weren't aware of the cases. We went
21 through internally and pulled the cases based on the
22 information from Arkansas about what the initial
23 date was.

24 THE COURT: So what I'm interested in is,
25 ultimately the 14 that came to my attention were

1 cases assigned to me that were filed under seal, the
2 seal has now been lifted.

3 MS. REINCKE: Right.

4 THE COURT: Did that 14 come from a group
5 of cases that were referred -- I think I've asked
6 this and I think you said no -- did it come from a
7 group of cases that were referred by the U.S.
8 Attorney for the Eastern District of Arkansas back
9 to the Northern District?

10 MS. REINCKE: No. We looked at those
11 cases, and of all the cases we looked at, the 14
12 that were involved in the time frame where the
13 allegation started were your cases. There were a
14 number of cases -- so we looked at every single case
15 starting with the time frame that the Eastern
16 District provided to us. Some we started in 2007,
17 some might have been 2003, some might have been
18 2008. It just all depended on the general
19 information that came to -- came to us through the
20 department so that we would -- you know, there
21 was -- we put up a Chinese wall so that we would be
22 able to look at those cases to determine whether or
23 not there was action that we needed to take prior to
24 the culmination of the police corruption cases.

25 THE COURT: Well, so when those 14 came

1 filed under seal --

2 MS. REINCKE: We filed ex parte notices
3 in every single case that we reviewed.

4 THE COURT: But those notices just went
5 to the court?

6 MS. REINCKE: Those notices just went to
7 the court.

8 THE COURT: Okay. And so then it was
9 incumbent upon the court to review those cases?

10 MS. REINCKE: I don't -- I don't know.
11 We were just advised that that's what we were going
12 to do and that's what was done and --

13 THE COURT: And this is one of those
14 cases.

15 MS. REINCKE: This is one of those
16 cases.

17 THE COURT: And those other 13 people,
18 some perhaps have been released from incarceration
19 and -- I guess I'm saying except for the court
20 unsealing them and giving notice to those
21 defendants, there would have been -- there would
22 have been no notice to them that there was a
23 possible issue with those cases that should be
24 raised in a 2255 or --

25 MS. REINCKE: Well, I don't know.

1 Because there have been a number of 2255s that have
2 been filed based on the fact that it was a
3 highly-publicized case, and because there was
4 something in the newspaper, there was things on
5 televisions and there have been -- television --
6 there have been defendants who filed 2255's in cases
7 that Your Honor didn't have.

8 I don't know if the other -- if all
9 the -- I don't know if all the notices were
10 unsealed. I just know that the notices in your
11 cases --

12 THE COURT: Yeah, I unsealed them in my
13 cases.

14 MS. REINCKE: Right. But I don't know
15 about the other ones. I do know that there have
16 been defendants that were not sentenced by Your
17 Honor but sentenced by other of your colleagues who
18 have filed 2255's. So I'm not aware of the status
19 of those filed notices in the other cases.

20 THE COURT: So is the source of those
21 cases the list? Did that list come from, again, the
22 U.S. Attorney in the Eastern District of Arkansas?

23 MS. REINCKE: No. It came from the U.S.
24 Attorney's Office here.

25 THE COURT: Okay. You generated that

1 based on information from --

2 MS. REINCKE: We generated that based on
3 what we were told by the department was the time
4 frame of the cases we need to look at for purposes
5 of determining whether the officers --

6 THE COURT: So there was a -- you
7 mentioned a Chinese wall.

8 MS. REINCKE: Right.

9 THE COURT: So there was a Chinese wall
10 between the Eastern District of Arkansas and you
11 went through that Department of Justice to get that
12 information and it came back here?

13 MS. REINCKE: Yes. We talked to the
14 department, the department talked to them, then the
15 department then talked to us.

16 THE COURT: So there's reason for me to
17 be confused?

18 MS. REINCKE: I agree with that, Your
19 Honor. Chinese walls are never easy. And I may
20 have explained it better in one of my responses, but
21 I can't tell Your Honor which response it is right
22 off the bat. I will look. If, in fact, I did a
23 better job in writing than I've done orally here,
24 I'll be happy to let you know that.

25 THE COURT: You may have answered this

1 because I recall asking it before but it just comes
2 back to my mind.

3 Based on the Tenth Circuit's finding in
4 *Buchanan*, and in the context of this case and other
5 cases we're dealing with, do you see any inherent
6 conflict in the U.S. Attorney for the Northern
7 District reviewing those cases that we've just been
8 talking about in light of *Buchanan*? Is that a
9 conflict?

10 MS. REINCKE: I don't believe it is
11 because we're duty-bound to ensure that the right
12 result gets done, and we're required just as much as
13 Your Honor and the defense bar to make sure
14 constitutional rights have not been violated. And
15 that was -- and there were a number of cases where
16 that determination was made or the belief that based
17 on the information we had at the time there was a
18 good chance that it could have happened. We looked
19 at it in light of all of the law.

20 For instance, as Your Honor is aware,
21 under *United States v. Ruiz*, which is a Fifth
22 Circuit case, a defendant who pleads guilty waives
23 all of his rights to know about *Giglio* material,
24 waives all of his rights as far as pretrial motions
25 to be filed. And so anybody who stepped up and

1 pleaded guilty, we made those determinations too.
2 But we looked at those in light of the
3 *Giglio*-impaired officer who might have been involved
4 in the case and whether or not there was any
5 materiality that would make us look at the case for
6 purposes of determining whether we should file a
7 motion to vacate despite the fact that the person
8 had pleaded guilty. There were a number of
9 individuals who did plead guilty whose cases were
10 vacated.

11 So I think that -- I don't think we had a
12 conflict. I think we had a responsibility to do
13 that. I can't speak to the U.S. attorney, but I
14 know the U.S. attorney is very thorough and that he
15 dots the I's and crosses the T's and he wants to
16 ensure that the right thing is done, that no
17 constitutional rights have been violated, and that
18 this is not something that he would have done
19 unilaterally, he would have made sure it was the
20 right thing to do.

21 THE COURT: Well, let me solicit this
22 then in regard to this briefing. If you'd give me a
23 history lesson because this case comes out of that
24 14, and maybe a history lesson to this discussion
25 we've had would be helpful in the briefing.

1 MS. REINCKE: Okay. Be happy to.

2 THE COURT: Anything further?

3 MR. DEMURO: Just a point of
4 clarification, Your Honor. The 15-day time period,
5 was that to submit additional findings of fact and
6 conclusions of law --

7 THE COURT: Yes.

8 MR. DEMURO: -- or recommendations or --

9 THE COURT: Well, I want you to make a
10 closing argument and your proposed -- closing
11 argument in writing and proposed findings of fact
12 and conclusions of law.

13 MR. DEMURO: Okay. Understood, Your
14 Honor. And the document in which the government had
15 disclosed the chronology of those 13 cases you're
16 talking about was docket No. 72 in this case.

17 THE COURT: Yes.

18 MR. DEMURO: Okay.

19 THE COURT: Anything further from the
20 government?

21 MS. REINCKE: No, Your Honor.

22 THE COURT: We'll be in recess.

23 *(The proceedings were concluded)*

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C E R T I F I C A T E

I, Brian P. Neil, a Certified Court Reporter for the Eastern District of Oklahoma, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes and is a true record of the proceedings held in above-captioned case.

I further certify that I am not employed by or related to any party to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 3rd day of July 2012.

s/ Brian P. Neil

Brian P. Neil, RMR-CRR
United States Court Reporter