

# APPENDIX

## TABLE OF APPENDICES

Appendix A: Opinion of the U.S. Court of Appeals for the Eleventh Circuit (June 28, 2017).....	1a
Appendix B: Order of the U.S. Court of Appeals for the Eleventh Circuit Denying Rehearing En Banc (Sept. 13, 2017) .....	36a
Appendix C: Order of the U.S. District Court for the Southern District of Florida (Aug. 12, 2015).....	38a
Appendix D: Transcript of the Hearing on Petitioners' Motion to Suppress, Volume I (Aug. 7, 2015).....	45a
Appendix E: Transcript of the Hearing on Petitioners' Motion to Suppress, Volume II (Aug. 10, 2015) .....	160a

# APPENDIX A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 15-15023

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D.C. Docket No. 0:15-cr-60082-WPD-2

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERIC JERMAINE SPIVEY,  
CHENEQUA AUSTIN,

Defendants - Appellants.

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Appeals from the United States District Court  
for the Southern District of Florida

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(June 28, 2017)

Before WILLIAM PRYOR, MARTIN, and BOGGS, \* Circuit Judges.

WILLIAM PRYOR, Circuit Judge:

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\* Honorable Danny J. Boggs, United States Circuit Judge for the Sixth Circuit, sitting by designation.

This appeal presents the question whether deception by law enforcement necessarily renders a suspect's consent to a search of a home involuntary. Chenequa Austin and Eric Spivey shared a home and a penchant for credit-card fraud. And they both became crime victims. Their home was twice burgled, which each time they reported to the police. Two officers, one posing as a crime-scene technician, came to their house on the pretense of following up on the burglaries, but mainly, unbeknownst to them, to investigate them for suspected fraud. The police had already caught the burglar who, in turn, had informed the police that Austin and Spivey's house contained evidence of credit-card fraud. Spivey hid some incriminating evidence in the oven before Austin invited the officers inside. The couple then provided the officers video footage of the burglary and led the officers through their home. After the officers saw a card-embossing machine, stacks of cards, and a lot of high-end merchandise in plain view, they informed Spivey that they investigated credit-card fraud. Spivey then consented to a full search that turned up a weapon, drugs, and additional evidence of fraud. Austin and Spivey moved to suppress all evidence obtained as a result of the officers' "ruse." The district court denied the motion to suppress because it found that Austin's consent to the initial search was voluntary and, alternatively, that Spivey's later consent cured any violation. Austin and Spivey each pleaded guilty to several

offenses, conditioned on the right to pursue this appeal of the denial of their motion to suppress. Because Austin made a strategic choice to report the burglary and to admit the officers into her home, the district court did not clearly err in finding that Austin's consent was voluntary. We affirm.

## **I. BACKGROUND**

Caleb Hunt twice burgled the Lauderhill, Florida, home of Chenequa Austin and Eric Spivey. Spivey reported the first burglary to the police. The second time, Hunt tripped a newly installed security system. Austin spoke with the police about the second burglary when officers responded to the audible alarm. When the police caught Hunt, he informed them that the residence was the site of substantial credit-card fraud. Indeed, Hunt told the police that the home "had so much high-end merchandise in it that he [burgled] it twice."

Two members of the South Florida Organized Fraud Task Force then became involved. Special Agent Jason Lanfersiek works for the United States Secret Service investigating financial crimes, including credit-card fraud. Detective Alex Iwaskewycz works for the Lauderhill Police Department. The Task Force decided to have Lanfersiek and Iwaskewycz investigate Austin and Spivey's suspected fraud.

The district court found that Lanfersiek and Iwaskewycz went to the residence “on the pretext of following up on two burglaries, which was a legitimate reason for being there, but not the main or real reason.” Iwaskewycz displayed a gun and a badge. Lanfersiek wore a police jacket. Austin saw the agents approaching and went inside to warn Spivey and tell him to hide the card reader/writer in the oven. When the agents told Austin they were there to follow up on the burglary, Austin invited them in. The officers told Austin that Lanfersiek was a crime-scene technician for the police department, and Lanfersiek maintained the façade by pretending to brush for latent fingerprints. Austin led Lanfersiek and then Iwaskewycz through the house to the master bedroom, following the burglar’s path. Spivey showed Iwaskewycz home-surveillance video of the burglary. A detective assigned to the burglary investigation later used that video evidence to help prosecute Hunt. Inside the home, both officers observed evidence of fraud, including a card-embossing machine, stacks of credit cards and gift cards, and large quantities of expensive merchandise such as designer shoes and iPads. Austin and Spivey separately told the officers that the embossing machine had been left in the apartment before they moved in. Iwaskewycz arrested Austin on an unrelated active warrant and removed her from the scene.

The officers then ended their ruse and told Spivey that they investigated credit-card fraud. Nevertheless, Spivey remained cooperative. After being advised of his rights, he signed two forms giving his consent to the officers to conduct a full search of the home and a search of his computer and cell phone. In that search, officers recovered high-end merchandise, drugs that field-tested positive as MDMA, a loaded handgun, an embossing machine, a card reader/writer (found inside the oven), and at least seventy-five counterfeit cards.

After a federal grand jury returned an indictment against them, Austin and Spivey moved to suppress all evidence procured as a result of the officers' "entry into Austin's residence . . . by fraud . . . which vitiated any consent." The district court denied the motion to suppress and rejected a "bright line rule that any deception or ruse vitiates the voluntariness of a consent-to search." The district court explained, "Austin wanted to cooperate in solving the burglaries; expensive shoes had been stolen." The district court found that "Spivey thought he could talk his way out of a predicament and was willing to risk exposure to credit[-]card prosecution to get his property back. Thieves usually don't report that the property that they stole has been stolen." And "any problem with [Austin's] initial consent was cured by Spivey's later signing a written waiver of a search warrant." It determined that "the government has shown by clear and positive testimony that



the consents were voluntary, unequivocal, specific, intelligently given, and uncontaminated by duress or coercion.”

Both Austin and Spivey conditionally pleaded guilty. Austin pleaded guilty to conspiracy to commit access-device fraud and possess device making-equipment, 18 U.S.C. § 1029(b)(2), and aggravated identity theft, *id.*

§ 1028A(a)(1). Spivey pleaded guilty to conspiracy to commit access device fraud and possess device-making equipment, *id.* § 1029(b)(2), aggravated identity theft, *id.* § 1028A(a)(1), and being a felon in possession of a firearm, *id.* § 922(g)(1).

Both pleas reserved the right to appeal the denial of the motion to suppress. The district court sentenced Austin to thirty-six months in prison and three years of supervised release and Spivey to seventy months in prison and three years of supervised release.

### **III. STANDARD OF REVIEW**

“A denial of a motion to suppress involves mixed questions of fact and law. We review factual findings for clear error, and view the evidence in the light most favorable to the prevailing party. We review *de novo* the application of the law to the facts.” *United States v. Barber*, 777 F.3d 1303, 1304 (11th Cir. 2015) (citations omitted). Voluntariness is “a question of fact,” *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973), that we may disturb only if clearly erroneous, *United States*

*v. Chemaly*, 741 F.2d 1346, 1352 (11th Cir. 1984). “Normally, we will accord the district judge a great deal of deference regarding a finding of voluntariness, and we will disturb the ruling only if we are left with the definite and firm conviction that the trial judge erred.” *United States v. Fernandez*, 58 F.3d 593, 596–97 (11th Cir. 1995) (citation omitted). But we will review *de novo* the district court’s application of the law about voluntariness to uncontested facts. *See United States v. Garcia*, 890 F.2d 355, 359–60 (11th Cir. 1989) (explaining that because “we believe[d] that the trial court[’s]” “decision was based on the application of what he believed to be the existing law as applied to the uncontroverted facts,” we “review[ed] the judge’s finding of voluntariness *de novo*”).

#### IV. DISCUSSION

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.” U.S. Const. Amend. IV. A search is reasonable and does not require a warrant if law enforcement obtain voluntary consent. *Schneckloth*, 412 U.S. at 222. The parties agree that Austin consented to the search, so the sole question on appeal is whether her consent was voluntary.

“A consensual search is constitutional if it is voluntary; if it is the product of an ‘essentially free and unconstrained choice.’” *United States v. Purcell*, 236 F.3d 1274, 1281 (11th Cir. 2001) (quoting *Schneckloth*, 412 U.S. at 225). Voluntariness is “not susceptible to neat talismanic definitions; rather, the inquiry must be conducted on a case-by-case analysis” that is based on “the totality of the circumstances.” *United States v. Blake*, 888 F.2d 795, 798 (11th Cir. 1989) (citing *Schneckloth*, 412 U.S. at 224–25). Relevant factors include the “voluntariness of the defendant’s custodial status, the presence of coercive police procedure, the extent and level of the defendant’s cooperation with police, the defendant’s awareness of his right to refuse to consent to the search, the defendant’s education and intelligence, and, significantly, the defendant’s belief that no incriminating evidence will be found.” *Chemaly*, 741 F.2d at 1352 (citation omitted).

Deceit can also be relevant to voluntariness. Because we require “that the consent was not a function of acquiescence to a claim of lawful authority,” *Blake*, 888 F.2d at 798, deception invalidates consent when police claim authority they lack. For example, when an officer falsely professes to have a warrant, the consent to search is invalid because the officer “announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion.” *Bumper v. North Carolina*, 391 U.S. 543, 550 (1968).

And when an officer lies about the existence of exigent circumstances, he also suggests that the occupant has no right to resist and may face immediate danger if he tries. *See, e.g., United States v. Harrison*, 639 F.3d 1273 (10th Cir. 2011) (agents falsely implied that a bomb was planted in the apartment they sought to search). Deception is also likely problematic for consent if police make false promises. *See United States v. Watson*, 423 U.S. 411, 424 (1976) (“There were no promises made to him and no indication of more subtle forms of coercion that might flaw his judgment.”); *cf. Alexander v. United States*, 390 F.2d 101, 110 (5th Cir. 1968) (“We do not hesitate to undo fraudulently induced contracts. Are the disabilities here less maleficent?”).

In the tax context, we have ruled that when a taxpayer asked whether a “special agent” was involved in the investigation and the Internal Revenue Service answered “no,” consent was involuntary because it was induced by an official misrepresentation that suggested the investigation was only civil, not criminal. *United States v. Tweel*, 550 F.2d 297, 299 (5th Cir. 1977). Contrary to the dissent’s assertion that “consent searches are almost always unreasonable” when induced by deceit, Dissenting Op. at 26 (citing *Tweel*, 550 F.2d at 299), we have never applied this decision outside the administrative context, let alone to a situation in which the suspect is aware of the criminal nature of the investigation. This limitation makes

sense in the light of the rule that police officers are permitted to obtain a confession through deception under the Fifth Amendment. *See Illinois v. Perkins*, 496 U.S. 292, 297 (1990) (“Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda*’s concerns.”); *see also United States v. Peters*, 153 F.3d 445, 463 (7th Cir. 1998) (Easterbrook, J., concurring) (“If a misunderstanding of one’s status as a target—misunderstanding abetted by calculated silence and half-truths from agents and prosecutors—does not invariably make a statement involuntary, why should it make a disclosure of physical evidence involuntary?”).

The Fourth Amendment allows some police deception so long the suspect’s “will was [not] overborne,” *Schneckloth*, 412 U.S. at 226. Not all deception prevents an individual from making an “essentially free and unconstrained choice,” *id.* at 225. For example, undercover operations do not invalidate consent. *Lewis v. United States*, 385 U.S. 206, 206–07 (1966). When an undercover agent asks to enter a home to buy drugs, the consent is voluntary despite the agent’s misrepresentations about his identity and motivation. *Id.* “If dissimulation so successful that the suspect does not know that he is talking to an agent is compatible with voluntariness, how could there be a rule that misdirection by a known agent always spoils consent?” *Peters*, 153 F.3d at 464 (Easterbrook, J.,

concurring). Although we distinguish undercover investigations from those where the officer is “seeking . . . cooperation based on his status as a government agent,” *United States v. Centennial Builders, Inc.*, 747 F.2d 678, 682 (11th Cir. 1984), an individual who interacts with officers undertakes a knowing risk that the officers may discover evidence of criminal behavior. *Cf. United States v. Wuagneux*, 683 F.2d 1343, 1348 (11th Cir. 1982) (“[A]ll taxpayers, especially businessmen, are presumed to be aware of th[e] possibility” “that a routine civil audit may lead to criminal proceedings if discrepancies are uncovered.”). That “fraud, deceit or trickery in obtaining access to incriminating evidence *can* make an otherwise lawful search unreasonable,” *United States v. Prudden*, 424 F.2d 1021, 1032 (5th Cir. 1970) (emphasis added), does not mean that it *must*. Particularly because physical coercion by police is only one factor to be considered in the totality of the circumstances, *see Chemaly*, 741 F.2d at 1352, we should approach psychological coercion the same way. The district court correctly stated the law when it explained that deception does not always invalidate consent.

Austin and Spivey argue that the officers’ deception was egregious because the purpose of the ruse was to mislead them into believing that the officers were there to “*assist* them,” not to “*bust* them.” They argue that a “ruse” about whether

Austin was the target of the investigation is worse than misrepresentations about whether an investigation is civil or criminal. We disagree.

We cannot say that it was clear error for the district court to find that, although the burglary investigation was “not the main or real reason” for the search, it was “a legitimate reason for being there.” Iwaskewycz testified that it was a “dual-purpose investigation.” And the district court found that “the videotape was eventually used in the burglary investigations.” Austin argues that the stated purpose “was nothing more than a ‘pretext’” because one agent had the “exclusive purpose” and the other had the “primary purpose” “to investigate the report of a credit-card plant,” but even this argument concedes that at least one of the officers had a dual purpose. What matters is the existence of a legitimate reason to be there, not the priority that the officers gave that reason.

The subjective motivation of the officers is irrelevant. Consent is about what the suspect knows and does, not what the police intend. “Coercion is determined from the perspective of the suspect.” *Illinois v. Perkins*, 496 U.S. 292, 296 (1990). Whether officers “deliberately lied” “does not matter” because the “only relevant state of mind” for voluntariness “is that of [the suspect] himself.” *United States v. Farley*, 607 F.3d 1294, 1330 (11th Cir. 2010). And officers are entitled to be silent about their motivations. *See Prudden*, 424 F.2d at 1033 (“[T]he agents did not have

to warn him directly that they were undertaking a criminal investigation.”). The officers’ subjective purpose in undertaking their investigation does not affect the voluntariness of Austin’s consent. *See Farley*, 607 F.3d at 1330–01.

Pretext does not invalidate a search that is objectively reasonable. *Cf. Whren v. United States*, 517 U.S. 806, 814 (1996) (“[T]he Fourth Amendment’s concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, *whatever* the subjective intent.”); *Heien v. North Carolina*, 135 S. Ct. 530, 539 (2014) (“We do not examine the subjective understanding of the particular officer involved.”). As long as the officers are engaging in “objectively justifiable behavior under the Fourth Amendment,” *Whren*, 517 U.S. at 812, their subjective intentions will not undermine their authority to stop or search, or in this appeal, to ask for consent to search. Responding to a burglary report is objectively justifiable behavior, and we must ask only whether the officers prevented Austin from making a free and unconstrained choice.

Stripped of its subjective purposes, the officers’ “ruse” was a relatively minor deception that created little, if any, coercion. The officers admittedly misrepresented Agent Lanfersiek’s identity, but there is no evidence that his exact position within the hierarchy of criminal law enforcement was material to Austin’s consent. *Wuagneux* held that even though the agent did not reveal that he was a



part of a strike force, the suspect's knowledge that the agent worked for the Internal Revenue Service and was empowered to conduct a tax audit was sufficient for consent. 683 F.2d at 1347–48. Austin likewise knew that Agent Lanfersiek was involved in criminal investigations and was going to search her home. Austin understood that she faced a risk that Lanfersiek would notice evidence of the credit-card fraud when she consented to his presence in her home. His identity is material only to the subjective purpose of the investigation. The dissent argues that Agent Lanfersiek misrepresented his legal authority because the Secret Service does not have the authority to enforce a state burglary offense, *Dissenting Op.* at 28–29, but that misrepresentation did not lead Austin to believe that Lanfersiek could investigate without her consent or that Lanfersiek would not act upon evidence of criminal activity. And Lanfersiek acted within the scope of his authority to investigate credit-card fraud and was accompanied by an officer with the authority to investigate both burglaries and fraud. Pretending to be a crime-scene technician and to dust for fingerprints was perhaps silly and unnecessary, but it was relatively insignificant.

After it considered the totality of the circumstances, the district court correctly determined that Austin's consent was voluntary. The factors other than deceit all point in favor of voluntariness. Austin was not handcuffed or under arrest

when she gave her consent. *See Garcia*, 890 F.2d at 360–62. She invited the officers inside the home and volunteered video footage of the burglary. The encounter was polite and cooperative, and the officers used no signs of force, physical coercion, or threats. *See United States v. Espinosa-Orlando*, 704 F.2d 507, 513 (11th Cir. 1983). The officers did not inform Austin that she had the right to refuse consent, but they were not required to do so. *Schneckloth*, 412 U.S. at 248–49. And a warning is even less relevant in this context because it is easier to refuse consent when the police are offering to help than when they initiate an adversarial relationship. The district court found that the consent was “intelligently given.” And “significantly,” *Chemaly*, 741 F.2d at 1352 (citation omitted), Austin believed that no incriminating evidence would be found—or at least, nothing she and Spivey had not prepared to explain away.

The “ruse” did not prevent Austin from making a voluntary decision. Austin and Spivey informed the police of the burglaries and invited their interaction. The officers did not invent a false report of a burglary, nor claim any authority that they lacked. Agent Iwaskewycz testified that he and Lanfersiek never promised Austin that “[w]e’re just here to investigate a burglary; anything else we see, we’re gonna ignore.” Austin knew that she was interacting with criminal investigators who had the authority to act upon evidence of illegal behavior. There is no evidence that

Austin felt that she was required to help with the burglary investigation or that she needed to consent to avoid her inevitable prosecution. From Austin's perspective, her ability to consent to the search of an area where she knew there was evidence of illegal activity was not dependent on whether the officers provided no explanation or a partial explanation of their intentions. "[M]otivated solely by the desire" to retrieve her stolen property, Austin consented to the officers' entry and search "at h[er] own peril." *Cf. Perkins*, 496 U.S. at 298.

And perhaps most significant of all, Austin and Spivey engaged in intentional, strategic behavior, which strongly suggests voluntariness. Although Austin and Spivey were victims of one crime and suspects of another, the district court reasoned, "[t]hieves usually don't report that the property that they stole has been stolen." The district court found that Austin and Spivey enlisted the officers' assistance to recover their property. Austin "wanted to cooperate" because "expensive shoes had been stolen," and Spivey was "willing to risk exposure to credit[-]card prosecution to get his property back." Before allowing the officers into their home, they hid the most damning piece of evidence in the oven. And Austin and Spivey gave a rehearsed story to explain the device that remained visible. This prior planning proves that Austin and Spivey understood that asking for the officers' assistance came with the risk that their own crimes would be

discovered. Austin's behavior does not evoke fear or good-faith reliance, but instead suggests that she sought to gain the benefit of police assistance without suffering potential costs. The more Austin behaved strategically, the more her behavior looked like a voluntary, rational gamble, and less like an unwitting, trusting beguilement. Although the plan to involve police to recover their stolen goods may not have been the best one, voluntariness does not require that criminals have perfect knowledge of every fact that might change their strategic calculus. Nor does it require that "consent [be] in the[ir] best interest." *United States v. Berry*, 636 F.2d 1075, 1081 (5th Cir. Unit B 1981).

When we view the evidence in the light most favorable to the judgment, Austin's consent was not "granted only in submission to a claim of lawful authority." *Schneckloth*, 412 U.S. at 233 (citations omitted). We agree with the district court that under the totality of the circumstances, "the government has shown by clear and positive testimony that the consents were voluntary, unequivocal, specific, intelligently given, and uncontaminated by duress or coercion."

Austin and Spivey make two additional arguments based on precedent, both of which fail. First, they rely on the statement that "[i]ntimidation and deceit are not the norms of voluntarism. In order for the response to be free, the stimulus

must be devoid of mendacity.” *Alexander*, 390 F.2d at 110. But this statement is dicta and arose in a materially different context. In *Alexander*, postal inspectors illegally detained an employee suspected of mail theft. They then admittedly “misle[d]” the defendant by telling him they were investigating mail theft, particularly jewelry, when what they really sought were marked dollar bills they had placed in his mail. *Id.* at 102–03, 110. We held that compliance with “disingenuous questioning” by the police did not “purg[e] the taint of the illegal arrest.” *Id.* at 110. Austin’s consent, in contrast, did not have to overcome any previous taint. Second, Austin and Spivey rely on a decision that expressed concern with “allow[ing] the state to secure by stratagem what the fourth amendment requires a warrant to produce.” *Graves v. Beto*, 424 F.2d 524, 525 (5th Cir. 1970). But this decision involved the scope of consent, not the voluntariness of consent. *See id.* at 525 n.2. In *Graves*, the police requested a blood sample and the suspect refused. *Id.* at 525. The suspect consented only after the police said the sample would be used to determine his alcohol content, but the police nevertheless ran a test to compare his blood type with blood sample from the scene of a rape. Writing for our predecessor Court, Judge Wisdom interpreted the consent as limited to the blood-alcohol test because individuals can place boundaries on their consent. *Id.*

Even if Austin and Spivey had framed their appeal as a question of the scope of consent, Judge Wisdom's approach in *Graves* cuts in favor of the government. To the extent the officers lied, we would not "void the consent as to the purpose for which it was given," but instead "simply limit the state to the purposes represented." *Id.* at 525 n.2. We could attempt to limit Austin's consent to the burglary investigation, but unlike in *Graves*, the two police purposes do not align with divisible searches. If the scope of consent is about physical space, investigating the burglary and the credit-card fraud both involve looking in the living room and master bedroom. Austin gave "unequivocal" and "specific" consent to the physical presence of police in those spaces. The agents did not enter additional parts of the home irrelevant to the burglary, secretly film, or run any fraud-specific tests. *Cf. Gouled v. United States*, 255 U.S. 298, 309 (1921) (holding it unconstitutional to secretly ransack an office and seize papers when allowed into the home on the false representation that the officer was there for a social visit). The incriminating evidence was in plain view.

If the scope of Austin's consent were limited by police intent, then the officers had two legitimate purposes for the search. Judge Wisdom distinguished evidence acquired "in good faith for a legitimate purpose," *Graves*, 424 F.2d at 525 n.1, as evidence that could be used for another purpose. And if the police had

come to the home with the sole purpose of investigating the burglary, the district court found that “it is highly likely that he would have seen most of the same incriminating evidence in plain view.” After all, even Hunt, the burglar, was suspicious.

Not all deception by law enforcement invalidates voluntary consent. Austin and Spivey deride the “shocking” nature of the “misconduct” in this case, but we are “not empowered to forbid law enforcement practices simply because [we] consider[] them distasteful.” *Florida v. Bostick*, 501 U.S. 429, 439 (1991). The district court did not clearly err in determining that the “ruse” did not coerce Austin into giving her consent involuntarily.

Because the initial search was supported by Austin’s voluntary consent, it did not violate the Fourth Amendment. And because the initial search was constitutional, we do not reach any question about Spivey’s later consent and the fruit of the poisonous tree. We affirm the denial of the motion to suppress.

## V. CONCLUSION

We **AFFIRM** the judgments of conviction and the sentences of Austin and Spivey.

MARTIN, Circuit Judge, dissenting:

The Majority describes this case as raising the question of whether “deception by law enforcement” during the search of a home violates the Fourth Amendment of the United States Constitution. Among other things, the Fourth Amendment protects the “right of the people to be secure in their [] houses,” and requires that warrants allowing a home to be searched, issue “upon probable cause, supported by Oath or affirmation.” The two officers here had no warrant allowing their entry into the home of Eric Spivey and Chenequa Austin. Instead, they had a plan to get around the Fourth Amendment’s protections. They lied about their legal authority. They lied about their real reason for being there. And they took advantage of a public trust in law enforcement in order to search the Spivey/Austin home without a warrant. When Ms. Austin learned the true purpose of the officers’ presence in her home, she stopped cooperating immediately. Based on all the circumstances of her case, it is clear to me that Ms. Austin’s permission for the officers to enter her home was not voluntarily given.

This litigation could have easily been avoided. Instead of planning their ruse, the officers could have gotten a warrant. We know that “[w]ith few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.” Kyllo v. United States, 533 U.S. 27,



31, 121 S. Ct. 2036, 2042 (2001) (Scalia, J.). There is no exception that fits this case. I am concerned that the Majority opinion blesses the deliberate circumvention of constitutional protections, and in this way undermines the public trust in police. I therefore dissent.

## **I. BACKGROUND**

There is no dispute about the facts here. The two officers who conducted the search, Special Agent Lanfersiek and Detective Iwaskewycz, both testified at a suppression hearing, and told us what happened. I will add some detail taken from their testimony, which is necessary to fully understand why this search was not lawful.

The Majority opinion misses the fact that Agent Lanfersiek and Detective Iwaskewycz deliberately planned how to circumvent the Fourth Amendment's general requirement that they get a warrant before searching someone's home. Agent Lanfersiek testified that instead of getting a warrant, he and about ten other officers held a planning session during which they "made a decision to come up with the methodology of employing the ruse." They decided to pretend to investigate burglaries that had already been solved, as a way to get consent to enter the home and search for evidence of credit-card fraud. To avoid suspicion, they also came up with the idea of Agent Lanfersiek dressing up as a crime-scene

technician. Agent Lanfersiek is a Special Agent of the U.S. Secret Service, and in that job had no authority to investigate a local burglary. Neither, apparently, did he know how to dust for fingerprints. Nevertheless, this ploy, together with the costume he wore, gave him cover. Wearing his costume, he went through the Spivey/Austin home pretending to dust for fingerprints, asking for and receiving permission from Ms. Austin to go into areas of the home she likely would not have otherwise let him see. The officers hoped they would be able to see evidence of credit-card fraud in plain view. And if they did, they planned on using the evidence they had seen to get consent to search the rest of the home. In the event this plan did not work, the officers had an assistant state attorney on standby ready to get a search warrant.

There is also more to the order of events here than the Majority opinion includes. The officers testified that when they arrived at Ms. Austin's home, she was "genuinely excited," "relieved," and "happy" they were there to follow-up on the reported burglaries of her home. Agent Lanfersiek asked Ms. Austin to show him where the burglar entered the house so he could dust for fingerprints. She did. After pretending to dust the door, he asked Ms. Austin where else the burglar had gone. She said the bedroom, and Agent Lanfersiek asked to go there. Ms. Austin took him into the bedroom, where Agent Lanfersiek asked if she would open the

drawers to the bedside tables. Again, Ms. Austin complied. Agent Lanfersiek asked where else the burglar had gone. Ms. Austin replied the bathroom and closet areas, so he went to see those as well.

Agent Lanfersiek saw evidence of credit-card fraud in plain view in these different areas. He and Det. Iwaskewycz then decided to separate Mr. Spivey and Ms. Austin and talk to them individually. This is where the ruse ended. Det. Iwaskewycz went outside with Ms. Austin and explained to her that he was really there to investigate credit-card fraud. He asked about the evidence in the bedroom. Ms. Austin gave some unconvincing answers. As a result, Det. Iwaskewycz decided Ms. Austin was not likely to cooperate and provide the consent to the full search he and Agent Lanfersiek wanted. So he called a colleague to run a check on Ms. Austin. He discovered there was an unrelated outstanding warrant for Ms. Austin's arrest. Ms. Austin was promptly arrested.

## **II. STANDARD OF REVIEW**

Although voluntariness is usually a question of fact, the parties do not dispute the facts and both rely solely on the testimony of the government's witnesses. In a case like this, our review is de novo. United States v. Valdez, 931 F.2d 1448, 1451–52 (11th Cir. 1991); United States v. Garcia, 890 F.2d 355, 359–60 (11th Cir. 1989).

### III. DISCUSSION

The Fourth Amendment generally prohibits officers from searching a person's home without a warrant. Payton v. New York, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980) (“[S]earches and seizures inside a home without a warrant are presumptively unreasonable.”). One exception to the warrant requirement is where the person voluntarily gives consent for the officers to search. Illinois v. Rodriguez, 497 U.S. 177, 181, 110 S. Ct. 2793, 2797 (1990). The question before us here is whether Ms. Austin's consent for the officers to search her home was voluntary.

#### A. VOLUNTARINESS PRECEDENT

Consent is voluntary “if it is the product of an ‘essentially free and unconstrained choice.’” United States v. Purcell, 236 F.3d 1274, 1281 (11th Cir. 2001) (quoting Schneckloth, 412 U.S. at 225, 93 S. Ct. at 2047). We evaluate whether a consensual search was voluntary by examining the “totality of the circumstances” in each case. United States v. Yeary, 740 F.3d 569, 581 (11th Cir. 2014). It is the government's burden to prove both that consent was given and that it was “given freely and voluntarily.” Id. (quotation omitted).

In analyzing the totality of the circumstances, there is no one factor that controls. Schneckloth, 412 U.S. at 226, 93 S. Ct. at 2047. Instead this Court

recognizes several important factors to consider “including the presence of coercive police procedures, the extent of the defendant’s cooperation with the officer, the defendant’s awareness of his right to refuse consent, the defendant’s education and intelligence, and the defendant’s belief that no incriminating evidence will be found.” Purcell, 236 F.3d at 1281.

This Court has also said that consent searches are almost always unreasonable when government agents induce consent by “deceit, trickery or misrepresentation.” United States v. Tweel, 550 F.2d 297, 299 (5th Cir. 1977).<sup>1</sup> In Tweel, for example, the defendant was audited by the IRS. Id. at 298. The defendant wanted to know whether the IRS interest in him was related to a civil or a criminal case, so his accountant asked whether a special agent was involved. See id. The IRS truthfully replied that no special agent was involved, but purposefully did not say that the inquiry was being made on behalf of the Organized Crime and Racketeering Section of the Department of Justice. Id. Because of that deliberate omission, this Court said the “investigation was a sneaky deliberate deception” that rendered the defendant’s consent involuntary. Id. at 299.<sup>2</sup>

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<sup>1</sup> In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981. Id. at 1209.

<sup>2</sup> The Majority says this Court has “never applied [Tweel] outside the administrative context, let alone to a situation in which the suspect is aware of the criminal nature of the

Eleventh Circuit precedent about consenting to a search emphasizes that the use of deception to get consent violates the Fourth Amendment because it is an “abuse” of the public’s trust in law enforcement. See id.; see also SEC v. ESM Gov’t Sec., Inc., 645 F.2d 310, 316 (5th Cir. Unit B May 18, 1981). For example, in ESM, this Court said:

We believe that a private person has the right to expect that the government, when acting in its own name, will behave honorably. When a government agent presents himself to a private individual, and seeks that individual’s cooperation based on his status as a government agent, the individual should be able to rely on the agent’s representations. We think it clearly improper for a government agent to gain access to [evidence] which would otherwise be unavailable to him by invoking the private individual’s trust in his government, only to betray that trust. When that government agency then invokes the

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investigation.” Maj. Op. at 9 (emphasis added). But three of my colleagues on this Court did just that in a recent unpublished decision. See United States v. Jaimez, 571 F. App’x 935, 937 (11th Cir. 2014) (per curiam) (unpublished) (citing Tweel for the proposition that “[w]e have found that consent ‘induced by deceit, trickery, or misrepresentation’ can render consent involuntary” in the context of a consent search of a defendant’s home for contraband).

power of a court to gather the fruits of its deception, we hold that there is an abuse of process.

Id. Thus, Eleventh Circuit precedent requires us to consider whether the public trust was improperly employed by the officers.

## B. THE TOTALITY OF THE CIRCUMSTANCES

Considering the totality of the circumstances under the standards set by our precedent, Ms. Austin's consent was not voluntary. The officers used deceit, trickery, and misrepresentation to hide the true nature and purpose of their investigation as well as the authority they had to investigate the burglaries. This deception caused Ms. Austin to allow the officers into her home. And when the officers revealed the ruse to Ms. Austin, she immediately stopped cooperating.

First, the officers got consent from Ms. Austin to enter her home only through the deliberate misrepresentation of their authority. As the Majority rightly recognizes, "deception invalidates consent when police claim authority they lack." Maj. Op. at 8. Agent Lanfersiek testified that as a federal Secret Service agent, he was not at the Spivey/Austin home about a burglary. And the government conceded at oral argument that Agent Lanfersiek, as a federal agent, had no authority to investigate a local burglary. Knowing that his presence might alert Ms. Austin to the true purpose of his investigation, Agent Lanfersiek hid his real

identity. He pretended to be a member of the Lauderhill Police Department and played the part of a crime-scene technician because that role was best suited to convince Ms. Austin to allow him into parts of her home she would otherwise have refused. Agent Lanfersiek's misrepresentations allowed him to ask Ms. Austin—without raising suspicion—to show him around her home, let him into her bedroom, and even open drawers and look inside her closet. In other words, Agent Lanfersiek lied about his law enforcement authority in order to gain warrantless access to the most private areas of Ms. Austin's home. See Tweel, 550 F.2d at 299; see also ESM, 645 F.2d at 316 (“When a government agent presents himself to a private individual, and seeks that individual's cooperation based on his status as a government agent, the individual should be able to rely on the agent's representations.”). Had Ms. Austin known Agent Lanfersiek's true identity, this record shows she would not have let him into her home.<sup>3</sup>

Neither was Det. Iwaskewycz there to investigate the burglaries. Although he was employed by the local police department, his duties did not include investigating burglaries. Instead, he was assigned to the federally-funded South

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<sup>3</sup> The Majority says that the burglaries were a legitimate reason for the officers to be at Ms. Austin's home. Maj. Op. at 11–12. But even setting aside the legal authority issues already discussed, the fact that other officers might have been able to investigate the burglaries through a warrantless consent search does not make the consent here voluntary. See Kyllo, 533 U.S. at 35 n.2, 121 S. Ct. at 2043 n.2 (“The fact that equivalent information could sometimes be obtained by other means does not make lawful the use of means that violate the Fourth Amendment.”).



Florida Organized Fraud Task Force. The task force paired Secret Service agents with local detectives to combat financial crimes in the Southern District of Florida. Det. Iwaskewycz had been assigned to this task force for several years. And he testified that although the case of the burglary of the Spivey/Austin home was still technically an open file, he knew the burglar had been caught and confessed to burglarizing the Spivey/Austin home. He also testified that the case had been officially closed by the neighboring police department that caught the burglar. Thus, even aside from the fact that Det. Iwaskewycz's job did not include investigating burglaries, he would not have been at the Spivey/Austin home for that reason anyway. The burglary was already solved. This record shows he lied about why he was at the home and about who Agent Lanfersiek was. See ESM, 645 F.2d at 316.

Second, the officers methodically planned their deception. Well in advance of the search, Agent Lanfersiek convened a team of about ten law enforcement officers to make a plan which would circumvent the Fourth Amendment's warrant requirement. This fact also supports the conclusion that Ms. Austin's consent was not voluntary. The Supreme Court has told us to be wary of police planning around constitutional protections. See Missouri v. Seibert, 542 U.S. 600, 617, 124 S. Ct. 2601, 2613 (2004) (holding that "[s]trategists dedicated to draining the

substance out of” constitutional protections cannot accomplish by planning around these protections because it “effectively threatens to thwart [their] purpose”). The Eleventh Circuit has also adhered to this principle. We have refused to “allow the state to secure by stratagem what the fourth amendment requires a warrant to produce.” Graves v. Beto, 424 F.2d 524, 525 (5th Cir. 1970).

Third, and importantly, this record demonstrates that Ms. Austin refused to cooperate with law enforcement once the officers revealed their true purpose.<sup>4</sup> This shows she would not have allowed the officers into her home had they not lied about their authority and their reason for wanting to get into her house. Before the officers told her they were there to investigate credit-card fraud, they testified Ms. Austin was “genuinely excited,” “relieved,” and “happy” they were there to follow-up on the burglaries—crimes of which Ms. Austin was the victim. Once the officers’ true purpose was revealed, her demeanor changed so much that Agent Lanfersiek had a colleague run a check for any outstanding arrest warrants. After

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<sup>4</sup> The Majority says the pretext for investigating the burglary is not relevant. Maj. Op. at 13 (citing Whren v. United States, 517 U.S. 806, 814, 116 S. Ct. 1769, 1775 (1996)). But Whren was about inquiries into whether probable cause exists, which are made from a law enforcement officer’s perspective. In contrast, when we decide whether Ms. Austin’s consent was voluntary, we must consider Ms. Austin’s subjective perspective. The Majority acknowledges this. See Maj. Op. at 12; Schneckloth, 412 U.S. at 229, 93 S. Ct. at 2049 (noting that “[t]he very object of the inquiry” in determining voluntariness is “the nature of a person’s subjective understanding”). The pretext of investigating a burglary was not a “silent” motivation as the Majority says, but was instead the express reason given to Ms. Austin that led her to let the officers into her home. Maj. Op. at 12.

finding one, he arrested Ms. Austin and had her taken to the police station. As this Court has put it, deceit is not one of “the norms of voluntarism.” Alexander v. United States, 390 F.2d 101, 110 (5th Cir. 1968). “In order for the response to be free, the stimulus must be devoid of mendacity.” Id. Ms. Austin’s response, then, could not have been free, because it was entirely a product of the officers’ untruthfulness.<sup>5</sup>

Given these facts, I expected this panel to suppress the search of the Spivey/Austin home. It is true, as the Majority says, that not all police deception is unconstitutional.<sup>6</sup> Maj. Op. at 10–11. But the police deception here is unconstitutional because it meant that Ms. Austin’s consent was not knowing and voluntary. My read of the Majority opinion is that it tries to distinguish the police deception here from what this Court’s precedent says is unconstitutional conduct, mainly by relying on two cases: United States v. Wuagneux, 683 F.2d 1343 (11th Cir. 1982), and United States v. Prudden, 424 F.2d 1021 (5th Cir. 1970). Maj. Op.

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<sup>5</sup> These circumstances show that, contrary to the Majority’s assertion, Agent Lanfersiek’s position was material to Ms. Austin’s consent. See Maj. Op. at 13–14. His deception and misrepresentation was not just “perhaps silly,” as the Majority describes it. Id. He lied about his true legal authority so that the ruse could succeed.

<sup>6</sup> The Majority provides undercover operations as an example. Maj. Op. at 10–11. This was not an undercover operation. Indeed, we have specifically distinguished undercover operations from the type of deceit used here. See United States v. Centennial Builders, Inc., 747 F.2d 678, 682–83 (11th Cir. 1984) (distinguishing undercover investigations from consent to search “obtained through deception”).

at 11–14. Although the Majority is again correct that voluntary consent can carry with it the risk that officers may discover evidence of criminal behavior, see Wuagneux, 683 F.2d at 1348, we are still required to look to whether the initial consent was voluntary. In Wuagneux, for example, the defendant knew he was being investigated by the IRS. See id. The officers here, by contrast, told Ms. Austin they were there to help her. As a victim of crime, her acceptance of the officers’ offer of help made sense. But in fact, the officers relied on Ms. Austin’s trust to manipulate her, and gave no indication that she was actually the one being investigated. See Tweel, 550 F.2d at 299 (“[T]he agent’s failure to apprise the [defendant] of the . . . nature of this investigation was a sneaky deliberate deception . . . .”); ESM, 645 F.2d at 316 (“We think it clearly improper for a government agent to gain access to [evidence] which would otherwise be unavailable to him by invoking the private individual’s trust in his government, only to betray that trust.”).<sup>7</sup>

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<sup>7</sup> The Majority says that a warning of the right to refuse consent is less relevant in this context “because it is easier to refuse consent when the police are offering to help than when [the police] initiate an adversarial relationship.” Maj. Op. at 15. The Majority cites no legal authority for this proposition, and in any event, the government had the burden of proving the opposite in this case—that had Ms. Austin been aware of the adversarial nature of the investigation she would still have freely given her consent. This record shows she would not have.

The Majority also points to Prudden to say that not all deception makes a search unreasonable. Maj. Op. at 11. But Prudden only shows how far the officers in this case went beyond the line of what's constitutional. In Prudden, the government agent “in no way concealed his true identity.” 424 F.2d at 1032. We simply have a different case here.

#### IV. CONCLUSION

“It is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” Welch v. Wisconsin, 466 U.S. 740, 748, 104 S. Ct. 2091, 2097 (1984) (quotation omitted). That is why we presume warrantless searches of the home are unreasonable. Kentucky v. King, 563 U.S. 452, 459, 131 S. Ct. 1849, 1856 (“It is a basic principle of Fourth Amendment law, we have often said, that searches and seizures inside a home without a warrant are presumptively unreasonable.” (quotation omitted)). This is also why the Supreme Court has long incentivized law enforcement to get a warrant, rather than resort to warrantless entries. See, e.g., Ornelas v. United States, 517 U.S. 690, 699, 116 S. Ct. 1657, 1663 (1996).

At oral argument, the government was asked why it did not simply get a warrant, rather than using the ruse to get into the house. The government did not

say it lacked probable cause.<sup>8</sup> Neither did it say it would have been too burdensome. Indeed, this record reflects that the officers had an assistant state attorney on standby in case their ruse did not succeed. What the government said was that there was “no requirement” to get a warrant.

The Majority opinion tells police that what happened here is not a problem. In effect, it teaches police they don’t need to get a warrant so long as they can pre-plan a convincing enough ruse. This is true even if, as here, that ruse includes skirting the limits of the officer’s legal authority to investigate only certain crimes. In doing so, I fear the Majority opinion undermines the public’s trust in the police as an institution together with the central protections of the Fourth Amendment. When I read the record in Ms. Austin’s case, I don’t believe this is the “reasonable” conduct our Founders had in mind when drafting the Fourth Amendment. I therefore dissent.

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<sup>8</sup> The government also said at oral argument that by Ms. Austin and Mr. Spivey reporting the burglaries, they had “conscript[ed] the police to be their private collection agency” and “taken a calculated gamble.” To the extent the government implies it, I reject the idea that by reporting a crime a person welcomes the warrantless search of her home for other illegal activity.

## **APPENDIX B**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 15-15023

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D.C. Docket No. 0:15-cr-60082-WPD-2

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERIC JERMAINE SPIVEY,  
CHENEQUA AUSTIN,

Defendants - Appellants.

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Appeal from the United States District Court  
for the Southern District of Florida

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Before ED CARNES, Chief Judge, TJOFLAT, HULL, MARCUS, WILSON,  
WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES,  
JILL PRYOR, and NEWSOM, Circuit Judges.

BY THE COURT:

A petition for rehearing having been filed and a member of this Court in  
active service having requested a poll on whether this case should be reheard by



the Court sitting en banc, and a majority of the judges in active service on this Court having voted against granting a rehearing en banc, it is ORDERED that this case will not be reheard en banc.

## **APPENDIX C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 15-60082-CR-DIMITROULEAS

Plaintiff,

vs.

ERIC JERMAINE SPIVEY and  
CHENEQUA AUSTIN,

Defendants.

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**ORDER**

THIS CAUSE is before the Court on Defendant Austin's July 15, 2015 Motion to Suppress Physical Evidence and Statements [DE-47] and Defendant Spivey's July 24, 2015 Adopted Motion [DE-50]. The Court has considered the Government's July 27, 2015 Response [DE-51] and Spivey and Austin's August 5, 2015 Replies [DE-53, 54, 55] and having reviewed evidence and having received testimony from Special Agent Jason Lanfersick and Lauderhill Detective Alex Iwaskewycz<sup>1</sup> at an evidentiary hearing held on August 7 and 10, 2015, and having received testimony from Agent and Detective, and having determined credibility of witnesses, finds as follows:

1. A burglar, Caleb Hunt, recently had twice (November 6 and 23, 2014<sup>2</sup>) entered the Defendants' premises at 7945 NW 50 Street, Lauderhill, Florida. He was later arrested on December 6, 2014, and reported to Detective Will Gordon of the Sunrise Police Department that the residence was the site of substantial credit card fraud. Both defendants had previously been involved in reporting<sup>3</sup> a burglary at their residence. Both Defendants have an expectation of privacy in the home and have

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<sup>1</sup> A member of the South Florida Organized Fraud Task Force (SFOFTF) for over four (4) years.

<sup>2</sup> Between the first and second burglaries an alarm and video equipment had been installed.

<sup>3</sup> Spivey reported a delayed burglary on November 6, 2014. On November 23, 2014, Officer Hackshaw responded to an audible alarm and found the front door opened; he found the master bedroom ransacked. Austin was in Orlando at the time and responded to Hackshaw's call.

standing to contest the admissibility of evidence. Both Defendants had apparent authority to consent to a search of the home.

2. On December 17, 2014, law enforcement agents, who did not have a search warrant<sup>4</sup>, decided to try to gain entry into the house through a ruse to obtain consent to enter the residence. However, no Lauderhill Police Department detective had yet followed up on the burglary reports. The agents went to the home on the pretext of following up on two burglaries, which was a legitimate reason for being there, but not the main or real reason. Not all pretextual actions by the police are illegal. Whren v. U.S., 517 U.S. 806 (1996). Here, the agents were identifiable as police officers (Lanfersick was wearing a police jacket, and Iwaskewycz had a gun and badge displayed). When the agents stated that they were there to follow up on the burglary investigation, Austin invited the agents into the home. No threats were made. Austin volunteered that they had a video of one of the burglaries. Austin led Detective Lanfersick, and later Agent Iwaskewycz, to the areas (path of travel) that the burglar was suspected of being in. Spivey showed Detective Iwaskewycz home surveillance video of the burglary. However, it took 30-45 minutes for Spivey to produce a copy of the video, which Iwaskewycz eventually gave to Lauderhill burglary Detective Coulson, in mid-December. According to Coulson's police report, he was assigned to follow-up the second case on January 14, 2015. By then, Austin had identified a pair of Louis Vuitton shoes as her property and was still cooperating with detective Coulson's investigation. Furthermore, Detective Gordon had identified Hunt in the video. Clearly, the evidence of a burglary found during the "ruse" search was utilized to prosecute Hunt.

3. Austin led the agents around the house and eventually to the master bedroom. Both agents observed access device materials in the house. Detective Iwackewycz spoke with Austin outside the house for 10-30 minutes. Austin initially stated that the devices had been there when they moved in. Spivey later repeated the same story.

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<sup>4</sup> However, they had a state attorney on call in case they needed a search warrant.

4. Austin was not being forthright with Detective Iwaskewycz, and she was arrested based upon an active warrant. Although she had consented to the entry, Austin did not consent to a search. However, due to her uncooperative attitude, she was not asked to consent. Conversely, Spivey tried to cooperate and talk his way out of the predicament.

5. The agents then ended their ruse and informed Spivey that they conducted credit card fraud investigations. Spivey was not handcuffed; the officers were polite and non-threatening. No guns were drawn. Spivey was cooperative and consented to a search. After Detective Iwaskewycz read him the consent form, Spivey signed a "Waiver of Search Warrant" at 3:45 P.M.; he signed another one for electronic devices at 4:26 P.M. [DE-54-1]. Spivey later provided the passwords so that the phones and computer could be accessed. In the first waiver, Spivey acknowledged that he had a constitutional right of not having his premises searched without a warrant and his right to refuse to consent to such a search. [DE-53-1]. Pursuant to a subsequent search, other items, including a loaded Glock firearm, were seized. The second consent form was much more detailed.

6. Any taint from the prior search was attenuated. U.S. v. Myers, 335 Fed. Appx. 936, 939 (11<sup>th</sup> Cir. 2009). The officer's telling Spivey that they conducted credit card investigations severed the taint of any possible illegality of the initially reported burglary investigation ruse and ended any causal connection between that ruse-based consented-to search and the subsequent written consent-based searches. See also, U.S. v. Farley, 607 F. 3d 1294, 1332 (11<sup>th</sup> Cir.) cert. denied, 562 U.S. 945 (2010).

7. The burden is on the Government to show the voluntariness of a consent search. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Whether a consent is voluntary is based on the totality of circumstances. U.S. v. Purcell, 236 F. 3d 1274 (11<sup>th</sup> Cir. 2001). The police do not have to inform a suspect that he has a right to refuse consent, U.S. v. Pineiro, 389 F. 3d 1359, 1366 n. 4 (11<sup>th</sup> Cir. 2004), but it is a factor. U.S. v. Chemaly, 741 F. 2d 1346 (11<sup>th</sup> Cir. 1984). A ruse is also just one factor. U.S. v. Harrison,

639 F. 3d 1273, 1278 (10<sup>th</sup> Cir. 2009); U.S. v. Griffin, 530 F. 2d 739, 743 (7<sup>th</sup> Cir. 1976); U.S. v. Jaimez, 571 Fed. Appx. 935, 937 (11<sup>th</sup> Cir. 2014).

8. There is a wide range of ruses that have been used to obtain a consensual search, from lying about a bomb being planted in the house to pretending to be there to buy drugs. In Harrison, the officers falsely implied that a bomb may have been planted in the apartment. Id at 1279. That ruse destroyed the voluntariness of the consent. However, not every ruse will negate the voluntariness of a consent. An undercover police officer, pretending to be a purchaser of drugs, can enter a home after being invited in. Lewis v. U.S., 385 U.S. 206, 210 (1966).

9. Where the police misrepresentation is so extreme that it deprives the individual of the ability to make a fair assessment of the need to surrender privacy, then the consent is not valid. Harrison at 1280. For example, where the police falsely represented that the occupants were identity theft victims, the consent was not valid. U.S. v. Parson, 599 F. Supp 2d 592 (W. D. Pa. 2009). Where the police stated that they were there regarding a pending license application, the consent was not voluntary. U.S. v. Bosse, 898 F. 2d 113, 115 (9<sup>th</sup> Cir. 1990). In an IRS case, lying about whether the investigation was civil or criminal destroyed the voluntariness of the consent. U.S. v. Tweel, 550 F. 2d 297, 300 (5<sup>th</sup> Cir. 1977)<sup>5</sup>. Where the occupants believed that the officers were investigating a burglary, the evidence was suppressed. U.S. v. Phillips, 497 F. 2d 1131, 1135 (9<sup>th</sup> Cir. 1974)<sup>6</sup>. Where postal inspectors lied about investigating jewelry instead of mail theft, the consent was not voluntary. U.S. v. Alexander, 390 F. 2d 101 (5<sup>th</sup> Cir. 1968)<sup>7</sup>. Where a rape suspect was told that blood would be used to test for alcohol, the consent was upheld as involuntary. Graves v. Beto, 424 F. 2d 524 (5<sup>th</sup> Cir. 1970).

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<sup>5</sup> In Bonner v. City of Prichard, 661 F. 2d 1206, 1209 (11<sup>th</sup> Cir. 1981), the Eleventh Circuit adopted as binding precedent all cases decided by the Fifth Circuit before October 1, 1981.

<sup>6</sup> In U.S. v. Watzman, 486 F. 3d 1004, 1006-07 (7<sup>th</sup> Cir. 2007), the government did not contest the illegality of evidence seen during a phony burglary investigation.

<sup>7</sup> Arguably, the consent issue may be viewed as dicta where the appellate court found the arrest to be illegal.

10. However, in U.S. v. Turpin, 707 F. 2d 332, 334 (8<sup>th</sup> Cir. 1983), the officers did not lie when they omitted telling the defendant that the victim was dead. Here, the police officers did not tell the defendants that the burglar had been arrested. Here, the ruse did not imply that the defendants would be in physical danger if they refused consent. Here, the police were not pretending to be non-law enforcement personnel; Austin knew she was admitting police officers (both clearly were dressed with police looking garb, and when she saw them approaching, she went inside the house to tell Spivey to hide a reader-writer in an oven). The agents were not lying about a burglary investigation; there had been two reported burglaries at the house. However, they lied when they represented Lanfersick to be a crime scene technician, who was interested in gathering evidence of a burglary. The sought-after evidence to be gathered was not intended to be used in a case where Spivey and Austin were victims, but it was to be used against them. Any motive to obtain evidence of a burglary was clearly secondary and very minimal compared to the interest in a credit card investigation. Here, the police had some justification for using the ruse; they had more than just conjecture that criminal activity was underway before they embarked on a ruse. U.S. v. Malonado, 655 F. Supp 1363 (D.P.R. 1987). Although the second case had been closed by December 17, 2014, the videotape was eventually used in the burglary investigations. Moreover, had just Iwaskewycz gone to the home, he would have been admitted to see the surveillance video, and it is highly likely that he would have seen most of the same incriminating evidence in plain view. Here, there was permissible law enforcement deception. Here, looking at all relevant factors (voluntariness of defendant's custodial status, the presence of coercive police procedures, the extent and level of the defendant's cooperation with police, the defendant's awareness of his right to refuse to consent to a search, the defendant's age, education and intelligence, and the defendant's belief that no evidence would be found), all consents, both to enter and to search, were voluntary. The court does not find that there is a bright line rule that any deception or ruse vitiates the voluntariness of a consent-to search. Here, the government has shown by clear and positive testimony

that the consents were voluntary, unequivocal, specific, intelligently given, and uncontaminated by duress or coercion. Austin wanted to cooperate in solving the burglaries; expensive shoes had been stolen. Spivey thought he could talk his way out of a predicament and was willing to risk exposure to credit card prosecution to get his property back. Thieves usually don't report that the property that they stole has been stolen. Here, Spivey and Austin both cooperated in the burglary investigations.

11. Moreover, any problem with the initial consent was cured by Spivey's later signing a written waiver of a search warrant; in fact, he signed two. Such a consent can be considered a ratification of the search and is effective. U.S. v. Reeh, 780 F. 2d 1541 (11<sup>th</sup> Cir. 1986). Any taint from any problem with Austin's earlier consent was attenuated. U.S. v. Edmondson, 791 F. 2d 1512 (11<sup>th</sup> Cir. 1986). Here, Spivey's consent was sufficiently an act of free will to purge any prior taint; any causal connection had become sufficiently attenuated to purge any taint. U.S. v. Delancy, 502 F. 3d 1297, 1309 (11<sup>th</sup> Cir. 2007). There are three factors to consider. Brown v. Illinois, 422 U.S. 590, 603-04 (1975). First, the temporal proximity of the prior search was minimal (about one hour before the first consent form was signed, an hour and forty-five minutes after the second consent form<sup>8</sup> was signed). U.S. v. Pineda-Buenaventura, 622 F. 3d 761, 776-77 (7<sup>th</sup> Cir. 2010). Second, there were intervening circumstances that interrupted the causal connection between the first search and Spivey's consent (written consent forms). Third, the police conduct was not particularly flagrant. U.S. v. Welch, 683 F. 3d 1304, 1308 (11<sup>th</sup> Cir. 2012) cert. denied, 133 S. Ct. 913 (2013). The police (Officer Uri Tal) had been inside the house already investigating the first burglary on November 6, 2014. Spivey's consent was immediate; it was not prompted by repeated requests; he had not even been detained. Pineda-Buena-Ventura at 776-77.

12. Austin did not object to a search, but even if she had, once she was removed from the scene and taken to jail, the police could rely on Spivey's consent. Fernandez v. California, 134 S. Ct. 1126 (2014).

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<sup>8</sup> Including the right to have an attorney present and a warning that evidence seized could be used against him in a court of law..



13. Any statements made by Austin and Spivey were freely and voluntarily made<sup>9</sup>. According to Detective Coulson's report Austin was still cooperating with the burglary investigation on January 28, 2015, long after her arrest. Spivey was not Mirandized, as he was not in custody. He had voluntarily gone to the police station.

Wherefore, Defendants' Motion to Suppress [DE-47] and Adopted Motion [DE-50] are Denied.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 11<sup>th</sup> day of August, 2015.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:

Counsel of Record

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<sup>9</sup> Initially, Austin did not cooperate at the scene because she feared Spivey and did not want to appear to be cooperating with the police. At the station, after receiving Miranda warnings, she was cooperative. When Detective Iwaskewycz said, on the tape, that she had said, "Fuck you, I'm not talking to you", he was referring to her not being honest or cooperative earlier. She never exercised her right to remain silent.

## **APPENDIX D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
CASE NO. 15-60082-CR-WPD

UNITED STATES OF AMERICA, .  
 .  
Plaintiff, . Fort Lauderdale, Florida  
 . August 7, 2015  
v. . 2:02 p.m.  
 .  
ERIC JERMAINE SPIVEY AND .  
CHENEQUA AUSTIN, .  
 .  
Defendants. .  
. . . . .

- - - - -

Transcript of Motion Hearing had  
before the Honorable William P. Dimitrouleas,  
United States District Judge.

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VOLUME 1

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1 FRIDAY, AUGUST 7, 2015, 2:02 P.M.

2 *(The Judge entered the courtroom)*

3 **MR. KOBRINSKI:** Good afternoon, your Honor.

4 *(Pause)*

5 **THE COURT:** United States vs. Eric Jermaine Spivey.  
6 If counsel would announce their appearances for the  
7 record.

8 **MR. KOBRINSKI:** Good afternoon, your Honor. Jonathan  
9 Kobrinski for the United States. With me at counsel's table is  
10 Detective Alex Iwaskevycz from the Lauderhill Police  
11 Department.

12 **MR. DAY:** Good afternoon, your Honor. Tim Day from  
13 the federal defender's office on behalf of Chenequa Austin,  
14 who's present in court.

15 **MR. SMITH:** Good afternoon, your Honor. Mike Smith on  
16 behalf of Eric Spivey. He's also present before the Court.

17 **THE COURT:** All right. We're here on a motion to  
18 suppress.

19 Last week I filed a notice indicating that my son is a  
20 special agent with the Secret Service -- I don't think he  
21 was -- he was in Beltsville, Maryland, when this investigation  
22 occurred, in the academy. He's since graduated from the  
23 academy. He's assigned to the Brooklyn field office.

24 Have you had an opportunity to discuss that situation  
25 with your client, Mr. Day?

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1           **MR. DAY:** Yes, I have, your Honor, and we have no  
2 objection to the Court proceeding on the matter.

3           **THE COURT:** Mr. Smith, have you had a chance to  
4 discuss that with your client?

5           **MR. SMITH:** Yes, your Honor, and likewise, we have no  
6 objection to the Court proceeding.

7           **THE COURT:** You understand your lawyer could ask me to  
8 disqualify myself and have another judge assigned to the case,  
9 Ms. Austin?

10           **DEFENDANT AUSTIN:** Yes.

11           **THE COURT:** And Mr. Spivey?

12           **DEFENDANT SPIVEY:** Yes.

13           **THE COURT:** Your lawyer's been to law school, he's  
14 tried a lot of cases, he gives you the benefit of his legal  
15 advice, but it's your life, you don't have to follow the  
16 advice.

17           Do you understand that, Ms. Austin?

18           **DEFENDANT AUSTIN:** Yes.

19           **THE COURT:** And Mr. Spivey?

20           **DEFENDANT SPIVEY:** Yes.

21           **THE COURT:** And have you had enough time to think  
22 about this and talk about it with your lawyer, Ms. Austin?

23           **DEFENDANT AUSTIN:** Yes.

24           **THE COURT:** And Mr. Spivey?

25           **DEFENDANT SPIVEY:** Yes.

1           **THE COURT:** And do you agree with the strategy of not  
2 asking me to disqualify myself and have me continue on your  
3 case, including this motion to suppress here this afternoon,  
4 Ms. Austin?

5           **DEFENDANT AUSTIN:** Yes.

6           **THE COURT:** And Mr. Spivey?

7           **DEFENDANT SPIVEY:** Yes.

8           **THE COURT:** And do you understand if I deny the motion  
9 to suppress, or if I give you an unfair trial, or if I -- if  
10 you're convicted or plead guilty, if I give you a sentence you  
11 don't like, you won't be able to come back then and say that  
12 your lawyer was no good, he should have gotten me off the case  
13 because my son works as a special agent with the Secret  
14 Service?

15           Do you understand that, Ms. Austin?

16           **DEFENDANT AUSTIN:** Yes.

17           **THE COURT:** And Mr. Spivey?

18           **DEFENDANT SPIVEY:** Yes.

19           **THE COURT:** And is this what you want to do, go ahead  
20 and proceed today, Ms. Austin?

21           **DEFENDANT AUSTIN:** Yes.

22           **THE COURT:** And Mr. Spivey?

23           **DEFENDANT SPIVEY:** Yes.

24           **THE COURT:** All right. I guess it's a warrantless  
25 search. Normally, the government has the burden, but it's the

1 defense's motions. Who wants to go first?

2 **MR. DAY:** It's the government's burden, your Honor. I  
3 believe they're required to go first, and I think they should  
4 go first. But there is an issue I'd like to address with the  
5 Court before we begin.

6 **THE COURT:** Okay.

7 **MR. DAY:** I have just been handed I guess what would  
8 be considered 18 U.S.C. 3500 material, *Jencks* material, and it  
9 is a -- it's the grand jury testimony of the detective here,  
10 Detective Iwaskevycz -- I think that's the proper pronunciation  
11 of his name -- and then, also, a state court deposition of  
12 Detective Iwaskevycz, which I was unaware of. I guess this is  
13 being handed to me as *Jencks*. I'm asking the Court for a  
14 recess to be able to review that before we begin.

15 **THE COURT:** Okay. How long of a recess do you need?

16 **MR. DAY:** I would say probably, Judge, a half hour.

17 **THE COURT:** Okay. So we'll be in recess for  
18 30 minutes.

19 **MR. DAY:** Thank you.

20 **ROOM CLERK:** All rise.

21 **MR. KOBRINSKI:** If I may, just for a second. He's not  
22 our first witness. I don't know if you want to take our first  
23 witness and then have the recess? That might --

24 **THE COURT:** Talk to Mr. Day. I mean he --

25 **MR. KOBRINSKI:** -- for efficiency --



1           **MR. DAY:** Well, no, I'd like to review the *Jencks*  
2 material before we begin.

3           **THE COURT:** I guess technically Mr. Kobrinski didn't  
4 have to give you the *Jencks* until after direct, but we'll go  
5 ahead and take the 30-minute recess.

6           **MR. DAY:** I appreciate that, Judge.

7           *(The Judge exited the courtroom)*

8           *(Recess taken at 2:10 p.m. until 2:41 p.m.)*

9           *(The Judge entered the courtroom)*

10          **THE COURT:** Please be seated.

11          All right. We're back on the record.

12          Counsel are present, Mr. Spivey's present,  
13 Ms. Austin's present, and we're ready to proceed.

14          **MR. KOBRINSKI:** Yes, your Honor.

15          **MR. DAY:** Yes, your Honor, invoke the rule.

16          **THE COURT:** Ready, Mr. Smith?

17          **MR. SMITH:** Yes, your Honor.

18          **THE COURT:** All right. The rules's invoked. Counsel  
19 are instructed to inform their respective witnesses of the  
20 invocation of the rule and the ramifications of a violation  
21 thereof.

22          **MR. KOBRINSKI:** Okay. And just to be clear, the case  
23 agent in this case, Task Force Officer Iwaskewycz, is gonna be  
24 testifying second, but as the case agent, I'd ask that he be  
25 permitted to stay in the courtroom.

1           **THE COURT:** That's fine.

2           Call your first witness.

3           **MR. KOBRINSKI:** Okay. So the first witness is Special  
4 Agent Lanfersiek.

5           And, your Honor, is it possible to just do a brief  
6 opening statement, or do you just want the testimony?

7           **THE COURT:** I mean I've read the materials. If you  
8 want to do an opening, fine, but I've read everything.

9           **MR. KOBRINSKI:** And all I would highlight, having read  
10 all the materials, I think you'll see, and the test here is the  
11 totality of the circumstances bearing on the consent -- first,  
12 the consent to allow the agents to enter, and then, second, the  
13 consent for the form that was signed to search the house.

14           For the totality of the circumstances, there are  
15 really only two material facts in dispute. And those material  
16 facts aren't even especially material. Those are whether  
17 Agent Lanfersiek asked Ms. Austin to walk through the path the  
18 burglar took, or whether he suggested that path to her, and  
19 then, second, whether Ms. Austin ever asked the agents to leave  
20 and locked the door.

21           And so you'll hear testimony about those two factors.  
22 And then, otherwise, I think the remaining factors are  
23 generally uncontroverted.

24           Special Agent Lanfersiek is here to testify.

25           **THE COURT:** Okay.

## LANFERSIEK - DIRECT/KOBRINSKI

1           **ROOM CLERK:** Please raise your right hand.

2           *(JASON LANFERSIEK, GOVERNMENT'S WITNESS, WAS SWORN)*

3           **ROOM CLERK:** Thank you. You may be seated.

4           Please state your name and spell your name for the  
5 record.

6           **THE WITNESS:** Sure. My name is Jason Lanfersiek.  
7 That's J-A-S-O-N, L-A-N-F-E-R-S-I-E-K.

8           **MR. KOBRINSKI:** May I inquire, your Honor?

9           **THE COURT:** Okay.

10   **DIRECT EXAMINATION**

11 BY MR. KOBRINSKI:

12 Q. Good afternoon, sir.

13           Please tell the Court where you're employed.

14 A. Good afternoon, your Honor.

15           I am currently employed as a special agent with the  
16 United States Secret Service. I've been in that capacity since  
17 August of 2009.

18 Q. And what types of investigations have you done with the  
19 Secret Service?

20 A. So the United States Secret Service has a dual  
21 investigative and protective mission. On the investigative  
22 side of the house, we investigate financial crimes committed  
23 within the United States, such as credit card fraud, tax fraud,  
24 bank fraud, mortgage fraud. And on the protective side of the  
25 house, we provide physical protection for the president of the

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1 United States, the vice president, their families, and others  
2 designated by law.

3 Q. And today's case is a credit card fraud case and also a  
4 felony in possession, right?

5 A. Correct, yes.

6 Q. For those types of cases, how many have you investigated?

7 A. Identity theft cases, over 50.

8 Q. And have you been the case agent in those 50 or  
9 participated in, or both?

10 A. Case agent and participated in over 50.

11 Q. Okay. And so for this particular case, how did your  
12 involvement begin?

13 A. I'm currently assigned to a task force, which is funded by  
14 a federal agency called HIDTA. It's the South Florida  
15 Organized Fraud Task Force. Secret Service agents along with  
16 detective counterparts throughout the south Florida area work  
17 together to try to combat financial crimes within the Southern  
18 District of Florida.

19 There's a task force officer from the Lauderhill  
20 Police Department named Alex Iwaszewycz, who I work closely  
21 with.

22 Detective Iwaszewycz came to me in December and gave  
23 me information regarding a counterfeit credit card  
24 manufacturing plant possibly being conducted in Lauderhill,  
25 Florida. The information provided me by Detective Iwaszewycz

1 was that the Sunrise Police Department had a cooperating  
2 individual who was burglarizing numerous houses in that area.  
3 That person was arrested and started cooperating with police.

4           Some of the information that he gave was that there  
5 was a home in Lauderhill that had so much high-end merchandise  
6 in it that he burglarized it twice. He also stated that within  
7 the home, there was numerous indicators of credit card fraud,  
8 such as credit cards, debit cards, Green Dot cards, and  
9 manufacturing equipment.

10           Detective Iwaskewycz and I decided that we would try  
11 to investigate this. And we had a brief in December of 2014, I  
12 think it was approximately December 17th, and we discussed the  
13 circumstances of how we would investigate this with a group of  
14 agents.

15 Q. Okay. And you approximated that the date of the brief was  
16 December 17th. And if I told you the search was also -- I'm  
17 sorry -- eventually the search, but the encounter with  
18 Ms. Austin and Mr. Spivey was December 17th, do you think the  
19 brief was the same day?

20 A. That's correct. The brief was before Detective Iwaskewycz  
21 and I left.

22 Q. Okay. And so what did you discuss at the brief?

23 A. We discussed, you know, the information that we had at the  
24 time, who may possibly be inside the home.

25           Detective Iwaskewycz stated that he had a state

1 attorney on standby in case a search warrant was needed, and  
2 that, you know, we were going there to see if there was a  
3 manufacturing -- credit card manufacturing plant, but  
4 Detective Iwaskevycz also was going to follow up with the  
5 burglary that was committed within the home.

6 Q. Okay. And you're a Secret Service agent, so you weren't  
7 there for the burglary.

8 A. No, no.

9 Q. Okay. And did you actually go to the home?

10 A. We did go to the home, yes.

11 Q. And when you got there, what did you see?

12 A. So Detective Iwaskevycz and I arrived at the home in his  
13 unmarked police vehicle. He was wearing a tie, button-down  
14 shirt, with his weapon and badge exposed. I was wearing a polo  
15 shirt, khaki pants, and a police jacket. My weapon was not  
16 exposed.

17 When we arrived at the house, we saw an individual  
18 later identified as Chenequa Austin outside with two children.  
19 As we pulled up and started to exit the vehicle, she  
20 immediately entered the home. So she was outside, and then she  
21 went back into the home.

22 Q. Okay. And let's stop right there.

23 So you say you later identified this individual as  
24 Ms. Austin. Do you recognize her today?

25 A. I do, yes. She's sitting in the courtroom, wearing a

## LANFERSIEK - DIRECT/KOBRINSKI

1 cream-colored shirt, at defense counsel table.

2 **MR. KOBRINSKI:** I'd ask that the record reflect that  
3 Special Agent Lanfersiek has identified the defendant,  
4 Ms. Austin.

5 **THE COURT:** The record will so reflect.

6 BY MR. KOBRINSKI:

7 Q. Now, with regard to encountering Ms. Austin, did you do any  
8 research or do you know whether any research was done as to who  
9 were the occupants of that home?

10 A. Yes. So research was done by Detective Iwaskewycz. I  
11 believe he conducted a TLO search or an Accurint search, which  
12 you can put a property address into a computer database, and it  
13 will spit out results of who possibly could be living in the  
14 home.

15 Q. And from your understanding, Ms. Austin was one of the --

16 A. Correct, yes. It's my understanding that she was one.

17 Q. What about Mr. Spivey?

18 A. I don't believe he came back on the search, but I don't  
19 recall.

20 Q. Okay. So then going forward, you just testified that you  
21 arrived, and when you arrived --

22 **MR. DAY:** I'm gonna object to the leading questions.

23 **THE COURT:** Sustain.

24 **MR. KOBRINSKI:** Well, I was just trying to orient the  
25 witness, but I'll try to avoid leading him.

1           **THE COURT:** Okay.

2 BY MR. KOBRINSKI:

3 Q. With regard to arriving at the house and seeing Ms. Austin  
4 go into the house, what did you next observe?

5 A. So Ms. Austin went inside the house. At that point, Alex  
6 and I came to the threshold of the home, and we knocked on the  
7 door. I rang the doorbell.

8           At that point, Ms. Austin opened the door, and Alex  
9 identified himself as a police officer with the Lauderhill  
10 Police Department, who was there to follow up on a recent  
11 burglary of the home. And he identified me as an employee of  
12 the Lauderhill Police Department who worked in the crime scene  
13 unit.

14 Q. And can you go into that encounter a little more? What was  
15 said -- the particulars of what was said?

16 A. Yeah. Basically, Alex just told her that, you know, he  
17 wanted to show her some pictures, ask some follow-up questions.  
18 I believe he wanted to obtain some video and see if she could  
19 identify who this person was.

20 Q. And when you say you believe he wanted to obtain video, do  
21 you recall who brought video up first and then -- whether it  
22 was Ms. Austin or --

23 A. I believe she brought the video up first. I believe she  
24 said, Yes, I have video on this, I can give it to you.

25 Q. But you're not certain about that.



## LANFERSIEK - DIRECT/KOBRINSKI

1 A. I'm not a hundred percent certain, but I'm pretty certain  
2 that's how the encounter occurred.

3 Q. How long was this encounter?

4 A. Oh, this particular one?

5 Q. Yeah, at the door, where she --

6 A. Thirty seconds maybe.

7 Q. And how long were you waiting at the door after you  
8 knocked, approximately?

9 A. Maybe 30 seconds, a minute? It wasn't -- it wasn't very  
10 long, but....

11 Q. So both encounters were relatively short.

12 A. Correct.

13 Q. Now, what happened at the end of that encounter -- the  
14 second encounter where you had that conversation?

15 A. She seemed genuinely excited that we were there to follow  
16 up on the burglary, and she invited us to come inside the house  
17 so we could further discuss what happened.

18 Q. And did you do that?

19 A. We did, yes.

20 Q. And who was there?

21 A. So at that point, Ms. Austin was inside the home along with  
22 her two children. And then as we entered, an individual we  
23 later identified as Eric Spivey was also inside the home.

24 Q. Okay. And you mentioned that the two children were there,  
25 and you -- where were they?

1 A. At the time, I believe they were just in the living room.

2 Q. Okay.

3 A. So maybe -- they may have -- Ms. Austin may have asked them  
4 to go to their bedroom at the time, but I don't -- I don't  
5 recall. I think they were just in the living room.

6 Q. Now, what happened next as it relates to what you observed?

7 A. So at that point, Ms. Austin told Alex that Eric Spivey,  
8 who was described as her -- he was living inside the house as  
9 her boyfriend, that he would be able to pull video surveillance  
10 of the burglary off of their home computer and provide that to  
11 Alex.

12 So, at that point, I asked her to show me where the  
13 burglar entered the house so I could take a look at it and dust  
14 it for fingerprints.

15 Q. Okay. So she mentioned that her boyfriend who lived with  
16 her is in the house. And did you --

17 **MR. DAY:** Objection to the leading questions.

18 **MR. KOBRINSKI:** I'm just circling back, your Honor, to  
19 try to orient him --

20 **THE COURT:** Let me hear the whole question first.

21 **MR. KOBRINSKI:** Excuse me, your Honor?

22 **THE COURT:** He made an objection before you finished  
23 your question --

24 **MR. KOBRINSKI:** Yes, your Honor.

25 **THE COURT:** -- so I want to hear the whole question

1 first.

2 BY MR. KOBRINSKI:

3 Q. And I just wanted to take you back to -- when did you first  
4 encounter this individual?

5 A. As we were entering the house -- I believe he was coming  
6 out of the bedroom as we were walking into the living room. So  
7 it was contemporaneous with us coming inside the house.

8 Q. And is that individual here today?

9 A. He is, yes.

10 Q. And can you point him out by an article of clothing?

11 A. Sitting right here in the navy blue jumpsuit.

12 Q. Okay.

13 **MR. KOBRINSKI:** I'd ask that the record reflect that  
14 he's identified the defendant, Eric Spivey, as being  
15 Mr. Spivey.

16 **THE COURT:** The record will so reflect.

17 **MR. KOBRINSKI:** Thank you, your Honor.

18 BY MR. KOBRINSKI:

19 Q. So getting into the house, and taking a step back, that  
20 initial conversation with Ms. Austin and the burglary, did you  
21 ever suggest that if she didn't cooperate, or did you hear  
22 Detective Iwaszewycz suggest if she didn't cooperate, that the  
23 case would go unsolved?

24 A. No.

25 Q. Did you ever suggest that her response was critical or

1 otherwise emergent?

2 A. No.

3 Q. Was this a high-pressure sales pitch that you put on her?

4 A. No, no, not at all.

5 Q. And you weren't there for the actual burglary.

6 A. No.

7 Q. But did you need to get into the house? Did you force your  
8 way in?

9 A. No.

10 Q. Now, with regard to what you just testified, that  
11 Mr. Spivey was trying to pull the computer stuff, and you went  
12 off with Ms. Austin, what did you do?

13 A. So Alex went with Eric to the computer, and Ms. Austin took  
14 me to the back dining room, to a sliding glass door where she  
15 told me the burglar entered the house.

16 We went back there. I examined the door. I think I  
17 brushed it with a fingerprint brush. We spoke about, you know,  
18 him entering through the door. And at that point, I said,  
19 Okay, where did he go after this? Where did the burglar go  
20 after this point?

21 Q. And --

22 A. At that point, she said he went into the bedroom.

23 And I said, Okay, well, can we go into the bedroom and  
24 take a look?

25 And she said, Sure. And she led me into the bedroom

1 from that point.

2 Q. And then from there, what happened next?

3 A. Once we -- even before I entered into the bedroom, the door  
4 was open to bedroom, and I could see a stack of credit cards  
5 sitting on a dresser where a flat screen TV was, probably 20 to  
6 25 cards, if I had to take a guess.

7 I also noticed men's clothing, women's clothing. It  
8 appeared that two people were living in the house -- or living  
9 in the room, based on, you know, both nightstands were being  
10 utilized. You know, I saw men's underwear on the floor.

11 There was also a large amount of high-end  
12 merchandise -- what appeared to be high-end merchandise. There  
13 was also electronics, boxes of electronics.

14 Q. And describe to the judge what you mean by "high-end  
15 merchandise."

16 A. So I saw bags of items, such as boxes with the Louis  
17 Vuitton logo, the Gucci logo, Salvatore Ferragamo shoeboxes. I  
18 saw iPads, PlayStation 4s, you know, things of that nature.

19 Q. And in your training and your experience investigating  
20 identity theft and credit card fraud cases, is it common to see  
21 items of that sort?

22 A. Yes, it's very common.

23 Q. Now, with regard to getting into that room initially, you  
24 asked her -- you testified --

25 A. I asked for permission, yes.

1 Q. And who brought up the bedroom?

2 A. She did.

3 Q. And when did she bring it up? After what?

4 A. After I asked her where the burglar went after he entered  
5 the sliding glass door.

6 Q. Now, what happened after that -- after encountering those  
7 items you just described to the Judge?

8 A. So, at that point, I asked her, you know, where he went  
9 within the bedroom. She first told me that he went through the  
10 bedside tables. So I asked her if she would open the drawers  
11 to the bedside tables for me. She did.

12 And when she opened the drawer to the bedside tables,  
13 I saw more credit cards, this time much more voluminous. There  
14 was brand new packages of prepaid store value cards. There  
15 were what appeared to be used cards. There were receipts.

16 Also, by the bedside tables, there were more bags of  
17 high-end merchandise.

18 So she opened both drawers, both bedside table drawers  
19 for me.

20 And I then asked again, Where else did he go, after I  
21 was done, you know, examining the drawers.

22 And she said then he went to the closet and the  
23 bathroom area.

24 So when I approached -- I said, Okay, can we go over  
25 there? And we walked over there. And when we -- the closet

1 door was standing open, and when I arrived at the closet door,  
2 I could see a credit card embossing machine sitting on a shelf  
3 in the closet just next to the door.

4 Q. And I ask you, describe what a credit card embossing  
5 machine is and what it looks like?

6 A. So a credit card embossing machine -- there's numerous  
7 different types, but it is a machine that actually embosses  
8 letters and numbers on to a credit card. So if you had a blank  
9 card, and you wanted to put an individual's name or a credit  
10 card account number, that's what the card embossing machine  
11 would be used for. This particular one was, you know,  
12 probably -- it was fairly large. I mean it was probably the  
13 size of one of those folders right there. But it was more  
14 circular than square -- or I should say it was circular.

15 Q. Had you encountered machines like this --

16 A. I've seen them numerous times, yes.

17 Q. And so did you say anything when you saw these high-end --

18 A. I did not, no.

19 Q. Did you see anything --

20 **THE COURT REPORTER:** I'm sorry.

21 **THE WITNESS:** I'm sorry, ma'am.

22 **THE COURT:** Just talk one at a time, please.

23 **THE WITNESS:** Sorry about that.

24 BY MR. KOBRINSKI:

25 Q. Did you see anything -- did you say anything when you saw

1 the credit cards?

2 A. I did not, no.

3 Q. And what about the embossing machine?

4 A. I did not.

5 Q. So what did you do next?

6 A. At that point, I left the bedroom, and I first went to  
7 Alex, Detective Iwaskeycz, and I told him what I saw. And  
8 then I went to Ms. Austin, and I told her that I had a  
9 colleague who worked with me who was gonna come in and help us  
10 with the processing of the crime scene, meaning the burglary.  
11 So -- and at that point, when I saw the contraband, I sent a  
12 text message for another Secret Service agent to come inside  
13 the house.

14 Q. And so then what about Mr. Spivey at this point, where is  
15 he?

16 A. So he is with Alex at the home computer trying to pull the  
17 video footage of the burglary.

18 Q. Okay. And so what happens next?

19 A. So, at that point, I tell Alex what's going on. Alex then  
20 concludes what he's doing with Spivey, and he starts discussing  
21 with Ms. Austin what I had just seen in the house.

22 Q. Okay.

23 **MR. SMITH:** Objection as to who, if he could identify.

24 A. I'm sorry?

25 Q. I believe the "he" you were referring to is



## LANFERSIEK - DIRECT/KOBRINSKI

1 Detective Iwaskewycz, is that correct?

2 A. Correct. I can repeat the answer if you'd like.

3 **MR. KOBRINSKI:** Perhaps the next question will  
4 clarify, and if not, we can -- you can restate your objection.

5 BY MR. KOBRINSKI:

6 Q. So you mentioned that he went to speak with Ms. Austin. I  
7 believe you're talking about Detective Iwaskewycz, right?

8 A. Correct, yes.

9 Q. And where is this conversation taking place?

10 A. This particular conversation is in the living room at this  
11 point.

12 Q. Okay. And you say "at this point," because what happens  
13 next?

14 A. At that point, Alex and I decided that it would be best to  
15 separate them.

16 Q. And why is that?

17 A. You just -- when you interview someone, it's best so people  
18 don't -- maybe they don't have the same story, and they don't  
19 hear what the one person said, and, you know, officer safety.

20 Q. Or speaking freely in front of you?

21 A. Exactly.

22 **MR. DAY:** Objection to the leading questions.

23 **THE COURT:** Sustain.

24 BY MR. KOBRINSKI:

25 Q. Are there any other reasons that you would want to separate

1 them?

2 A. Someone -- a suspect could speak more freely in front of,  
3 you know, an officer when they know that their partner is not  
4 around.

5 Q. And, in fact, did Ms. Austin make any comments to that  
6 nature subsequently?

7 A. That she was afraid of him?

8 Q. Yes.

9 A. Yes, she did.

10 Q. Okay. And taking a step back, in that initial time period,  
11 with regard to when you knocked on the door, and you're waiting  
12 for what I believe you testified was 30 minutes to a minute,  
13 did Ms. Austin make any subsequent statements of what occurred  
14 in that time period?

15 A. Yes. Later in the evening, she told us that she was hiding  
16 the card reader in the oven.

17 Q. Okay.

18 A. So we wouldn't find it.

19 Q. Did she tell you whether she informed Mr. Spivey?

20 A. She did. She said the police were here.

21 Q. Now -- and then subsequent to that, she opened the door.

22 A. Correct.

23 Q. Okay. Now, Detective Iwaszewycz goes outside, and what do  
24 you do?

25 A. I stay inside the residence with Spivey.

1 Q. Okay. And what happens next as far as you're concerned?

2 A. As far as I'm -- as far as I know, we knew prior to -- we  
3 had a good idea prior to that Ms. Austin may have an  
4 outstanding arrest warrant from the State of Florida from a  
5 prior credit card charge. So Alex -- it was my understanding  
6 that Alex took her outside to not only talk to her about that,  
7 but to also confirm the warrant and arrest her, if need be, if  
8 the warrant was active.

9 Q. And you're inside.

10 A. I'm inside, yes.

11 Q. Okay. And so what do you do next?

12 A. I'm talking to Spivey about what's been going on inside the  
13 house.

14 Q. Okay. And at some point does Detective Iwaskewycz come  
15 back in?

16 A. He does, yes.

17 Q. And approximately how much time between when he leaves with  
18 Ms. Austin and they come back -- and he comes back inside --  
19 how much time elapses?

20 A. Maybe 30 minutes, give or take. So....

21 Q. Okay. That's an estimate.

22 A. That's an estimate, yeah. I wasn't timing it or anything.

23 **MR. KOBRINSKI:** Just for the record, he was moving his  
24 hands up and down to suggest an estimate, and that's why I  
25 asked the question.

1 BY MR. KOBRINSKI:

2 Q. Now, he comes back in after approximately 30 minutes, and  
3 what happens next?

4 A. At that point, Alex and I start discussing with him what we  
5 found inside the house. We told him who I was at that point,  
6 that I was a United States Secret Service agent. And we asked  
7 him if we could search the house.

8 Q. So the ruse is up.

9 A. The ruse is up at this point.

10 Q. To that point -- and until you go to the police station, do  
11 you have any other encounter with Ms. Austin?

12 A. I do not, no.

13 Q. Okay. And to that point, did you ever hear Ms. Austin ask  
14 you or any other law enforcement officer --

15 A. I did not, no.

16 Q. Just wait for the --

17 A. I'm sorry.

18 **MR. KOBRINSKI:** Were you able to get that, or do I  
19 need to reask it?

20 **THE COURT REPORTER:** You need to reask it.

21 BY MR. KOBRINSKI:

22 Q. It's probably the way I asked the question.

23 To that point, did Ms. Austin ask you or any other law  
24 enforcement officer to leave?

25 A. No, not that I'm aware of.

## LANFERSIEK - DIRECT/KOBRINSKI

1 Q. To that point -- well, did you hear her ask you to leave?

2 A. I did not, no.

3 Q. To that point, did you ever raise your voice on Ms. Austin?

4 A. No.

5 Q. Did you ever pull your gun out?

6 A. No.

7 Q. Did you ever physically restrain her?

8 A. No.

9 Q. Did you touch her?

10 A. No.

11 Q. Handcuff her?

12 A. No.

13 Q. Yell at her?

14 A. No.

15 Q. Okay. And what about -- same goes for Mr. Spivey, or did  
16 you do any of those things to him?

17 A. No.

18 Q. Now, talk about the encounter with Mr. Spivey, where you  
19 mention that you're a Secret Service agent. What else happens?

20 A. He told us that he didn't have any idea what was going on  
21 with what we found inside the house. He told me that the  
22 credit card embossing machine -- that his landlord had left it  
23 inside the garage, and that he moved it into the bedroom, but  
24 he didn't know what it was or what it was used for. And he  
25 said he didn't have any involvement whatsoever with the

1 manufacturing of fraudulent credit cards.

2 Q. What's his demeanor like at this time?

3 A. He was very friendly, he was cooperative, he was polite the  
4 entire time.

5 Q. How about Ms. Austin?

6 A. She was as well. My entire encounter with her she was  
7 polite and cooperative.

8 Q. Okay. Now, what did you -- after Mr. Spivey made those  
9 statements to you, what did you and Detective Iwaskewycz do?

10 A. Alex presented him with a consent to search form, which he  
11 read and executed in front of us.

12 Q. Okay. And before presenting him with that form, did you  
13 ask him about it?

14 A. About the form or about the credit card fraud?

15 Q. About -- well, both.

16 A. Well, I was asking him about the credit card fraud prior to  
17 that. I believe Alex explained to him what the form meant, but  
18 I don't --

19 **MR. SMITH:** Objection as to what he believes.

20 **THE COURT:** Sustain.

21 BY MR. KOBRINSKI:

22 Q. Okay. When -- we're not interested in what your opinion is  
23 of the form, but do you recall a conversation about the --  
24 having a discussion regarding consent?

25 A. Correct, yes.

1 Q. And was the one --

2 A. We had the discussion regarding consent, and Spivey told us  
3 we could search whatever we wanted to search.

4 Q. Okay.

5 **MR. KOBRINSKI:** Your Honor, this was previously  
6 submitted as a defense filing, so I don't believe I need to  
7 introduce it as an exhibit. I don't know if you'd want me to.  
8 It's the consent form.

9 **THE COURT:** I've seen it.

10 **MR. KOBRINSKI:** Okay. So Docket Entry 54-1. I just  
11 wanted to approach the witness with it.

12 **THE COURT:** Okay.

13 BY MR. KOBRINSKI:

14 Q. This is page 1 of 2 on 54-1.

15 Is that the form that you witnessed?

16 A. This is the form, yes.

17 Q. And whose signature did you witness for the person who's  
18 signing for consent?

19 A. That is Eric Spivey's.

20 Q. And do you recall it because you were there or because  
21 you're seeing the form?

22 A. I recall it because I was there.

23 Q. Did you guys, after obtaining the oral and written consent,  
24 actually search the residence?

25 A. We did, yes.

1 Q. And jumping ahead to -- because for the purposes of this  
2 hearing, a lot of other facts aren't necessarily relevant, so  
3 jumping ahead to statements at the station, did you advise  
4 Ms. Austin, or did someone advise Ms. Austin, of her *Miranda*  
5 rights?

6 A. Alex did.

7 Q. Okay. And was that written or oral or both?

8 A. It was both.

9 Q. Okay. And did she make a statement?

10 A. She did, yes.

11 Q. Okay. And were you there for part of the statement?

12 A. I was, yes.

13 Q. And did you review the subsequent video footage of the --  
14 as much of this statement as you could?

15 A. I have, yes.

16 Q. Okay. And I'd like to introduce a portion of that  
17 statement. You had an opportunity to review a compact disk  
18 that included portions of that statement, didn't you?

19 A. Yes.

20 **MR. KOBRINSKI:** And I'm approaching the witness with  
21 what's been marked for identification as Government's  
22 Exhibits 2A and 2B.

23 *(Government's Exhibits 2A and 2B marked for*  
24 *identification)*

25 **MR. KOBRINSKI:** That's his initials.



## LANFERSIEK - DIRECT/KOBRINSKI

1           *(Discussion had off the record between counsel)*

2           **MR. SMITH:** Do you have another copy of 2B?

3           **MR. KOBRINSKI:** Yeah. Do you need a copy?

4           **MR. SMITH:** Yeah, yeah.

5           **MR. KOBRINSKI:** Do you need a copy, sir?

6           **MR. DAY:** No, I have one.

7           **MR. KOBRINSKI:** May I approach, your Honor?

8           **THE COURT:** All right.

9           BY MR. KOBRINSKI:

10          Q. Is this the compact disk with the recordings that you then  
11          initialed on the exhibit sticker?

12          A. This is, yes.

13          Q. And is this the transcript that you reviewed for a portion  
14          of the video and audio file that appears on this disk?

15          A. This is, yes.

16          Q. And to the best of your knowledge, it's true and accurate?

17          A. It is, yes.

18          Q. Okay.

19                 **MR. KOBRINSKI:** Your Honor, I'd move exhibit -- what's  
20          been marked for identification as 2A and 2B into evidence and  
21          ask for permission to publish.

22                 **MR. DAY:** No objection.

23                 **MR. SMITH:** No objection.

24                 **THE COURT:** 2A and 2B will be received.

25                 *(Government's Exhibits 2A and 2B admitted into*

1 evidence)

2 **MR. KOBRINSKI:** And could I please have the computer  
3 that's linked to the prosecutor's table?

4 And I've got a copy here for the Court.

5 *(Discussion had off the record between counsel)*

6 **MR. KOBRINSKI:** So starting on page 2 of the  
7 transcript of 2B, we're gonna play the clip that's the clip  
8 that begins at run time 2730 of Government's Exhibit 2A.

9 *(Video played)*

10 **MR. KOBRINSKI:** Is the audio linked up? It's very  
11 faint, and that's part of the reason there's a transcript.

12 **THE COURT REPORTER:** You need to plug it in. Do you  
13 have the audio plugged in?

14 **MR. KOBRINSKI:** It is plugged in.

15 *(Video played)*

16 **MR. KOBRINSKI:** Perhaps we could read the transcript.  
17 I think it's important, and it bears on this hearing. So --

18 **THE COURT:** The transcript's in evidence, so you can  
19 publish it however you want.

20 **MR. KOBRINSKI:** Okay. I'd ask -- approaching Special  
21 Agent Lanfersiek.

22 BY MR. KOBRINSKI:

23 Q. Starting on page 2 of 2B, the transcript. And you recall  
24 reviewing this recently, correct, earlier this afternoon?

25 A. Correct, yes.

## LANFERSIEK - DIRECT/KOBRINSKI

1 Q. Okay. And to the best of your recollection, it's also the  
2 conversation that occurs on the --

3 A. That's correct, yes.

4 Q. Okay. And so the initials "C.A.," that's for Ms. Chenequa  
5 Austin, right?

6 A. Correct.

7 Q. And "A.I." is for Detective Iwaskewycz?

8 A. Correct.

9 Q. Okay.

10 So C.A. says: "No, I went to jail before, and I  
11 didn't have to" --

12 And then A.I. says: "Not for a warrant.  
13 Probably an ROR. They ROR'd you."

14 Then C.A. says: "Nuh-uh. They bonded me out.  
15 When I went for my license -- I went for driving while  
16 my license revoked."

17 A.I. then says: "Trust me, the sooner we can get  
18 out of here. We all want to go home. None of us want  
19 to stay here either. We're going as fast as we can."

20 And then C.A. asks: "Is he talking? Is he at  
21 least giving you an address?"

22 And then A.I. says: "Yeah, but he's lying about  
23 the gun."

24 Then C.A. asks: "Is he saying that it's my mine?"

25 And then A.I. says: "He's saying he doesn't know

## LANFERSIEK - DIRECT/KOBRINSKI

1 whose gun it is. Is there anything I need to know  
2 about?"

3 And then C.A. says: "To be honest with you, I'm  
4 just trying to see if I should just take the rap for  
5 him for it."

6 And A.I. says: "Why? Is it your gun?"

7 Then C.A. says: "Not my gun, but"....

8 A.I. says: "How did the gun get into the house?"

9 C.A. then says: "I know you know that... this is  
10 terrible."

11 A.I. says: "Go ahead."

12 C.A. says: "I know you know that he got an  
13 attempted murder charge out."

14 A.I. says: "Okay."

15 C.A. says: "You read between the lines on that.  
16 If that gun gets placed on him, what do you think?  
17 Right now they have no gun. Right now his baby  
18 momma's not going to court for him. With no gun and  
19 no baby mommas going to court, he walk."

20 A.I. says: "Uhm."

21 C.A. says: "So all you have to do is pretty much  
22 look up his old charges -- look up his old charges.  
23 You don't have to say it came from me."

24 A.I. says: "We won't."

25 C.A. says: "Look up his old charges, and you

## LANFERSIEK - DIRECT/KOBRINSKI

1 will know he has such and such and such."

2 A.I. asks: "He was arrested for the attempted  
3 murder?"

4 C.A. says: "He's going to court right now. He's  
5 out on probation for reckless driving or something  
6 like that with an accident. They gave him three  
7 years' probation for that and"....

8 A.I.: "Yeah, but listen" --

9 C.A.: "He's out."

10 A.I.: "The gun, does it have your fingerprints  
11 on it?"

12 C.A.: "The gun does not have my fingerprints at  
13 all."

14 A.I.: "Well, have you seen him handle the gun  
15 before?"

16 C.A.: "I've seen him handle the gun before.  
17 That's the same gun that he used to shoot."

18 A.I.: "Who'd he shoot with it?"

19 C.A.: "He didn't shoot nobody with it. But for  
20 his attempted murder, I think it's attempted murder,  
21 his baby momma got shot in the finger, and I guess  
22 they allegedly saying that he was shooting at them.  
23 They have no gun to prove it. Only thing they got is  
24 a couple of shells from it. So, you know, to protect  
25 himself."

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## LANFERSIEK - DIRECT/KOBRINSKI

1 A.I.: "It was in Miami?"

2 C.A.: "That was in Miami. If you look it up,  
3 you will see that. Did he tell you about the charge?"

4 A.I.: "Yeah, he said something with his baby  
5 momma, but"....

6 C.A.: "Some drama with the baby momma."

7 A.I.: "Yeah."

8 C.A.: "You know, right now he's fighting on the  
9 outside, but that guy"....

10 A.I.: "Wait. He wasn't arrested for that,  
11 though, right?"

12 C.A.: "He was arrested for it, but they let him  
13 bond out."

14 A.I.: "It was a domestic situation? It was  
15 probably just an aggravated battery, not an attempted  
16 murder."

17 C.A.: "It's attempted murder. That is what he  
18 bonded out on. They let him bond out."

19 A.I.: "Really?"

20 C.A.: "They probably listed it as domestic,  
21 because that wasn't the first time it was something  
22 major like that with his baby momma, 'cause I know  
23 before they had a falling out, and she stabbed him."

24 A.I.: "But you don't know where he got the gun  
25 then. He always had it as far as you know."

## LANFERSIEK - DIRECT/KOBRINSKI

1 C.A.: "When I met him, that was the gun he  
2 always had."

3 A.I.: "That one, the green bottom and black  
4 top?"

5 C.A.: "That was a gun that he always had. I  
6 know that when, uhm, with the argument between him and  
7 his baby momma that led to the shooting, her getting  
8 shot in the finger and stuff, it was at his house, and  
9 when -- walked out of his house, both of his baby  
10 mommas and another girl was there, and she was pretty  
11 much, you know, I can make your life miserable and  
12 other stuff. I left 'cause I'm just meeting him. I'm  
13 like four months in or whatever."

14 A.I.: "Damn, you stayed with this guy after all  
15 that?"

16 C.A.: "Just like my mom, you sound just like my  
17 mom."

18 Then A.I. says: "Shit."

19 Then C.A. says: "So I was like four months in  
20 the relationship, and, uhm, so I left the house. Then  
21 he called me and said that he went to jail, and then  
22 they took him to jail, the detectives. I guess he got  
23 a statement for everybody."

24 A.I.: "Oh, he stayed at your house after he shot  
25 her?"

## LANFERSIEK - DIRECT/KOBRINSKI

1 C.A.: "Not at my house, at his own house."

2 A.I.: "Yeah, when it happened."

3 C.A.: "Yeah, you know, because they go through  
4 it all the time like that, and I guess that she now  
5 called the police or whatever."

6 A.I.: "So what he do with the gun then? How did  
7 he hide it that night?"

8 C.A.: "Uhm, his mom was in the house. I don't  
9 know how or what he did with the gun, 'cause I left."

10 A.I.: "How did you know that he used that gun?  
11 Did he tell you?"

12 C.A.: "Uhm, we used to have conversations like,  
13 somebody came in here, and I did use that gun, that --  
14 that can't even be reported. How am I telling that I  
15 shot the person with that gun or something? Then I'm  
16 gonna get in trouble. I might get in trouble for it,  
17 you know."

18 A.I.: "You're saying because he had the gun" --

19 C.A.: "Yeah, he was like -- I guess he knew someone  
20 who could change the barrel, change something in it, or  
21 whatever, when it shoot out or whatever. And I guess he never  
22 got around to it. But I don't own a gun. I don't -- I never  
23 held that gun. None of that."

24 A.I.: "I mean that is what I was telling you, whether  
25 you tell us or not, we're gonna print it, we're gonna test it,



## LANFERSIEK - CROSS/DAY

1 so it's gonna come back either way."

2 C.A.: "Okay. So you'll print it and test it. So  
3 you'll see his fingerprints on it, unless he cleaned it. If he  
4 cleaned it, then I guess the only way if Dade County keeps  
5 their bullets or whatever."

6 Special Agent Lanfersiek, when Ms. Austin made this  
7 statement, you discussed -- after waiving her *Miranda* rights,  
8 you brought in information that you obtained through the  
9 consent search of the house, correct?

10 A. Yes.

11 Q. Okay.

12 **MR. KOBRINSKI:** Nothing further. Thank you.

13 **THE COURT:** Mr. Day.

14 **MR. DAY:** Thank you, your Honor.

15 **CROSS-EXAMINATION**

16 BY MR. DAY:

17 Q. Good afternoon, Agent Lanfersiek.

18 A. Sir.

19 Q. Did I pronounce your name correctly?

20 A. Yes, sir.

21 Q. Agent, if I ask you a question that you don't understand,  
22 I'm gonna ask you to stop me and ask me to rephrase it until  
23 you do understand. Will you do that, sir?

24 A. Yes, sir.

25 Q. All right. As you've indicated, you are an agent with the

## LANFERSIEK - CROSS/DAY

1 Secret Service, is that correct?

2 A. Yes, sir.

3 Q. And as you've also indicated, the Secret Service  
4 investigates financial crimes, is that right?

5 A. Yes, sir.

6 Q. Credit card fraud, bank fraud, tax fraud, is that right?

7 A. Yes, sir.

8 Q. And you, yourself, have investigated over 50 fraud cases  
9 personally, is that right?

10 A. Yes, sir.

11 Q. Okay. You are part of a task force, is that correct?

12 A. Yes, sir.

13 Q. And that is the South Florida Organized Fraud Task Force,  
14 is that right?

15 A. Yes, sir.

16 Q. And that's the task force that was involved in this  
17 particular case, is that correct?

18 A. Yes, sir.

19 Q. And that task force involved Detective Iwaskewycz?

20 A. Iwaskewycz.

21 Q. Iwaskewycz. Okay. I'll go with Detective I. Can you  
22 agree with that?

23 A. Yes, sir.

24 Q. Okay. Detective I was a part of that South Florida  
25 Organized Fraud Task Force, is that right?

## LANFERSIEK - CROSS/DAY

1 A. Yes, sir.

2 Q. And you've worked with him before, is that correct?

3 A. This was our first case together, but I -- he works -- he  
4 sits next to me in the office, but we had never worked an  
5 investigation together before.

6 Q. Okay. He sits next to you in what office?

7 A. The task force office.

8 Q. Okay. And that task force office is located where?

9 A. In Plantation.

10 Q. And in whose building?

11 A. It is a building that is run by HIDTA. HIDTA leases the  
12 building and provides space to us.

13 Q. Okay. And the members of this task force are Secret  
14 Service agents, is that right?

15 A. Correct, yes.

16 Q. Including yourself.

17 A. Hum-hum.

18 Q. And also a task force officer, is that correct?

19 A. Correct. Yes, sir.

20 Q. And that's someone who works for a state law enforcement  
21 agency, but yet they're assigned to work with you --

22 A. Yes, sir.

23 Q. -- investigating fraud.

24 A. Financial crimes, yes, sir.

25 Q. Okay. And that's how you comprise the South Florida

1 Organized Fraud Task Force, correct?

2 A. Yes, sir.

3 Q. Okay. On this particular occasion, December the 17th of  
4 last year, you were contacted -- or maybe it was he was sitting  
5 at the desk next to you -- you were given information by  
6 Detective I about credit card fraud that may be occurring in  
7 Lauderhill, is that correct?

8 A. That's correct, yes.

9 Q. And that credit card fraud that Detective I had received  
10 had been given to him by another detective, is that right?

11 A. That's correct, yes.

12 Q. And that detective had gotten that information from a  
13 detective who investigated burglaries, is that right?

14 A. I believe that's correct, yes.

15 Q. And essentially what happened is that a burglar by the name  
16 of Caleb Hunt had been arrested, is that correct?

17 A. I believe that's his name. I'm not sure, though.

18 Q. Okay.

19 A. But this is how I understand it, yes.

20 Q. The burglar who supplied the information that you operated  
21 on when you went into Ms. Austin's house on December the 17th  
22 was someone who had been caught and admitted to being a  
23 burglar, is that right?

24 A. Yes, sir.

25 Q. Okay. And Detective Gordon was one of the detectives who

1 was involved in the apprehension and the arrest of this  
2 burglar, is that right?

3 A. I believe that's correct, yes.

4 Q. Okay. And Detective Gordon is relating the information  
5 along to another detective, who then relates that to  
6 Detective I, who then shares it with you, is that right?

7 A. That's correct, yes.

8 Q. Okay. And this individual who had burglarized Ms. Austin's  
9 home had also burglarized numerous homes, is that correct?

10 A. That's my understanding, yes.

11 Q. Both in Sunrise and in the City of Lauderhill, is that  
12 correct?

13 A. Yes.

14 Q. Okay. And what he had done is he had cooperated with  
15 Detective Gordon, is that right?

16 A. That's correct.

17 Q. He actually -- Detective Gordon actually went into his  
18 house, this individual's house, Caleb Hunt -- I don't know if  
19 that name sounds familiar -- went into his house, and he showed  
20 specific property to Detective Gordon, is that right?

21 A. That I -- this, I don't know. I'm not -- these facts I'm  
22 not -- I don't remember exactly how it happened. But --

23 Q. Well, Detective I had all of this, right?

24 A. Yes, he would have had all this.

25 Q. Okay. And then he relayed it to you, is that right?

1 A. Yes.

2 Q. And that would have been relayed to you before you went to  
3 Ms. Austin's house on the 17th, correct?

4 A. Yes.

5 Q. Okay. And, in fact, this individual, this burglar gave a  
6 confession, is that right?

7 A. That's -- yes, correct.

8 Q. Audiotaped and videotaped confession, right?

9 A. I don't know if it was audio or videotaped.

10 Q. Okay. Have you had a chance to review a transcript of that  
11 confession?

12 A. I don't recall. I probably would have. I don't recall it  
13 off -- right now off the top of my head.

14 Q. Did -- Detective I had that?

15 A. I would speculate that he did, but I don't -- I don't know.

16 Q. Right. Because I mean that's the basis of the information  
17 that you're then going to put together a task force operation  
18 to go against Ms. Austin's house, right?

19 A. Correct.

20 Q. So you'd want to know what information this burglar had,  
21 right?

22 A. Correct.

23 Q. And he had relayed information that he had, in fact, been  
24 inside Ms. Austin's home, right?

25 A. That's correct.

1 Q. And that he had believed that was there an access credit  
2 card manufacturing plant there, correct?

3 A. That's correct.

4 Q. And, of course, that was of great interest to you, right?

5 A. Correct.

6 Q. Being a member of the South Florida Organized Fraud Task  
7 Force, correct?

8 A. Correct.

9 Q. So the indication was not just that this was credit card  
10 fraud, a couple of stolen credit cards, but that, in fact,  
11 credit cards were being manufactured. Is that correct?

12 A. That's correct.

13 Q. And that's a big problem in south Florida, correct?

14 A. Correct.

15 Q. Major problem in the Southern District of Florida, is that  
16 right?

17 A. Hum-hum.

18 Q. And you're -- yes?

19 A. Yes.

20 Q. And you're involved in those types of investigations,  
21 correct?

22 A. Yes, sir.

23 Q. And you said you've got a grant from HIDTA to go and  
24 investigate that type of crime, correct?

25 A. Correct.

## LANFERSIEK - CROSS/DAY

1 Q. So you would obviously want to know exactly what  
2 information this burglar-turned-informant would have, correct?

3 A. Correct.

4 Q. Okay. And so you got that information from Detective I, is  
5 that right?

6 A. I received some information from him. I didn't receive --  
7 I don't know if I received everything from him, but I -- he --  
8 everything that I was given was relayed to me by Alex, so....

9 Q. Okay. So you don't know if he had more information than  
10 you.

11 A. He could have. I would expect he'd give it all to me, but  
12 I don't know.

13 Q. Right.

14 Well, he had a transcript of the confession of this  
15 burglar, right?

16 A. Yes.

17 Q. You believe.

18 Okay. So you don't recall exactly if you reviewed  
19 that, but --

20 A. I don't recall.

21 Q. But you would assume that he did, right?

22 A. I would assume, yes.

23 Q. Okay. So based on that, and based on the review of the --  
24 whatever information had been gotten from this particular  
25 burglar, you were able to determine that according to the -- to



1 this burglar, that the house at 7945 Northwest 50th Street in  
2 Lauderhill, that's Ms. Austin's home, correct?

3 A. Correct.

4 Q. And, by the way, you determined that she's leasing that  
5 house, is that right?

6 A. That's correct.

7 Q. Okay. And that at that particular location, the  
8 information, the cooperating defendant had indicated to you  
9 that he had observed numerous credit cards, right?

10 A. Correct.

11 Q. Green Dot cards, is that correct?

12 A. Correct.

13 Q. Prepaid debit cards, correct?

14 A. Correct.

15 Q. And high-end merchandise, correct?

16 A. Correct.

17 Q. And you've already testified to that on your direct  
18 examination, right?

19 A. Hum-hum.

20 Q. Is that right?

21 A. Yes, sir.

22 Q. Okay. And he indicated that that was located in the master  
23 bedroom, correct?

24 A. I don't recall writing that.

25 Q. Okay.

## LANFERSIEK - CROSS/DAY

1 A. I don't recall if it was told to me that it was  
2 specifically the master bedroom.

3 Q. Okay.

4 A. I just recall that it was in the house.

5 Q. So whatever is in your report is what you were told, right?

6 A. Uhm, probably, yeah. Yes.

7 Q. Okay. Would you like to review your report?

8 A. Sure.

9 Q. See what it indicates?

10 A. Okay.

11 **MR. DAY:** May I approach the witness, your Honor?

12 **THE COURT:** All right.

13 BY MR. DAY:

14 Q. Bottom of -- top of the next page.

15 A. Hum-hum.

16 *(Pause)*

17 A. I wrote that, yes.

18 Q. Okay. You wrote that?

19 A. Hum-hum.

20 Q. Okay. So let's go over it again. The information that you  
21 got from Detective I was that this cooperating defendant, who  
22 had been arrested, burglarized Ms. Austin's home, observed  
23 numerous credit cards, Green Dot cards, prepaid debit cards,  
24 and high-end merchandise located in the master bedroom, is that  
25 correct?

1 A. Correct, yes.

2 Q. So that's accurate, right?

3 A. Correct.

4 Q. That's the information that you got from  
5 Detective Iwaszewycz -- Detective I, correct?

6 A. Correct.

7 Q. Okay. And that's accurate, right?

8 A. Hum-hum.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. Okay. Your report is accurate, is that correct?

12 A. Yes, sir.

13 Q. Okay. All right. So you knew prior to going to  
14 Ms. Austin's address that the Green Dot cards, the credit  
15 cards, the high-end -- whatever it is you indicated in your  
16 report, was located in the master bedroom, correct?

17 A. Yes, sir.

18 Q. Okay. What you would have then done is you would have  
19 devised a plan or come up with an idea on how to approach that  
20 residence, is that correct?

21 **MR. KOBRINSKI:** Objection, your Honor. Calls for  
22 speculation. He testified -- he can ask him what he did.

23 **THE COURT:** Overruled.

24 BY MR. DAY:

25 Q. So you came up with a plan, you and Detective I, on what

1 you're gonna do when you go to Ms. Austin's residence, right?

2 A. We worked together on a plan, yes.

3 Q. Right.

4 And you have a state attorney on call, is that right?

5 A. That's correct.

6 Q. So if there were legal questions, is that right, you'd be  
7 able to call and get a legal opinion, is that right?

8 A. I think we had the state attorney on standby in case we  
9 needed to get a search warrant.

10 Q. Okay. We'll talk about that in a few moments. But it's  
11 you and Detective Austin -- Detective I had met at HIDTA, is  
12 that right?

13 A. We met at the Lauderhill Police Department.

14 Q. You met at the Lauderhill Police Department.

15 A. When -- the plan -- are you talking about the plan or when  
16 we were going on the facts of the --

17 Q. Yeah, yeah.

18 A. We met at the Lauderhill Police Department.

19 **THE COURT REPORTER:** Excuse me. You're talking at the  
20 same time.

21 **THE WITNESS:** I'm sorry.

22 **MR. DAY:** Sorry. My apologies.

23 BY MR. DAY:

24 Q. Yes. When you're putting the plan together, you're at  
25 Lauderhill Police Department, is that right?

1 A. That's correct, yes.

2 Q. Okay. And who was present at that plan?

3 A. There was myself, obviously, Alex, Alex's supervisor,  
4 Alex's -- Alex's partner. So that's three Lauderhill police  
5 officers, myself, and I believe there were three Secret Service  
6 agents.

7 Q. Okay. And this is all part of this South Florida Organized  
8 Fraud Task Force, right?

9 A. Correct, yes.

10 Q. And this is a planning strategy session on how to approach  
11 Ms. Austin's house, correct?

12 A. It was more a planning strategy on officer safety, who was  
13 in the house, and what we were going to expect if we did find  
14 something in the house, and what we were gonna do if we didn't  
15 find anything in the house.

16 Q. Okay. Well, you expected that there would be Green Dot  
17 cards, credit cards, and other merchandise in the master  
18 bedroom, right?

19 A. We thought there would be a chance that that would be in  
20 there, correct.

21 Q. Okay.

22 A. There was also a chance there was gonna be nothing in  
23 there.

24 Q. Right.

25 Well, you've got, what, eight, ten officers there in

1 this planning session?

2 A. Give or take, yeah.

3 Q. Okay. And how long did you meet for?

4 A. Thirty minutes, maybe?

5 Q. Okay. All right. So you got eight or ten officers that  
6 are meeting for about 30 minutes at the Lauderhill Police  
7 Department, and that is because you believed that there was a  
8 pretty good chance that you're gonna be able to get Green Dot  
9 cards, credit cards, and be able to suppress an access card  
10 manufacturing plant, is that correct?

11 A. Correct.

12 Q. All right. So then what you want to do is you want to come  
13 together, and you want to put together an idea, a coordinated  
14 effort, as how to best investigate, is that right?

15 A. The idea had already been presented to us.

16 Q. Okay. And who presented the idea to you?

17 A. Alex came up with the idea to respond to the burglary call.

18 Q. Okay. And, uhm -- okay. And the idea that Detective I  
19 came up with on how to respond to the information that you had,  
20 and how to approach the house, was to come up with the idea,  
21 the ruse of a burglary, is that correct?

22 A. That's correct.

23 Q. Okay. So it was his idea, is that right?

24 A. He presented the idea to me, and then we further elaborated  
25 on the idea. But at the onset, it was his idea, because he

1 knew a burglary report -- police report had been filed, and he  
2 said, Hey, this might be a good idea, and we elaborated on it  
3 from that point.

4 Q. Okay. And it might be a good idea, what did he communicate  
5 as to why it would be a good idea?

6 A. Because there may be evidence of a credit card plant inside  
7 the house.

8 Q. Okay. All right. So that would be a good idea on how to  
9 get inside the house and investigate and search for credit card  
10 fraud, right?

11 A. Correct.

12 Q. So that was the idea behind this plan, correct?

13 A. Correct.

14 Q. Was to use the idea of a ruse to get consent to get in the  
15 house to search for credit card fraud, correct?

16 A. Correct.

17 Q. And that's what happened, right?

18 A. That's what happened, yes.

19 Q. Okay. Now, the idea of using -- or you being the crime  
20 scene expert, okay, that was also a ruse, correct?

21 A. That was a ruse, yes.

22 Q. Okay. You're not a crime scene expert.

23 A. I'm not.

24 Q. You don't dust for latent fingerprints, right?

25 A. I do not.

## LANFERSIEK - CROSS/DAY

- 1 Q. You don't have any training in that, is that right?
- 2 A. In dusting for latent prints, no.
- 3 Q. Okay. Never done that before, right?
- 4 A. I've never done that before.
- 5 Q. Okay. But you're going to present yourself as actually
- 6 being a crime scene expert, is that right?
- 7 A. Correct.
- 8 Q. And that's false, correct?
- 9 A. That's correct.
- 10 Q. That's a lie, right?
- 11 A. That's false.
- 12 Q. Okay. That's a lie, right?
- 13 A. That's a lie.
- 14 Q. So if anybody was told, like Ms. Austin, This is my friend
- 15 here, and he's the crime scene expert, that would be a
- 16 misrepresentation, correct?
- 17 A. That would be a misrepresentation, yeah.
- 18 Q. Okay. And you discussed that all beforehand, correct?
- 19 A. That's correct.
- 20 Q. This was all part of the plan, right?
- 21 A. Hum-hum.
- 22 Q. Right?
- 23 A. That's right.
- 24 Q. To use this misrepresentation to get inside the house,
- 25 right?



## LANFERSIEK - CROSS/DAY

1 A. That's correct.

2 Q. Okay. So you could search -- do your search -- get  
3 consent, do your search for credit card fraud, right?

4 A. Correct.

5 Q. Which you believed --

6 A. We wanted -- we wanted to see if there was anything in  
7 plain view. So....

8 Q. Well, but you knew, Detective, where these items were,  
9 right?

10 A. Contemp -- when I wrote my report contemporaneously to what  
11 happened, yes, I was aware that they were in the master  
12 bedroom.

13 Q. Okay. So on December the 17th, you knew that these items  
14 were in the master bedroom, right?

15 A. Correct.

16 Q. Right.

17 A. Sure.

18 Q. So you had to have a plan to get into the master bedroom,  
19 right?

20 A. Uhm, sure, yeah.

21 Q. Yeah, I mean that's where you wanted to go, right?

22 A. Sure, yeah.

23 Q. That's where the evidence was, correct?

24 A. Hum-hum, correct.

25 Q. So the idea of dusting for fingerprints is a way to get

1 there, right?

2 A. Sure, yeah.

3 Q. Okay. And, in fact, that's what occurred when you went to  
4 the house, right?

5 A. That's correct.

6 Q. You were told -- or you were introduced as the crime scene  
7 expert, right?

8 A. I was, yes.

9 Q. And then once you got inside the house with Detective I,  
10 the discussion was the route that the burglar took, right?

11 A. That was my discussion with Ms. Austin.

12 Q. Right.

13 You said --

14 A. I asked her where the burglar came in and what route did he  
15 take.

16 Q. Right.

17 And you asked her to show you that, right?

18 A. I did, yes.

19 Q. And she did show you that, correct?

20 A. She did.

21 Q. Okay. So first you get inside the door, right?

22 A. That's correct.

23 Q. By saying you're there to follow up on the burglaries,  
24 right?

25 A. That's correct.

1 Q. And Detective I introduces you as the crime scene expert.  
2 He's gonna dust for fingerprints, right?

3 A. Correct.

4 Q. That's what she's told, correct?

5 A. Correct.

6 Q. And you said that she was excited. Yeah, come on in,  
7 right?

8 A. *(No response)*

9 Q. Yes?

10 A. That's correct.

11 Q. She's excited. She wanted the burglary solved, right?

12 A. Correct.

13 Q. This is a real burglary that occurred, correct?

14 A. Two burglaries.

15 Q. Two burglaries that occurred in her home, right?

16 A. Correct.

17 Q. Property of hers was taken, correct?

18 A. Well, not really hers, but -- sure.

19 Q. Well, wasn't there a pair of shoes?

20 A. I think the majority of what was stolen was probably as a  
21 result of credit card fraud, but -- I don't know what was  
22 stolen, so --

23 Q. I thought I saw something in here about Louis Vuitton shoes  
24 of hers?

25 A. Which was later admitted that they were purchased with

1 stolen credit cards.

2 Q. Okay. All right. So what happened then is that after  
3 Detective I introduces you as the guy that's gonna dust for the  
4 fingerprints, you then ask her to take you on the route that  
5 the burglar took, is that right?

6 A. That's correct.

7 Q. Okay. And you knew, of course, that was gonna end up in  
8 the master bedroom, right?

9 A. Sure, correct, yeah.

10 Q. And so that's the way you're gonna get into the master  
11 bedroom, right?

12 A. Sure, yes.

13 Q. Okay. And so first she took you to the sliding glass door,  
14 is your direct testimony, correct?

15 A. That's correct.

16 Q. Okay. And just so that Judge Dimitrouleas knows, the  
17 sliding glass door is at the back of the house, correct?

18 A. That's correct, sir.

19 Q. Okay. So you get from the front door to the back of the  
20 house, is that right?

21 A. That's correct, yes.

22 Q. Okay. That -- actually, that sliding glass door exits  
23 through the back of the house, doesn't it?

24 A. Yes.

25 Q. All right. So using this ruse, you were able to get to the

1 back of the house, correct?

2 A. I am, yes.

3 Q. All right. And at the back of the house, the sliding glass  
4 door is right next to the master bedroom, correct?

5 A. That's correct.

6 Q. Okay. So now you're at the back of the house, and you are  
7 attempting to dust for fingerprints, is that right?

8 A. Yes.

9 Q. Okay. Now, you said you had some materials with you. What  
10 did you have with you?

11 A. I had -- I had a brush. I know I had a brush. I also had  
12 a bag. I believe within the inside of the bag, there were  
13 gloves, bags, and I don't remember if I had powder or not. I  
14 never took powder out at any point.

15 Q. Okay. So --

16 A. I didn't take any -- I took the gloves out. I had the  
17 gloves out and the brush out, but that was it.

18 Q. Okay. And what kind of brush is this?

19 A. I would assume an evidence brush, a fingerprint brush.

20 Q. But you don't know.

21 A. I don't re -- I mean -- no, I don't -- I don't recall if it  
22 was particular -- it was exactly for dusting for fingerprints.  
23 I don't know, so....

24 Q. Okay. So you took this brush and did you actually like use  
25 it on the sliding glass door?

1 A. I did, yes.

2 Q. Okay. And the reason that -- you're not actually trying to  
3 lift latent fingerprints, are you?

4 A. No.

5 Q. You said you didn't use any fingerprint powder, right?

6 A. Uhm-uhm.

7 Q. Right?

8 A. That's correct, yes.

9 Q. Okay. So you're faking, you're pretending to do this, is  
10 that correct?

11 A. I am, yes.

12 Q. Okay. And the reason that you're doing that is you're  
13 pretending that you're doing this to convince Ms. Austin,  
14 right?

15 A. *(No response)*

16 Q. That you're actually dusting for prints, right?

17 A. I'm doing that while I'm looking for contraband in plain  
18 view as well.

19 Q. Right.

20 A. Yes, yes, I'm doing so she thinks I'm dusting for  
21 fingerprints, yes.

22 Q. Right.

23 So you're using this ruse. As you're dusting for  
24 prints, you're looking all around, right? Seeing what you can  
25 see, right?

1 A. Sure.

2 Q. Right?

3 A. Yes.

4 Q. And that was part of the plan, correct?

5 A. That was part of the plan.

6 Q. To use the ruse to get in the house to look around and see  
7 what you could see, right?

8 A. Correct.

9 Q. So you could get evidence of credit card fraud, right?

10 A. Correct.

11 Q. Okay. And then the sliding glass door, as we said, is  
12 close to the master bedroom, right?

13 A. They're right next to each other.

14 Q. Right next to each other.

15 But that's at the back of the house, right?

16 A. Correct.

17 Q. All right. So then what you did is you asked Ms. Austin to  
18 take you -- or asked her where else the burglar went, is that  
19 right?

20 A. I did.

21 Q. Okay. And did she tell you that he went into the master  
22 bedroom?

23 A. She did.

24 Q. Okay. But you already knew that, right?

25 A. I already knew that.

1 Q. Okay. And so that's where you wanted to go, right, master  
2 bedroom?

3 A. Master bedroom, correct.

4 Q. So you got into where you wanted to go, right?

5 A. That's correct.

6 Q. Okay. And you got in there using this fraud, right?

7 A. Correct.

8 Q. This ruse.

9 A. This ruse, yes.

10 Q. We'll use the term "ruse."

11 A. Sure.

12 Q. Okay?

13 All right. So she then leads you into the master  
14 bedroom, right?

15 A. Correct.

16 Q. All the while believing that you're being truthful when you  
17 tell her that you're a crime scene expert, correct?

18 A. Correct.

19 Q. All the while thinking that the friendly detectives from  
20 the Lauderhill Police Department are there investigating her  
21 burglary, correct?

22 **MR. KOBRINSKI:** Objection, your Honor. How could he  
23 know what the defendant's thinking?

24 **THE COURT:** Overruled.

25



1 BY MR. DAY:

2 Q. Right?

3 A. Correct, yes.

4 Q. Well, you were there. That's how know what she was

5 thinking, right?

6 A. I just said correct, yes.

7 Q. You know what she was thinking, because that's what you

8 told her, right?

9 A. Correct.

10 Q. So you got into the master bedroom. She led you in there.

11 And where did you go first?

12 A. When I -- well, before I even walked into the master

13 bedroom, I saw credit cards sitting on a dresser, because the

14 door was open. So I didn't even need to go into the master

15 bedroom at that point. But when I went into the master

16 bedroom, I -- well, I first saw the credit cards sitting on the

17 dresser where the TV was. So I suppose I went there first.

18 Q. How far away were you from the credit cards when you --

19 A. When I was in the living room? Or when I was in the

20 bedroom?

21 Q. No, when you first saw them.

22 A. When I first saw the credit cards?

23 Q. Yeah.

24 A. I mean ten feet maybe.

25 Q. Okay. Because that's in the bedroom, right?

- 1 A. Correct.
- 2 Q. And you're outside the bedroom, right?
- 3 A. They're right next door to each other, like I testified  
4 earlier.
- 5 Q. I got that, but you're -- my question was if you were  
6 outside the bedroom?
- 7 A. I was outside of the bedroom when I first saw them, yes.
- 8 Q. Right.
- 9           They're about ten feet away, is that right?
- 10 A. Sure, give or take.
- 11 Q. Okay. On a dresser, is that correct?
- 12 A. That's correct.
- 13 Q. Do you have any idea how many?
- 14 A. I would guess around 20. They were all stacked up like  
15 this (*indicating*), so....
- 16 Q. Right. Okay.
- 17 A. More than a normal person would have.
- 18 Q. Well, that wasn't my question, sir. My question to you is:  
19 How many?
- 20 A. About 20, I would say, give or take.
- 21 Q. Okay. And they were stacked up, is that right?
- 22 A. Correct.
- 23 Q. Okay. And you couldn't read the writing on any of the  
24 cards, right?
- 25 A. Not on those cards, I couldn't. But I could also see empty

1 packages of other -- of something that would be store bought  
2 from -- you know, if you went to Walgreens and brought a  
3 Green Dot card. I could see the empty packaging from that as  
4 well.

5 Q. Right.

6 A. But, no, I could not read the writing on the credit card.

7 Q. It's not illegal to buy Green Dot cards, is it?

8 A. It's not illegal to buy Green Dot cards, no.

9 Q. As a matter of fact, that's why you buy them, to do it  
10 legally, right?

11 A. Well, that's why --

12 Q. You buy Green --

13 A. That's why people who aren't committing crime buy them.

14 Q. Right, right.

15 A. Yes.

16 Q. But you can legally have Green Dot cards in your home,  
17 right?

18 A. You can legally have credit cards too.

19 Q. Exactly.

20 A. Sure.

21 Q. And so you don't know if the credit cards that you see on  
22 the dresser or the Green Dot cards are counterfeit or not,  
23 right?

24 A. I had a very good understanding that they were, because I  
25 could also see the bags of merchandise around the stack of 20

1 credit cards, give or take, so....

2 Q. Okay. Did you know when you saw that merchandise whether  
3 it was properly purchased or not?

4 A. Did I know 100 percent? No.

5 Q. You didn't know, right?

6 A. I did not know.

7 Q. Okay. That bedroom is full of personal belongings, is that  
8 right?

9 A. Hundreds of thousands of dollars of personal merchandise,  
10 yes.

11 Q. Correct.

12 But there's personal merchandise in there, isn't it,  
13 sir?

14 A. Yes, there's personal merchandise.

15 Q. There's clothing that's in there, is that right?

16 A. Clothing, everything.

17 Q. There's purses that are in there, is that right?

18 A. Purses, yes.

19 Q. Okay. So you do not know what is the product of theft or  
20 fraud or not when you're looking at those items outside the  
21 bedroom, correct?

22 A. That's correct.

23 Q. Okay. So then based on this ruse, she leads you into that  
24 master bedroom, is that right?

25 A. That's correct.

## LANFERSIEK - CROSS/DAY

1 Q. And where is the first place that you went?

2 A. The first place would be the dresser where the television  
3 is with the cards on it.

4 Q. Okay. And did she tell you that things were burglarized  
5 there?

6 A. I believe she did, yes. I don't recall -- I don't recall.  
7 I believe she did, but I don't recall a hundred percent.

8 Q. Or did you -- but you went there.

9 A. I went there first, because you have to go there first.  
10 It's right next -- when you enter the room, you're standing  
11 right in front of it, so....

12 Q. Okay. Well, did you open the dresser drawer or somebody  
13 else --

14 A. She would have opened the dresser drawer. I didn't open  
15 them.

16 Q. Are you positive of that or not?

17 A. I'm positive. I did not open -- I had -- I directed her to  
18 open the drawers for me.

19 Q. Okay. So you directed her to open the drawer on the  
20 nightstand to the left of the bed, is that right? Is that the  
21 first --

22 A. There was a nightstand to the right of the bed as well, I  
23 believe.

24 Q. Right. But the first one was the one on the left, right,  
25 because that's the closest?

## LANFERSIEK - CROSS/DAY

1 A. Uhm, I don't recall which one she -- it -- I don't recall  
2 which one we opened first. I don't know. But I know we opened  
3 both of them. I don't recall which one was first.

4 Q. Okay. So you directed her to open both of those  
5 nightstands, is that right?

6 A. Yes, that's correct.

7 Q. Okay. And then you went to those nightstands and did you  
8 pull out your brush?

9 A. I did, yes.

10 Q. Okay. And did you do some brushing?

11 A. I did.

12 Q. So you're continuing the ruse at this point, correct?

13 A. I'm continuing the ruse at that point.

14 Q. You're continuing to deceive Chenequa Austin, is that  
15 correct?

16 A. That's correct.

17 Q. As to your real purpose for being there, correct?

18 A. Correct.

19 Q. Okay. And what you really are looking for is credit card  
20 fraud, right?

21 A. That's correct.

22 Q. Green Dot cards, right?

23 A. Everything. Yep.

24 Q. Stolen credit cards, right?

25 A. Stolen merchandise, everything.

## LANFERSIEK - CROSS/DAY

1 Q. You'd be looking in those drawers for credit cards that  
2 have somebody else's name on them, right?

3 A. I didn't touch anything in the drawers.

4 Q. But you looked in the drawers, right?

5 A. I looked in the drawers, yes.

6 Q. Okay. You had her open the drawer so you could look in the  
7 drawer, right?

8 A. That's correct.

9 Q. And you did the same thing with the nightstand on the right  
10 side, right?

11 A. That's correct.

12 Q. Okay. And you looked in there, and you were able to see  
13 what in those drawers?

14 A. More credit cards and receipts and credit card packaging.

15 Q. Okay. Did you see anything in any of those cards that  
16 would indicate that they were counterfeit cards in somebody  
17 else's name?

18 A. The cards in the drawer -- I believe the cards in the  
19 drawer were all blank cards. But I don't recall a hundred  
20 percent. I believe they were all blank cards, though.

21 Q. Okay. So you didn't see any cards in someone's name who  
22 was unassociated with the residents at that apartment -- or at  
23 that house, correct?

24 A. At that point, I don't recall seeing credit cards with  
25 names on them at that point.

## LANFERSIEK - CROSS/DAY

1 Q. Okay. So you don't know that there are counterfeit cards  
2 in somebody else's name in those drawers, right?

3 A. At that point, no, I don't know that there -- I don't  
4 recall knowing if there -- because I don't recall if they're in  
5 somebody else's name at that point.

6 Q. Okay.

7 A. But I'm -- I'm alerted that there's credit card fraud going  
8 on at this point.

9 Q. Right.

10 A. Due to the voluminous amount of cards in the drawers.

11 Q. Okay.

12 A. So....

13 Q. What you then do is you then ask her where else this  
14 particular burglar went, is that right?

15 A. That's correct.

16 Q. Okay. And she told you where?

17 A. Closet.

18 Q. Okay. Did she tell you which closet?

19 A. I believe there's -- oh, there's two closets, but I believe  
20 I went to the master closet -- the larger closet first.

21 Q. Okay.

22 A. So that's where I walked to.

23 Q. All right. And where is Ms. Austin when you walked there?

24 A. Either in front of me or behind me. I don't exactly  
25 recall.



1 Q. Okay. And what did you tell her with regard to the closet?

2 A. *(No response)*

3 Q. What did you say to her?

4 A. I mean --

5 Q. Did you say anything?

6 A. -- at the closet, I don't think anything. I think I asked  
7 her where he went, and she said the closet. And I looked over,  
8 and the closet door was open, and I just looked in the closet,  
9 and I saw the embossing machine sitting there.

10 Q. Are you sure of that? Or did you ask her if he went in the  
11 closet, the burglar, that is?

12 A. *(No response)*

13 Q. If you don't recall, just say you don't recall.

14 A. I don't recall. I think I did ask her if -- where else,  
15 and she said the closet. I think that's how it happened.

16 Q. Okay. So, once again, you're using the ruse, you're using  
17 this misrepresentation to get into the closet, right?

18 A. No, because I didn't need to get into the closet. I could  
19 see inside the closet from where I was already standing.

20 Q. Well, but you were directed to the closet as being an area  
21 that the burglar --

22 A. My attention was directed to the --

23 **THE COURT REPORTER:** Excuse me.

24 **THE WITNESS:** I'm sorry. Sorry, ma'am.

25

1 BY MR. DAY:

2 Q. Your intention was what, sir?

3 A. My attention was directed to the closet, but I didn't need  
4 to use her to get into the closet. I could see into the  
5 closet.

6 Q. Well, let me -- did you know that there would be anything  
7 in the --

8 A. I did not, no.

9 Q. Okay. You do have to wait until --

10 A. I'm sorry, I'm sorry. I'll do better. I'm sorry.

11 Q. So let me rephrase that.

12 So you didn't know that there was anything in the  
13 closet before you went in there that day, right?

14 A. No, I did not.

15 Q. Okay. So you used this misrepresentation to get direction  
16 from Chenequa as to this closet, right?

17 A. I mean if you -- if you're saying did she bring attention  
18 that the burglar went to the closet? Yes. But I would have  
19 seen the card embossing machine anyways.

20 Q. Well, you asked her to direct you -- you asked her -- after  
21 you looked at the nightstands -- and this is chronologically --  
22 the next thing that happens, you ask her where else that he  
23 went, right?

24 A. Correct.

25 Q. And she said the closet, right?

1 A. Yes.

2 Q. And after she said the closet, that's when you looked at  
3 the closet, right?

4 A. That's correct, yes.

5 Q. And that's when you observed the embossing machine, right?

6 A. That's correct.

7 Q. Okay. So, again, you used her direction to be able to find  
8 the evidence that you were looking for, correct?

9 **MR. KOBRINSKI:** Objection, your Honor. This has been  
10 asked and answered.

11 **THE COURT:** Sustain.

12 BY MR. DAY:

13 Q. Now, when you were at the front door of the house, you did  
14 not tell Ms. Austin that you had received information that a  
15 burglar had become an informant and giving you information  
16 about credit card fraud, right?

17 A. No, I did not.

18 Q. Okay. You didn't tell her that you had information that  
19 there was credit cards, Green Dot cards, prepaid debit cards,  
20 and high-end merchandise located in the master bedroom,  
21 correct?

22 A. That's correct.

23 Q. Okay. What you told -- or what the agent -- what you or  
24 Detective I told her is what you've already testified to, is  
25 that right?

1 A. That's correct, yes.

2 Q. And, of course, you, yourself, you're not investigating a  
3 burglary, correct?

4 A. No.

5 Q. Okay. You're investigating credit card fraud, right?

6 A. Correct.

7 Q. That's why you're heading towards the master bedroom,  
8 correct?

9 A. I was heading toward the master bedroom because I was told  
10 the burglar came in from the sliding glass doors. Had she told  
11 me the burglar came in from the garage, we would have started  
12 at the garage.

13 Q. Right.

14 But, again, you're conducting an investigation into  
15 credit card fraud, right?

16 A. That's correct.

17 Q. And you're using this ruse to be able to conduct that  
18 credit card fraud investigation, correct?

19 A. That's correct.

20 Q. Okay. After you made these observations, as we've talked  
21 about, you then went out, and I think you said in your direct  
22 testimony, and you got together with Detective I, is that  
23 correct?

24 A. I went and I informed him of what I saw.

25 Q. Right.

1                   And you told him that you had seen credit card --

2   A.   Contraband.

3   Q.   You told him what you had seen in the nightstands, right?

4   A.   Yes.

5   Q.   You told him what you had seen on the dresser, is that  
6   correct?

7   A.   Yes.

8   Q.   And you told him what you had seen in the closet, is that  
9   right?

10   A.   Correct.

11   Q.   Okay.  So now he has that information, right?

12   A.   Yes.

13   Q.   Okay.  And was that part of the plan, that he was going to  
14   remain in the living room area talking about the burglary while  
15   you do your search?

16   A.   No, that wasn't part of the plan.

17   Q.   Okay.  How did that particular -- the -- how did that work,  
18   that you were the guy that was actually observing that while  
19   he's in the living room?

20   A.   I -- it ended up being the circumstances involved in the  
21   investigation, because we didn't know how many people were  
22   gonna be inside the house at that point.  And when Spivey was  
23   inside the house at all -- or, I'm sorry -- when we discovered  
24   Spivey was inside the house, Spivey was the one who had the  
25   burglary information to give to Alex, so that's how Alex ended

1 up going with Spivey. Had Spivey not been in the house, I  
2 don't know what would have happened, who would have done what.  
3 I imagine he would have been with me the entire time.

4 Q. Okay. And Detective -- so, in other words, he would -- if  
5 Spivey hadn't been there, then you and Detective I would have  
6 done this together, correct?

7 A. I would imagine so, yes.

8 Q. Okay. Because that's the reason you're there, this credit  
9 card fraud investigation, right?

10 A. That's the reason I was there, yes.

11 Q. Okay. And he would have joined you in it, correct?

12 A. I would imagine so, if I had to guess, yes.

13 Q. So the only reason that he didn't join you is that Spivey  
14 was there, which you didn't know, right?

15 A. The only reason he didn't join me was because he was  
16 following up on the burglary with Spivey.

17 Q. Right.

18 So what happens then is -- I think your direct  
19 testimony was that it was Detective I that then spoke to  
20 Spivey -- excuse me -- it was Detective I that then spoke to  
21 Ms. Austin about what you had seen, is that right?

22 A. That's correct, yes.

23 Q. Okay. And he told her, Look, we've got some suspicious  
24 contraband that we found in your master bedroom, is that right?

25 A. That's correct, yes.

1 Q. Okay. Did he tell her that you saw an embossing machine  
2 that was in there?

3 A. I believe he did, yes.

4 Q. Okay. And when he told her that, she got upset, right?

5 A. I don't recall her getting upset.

6 Q. Well, she said to you or Detective I, I thought you were  
7 here on a burglary investigation, right?

8 A. Yes.

9 Q. Okay.

10 A. She did.

11 Q. And then you or Detective I said, Well, we've got  
12 contraband now that you need to answer questions about, right?

13 A. I believe Alex phrased the question as he discovered some  
14 suspicious items while he was investigating the burglary. I  
15 believe that's how the question was posed.

16 Q. Right.

17 And you're there for that, right?

18 A. I do not believe I was there at that point. I believe I  
19 was -- I think I was actually there for that. Yes.

20 Q. Okay. All right. And then what happened is he began  
21 asking her questions. Where did this stuff come from, right?

22 A. Correct, yes.

23 Q. Okay. As you testified on direct examination, there were  
24 answers about, Well, it's in the garage, or something like  
25 that, right?

## LANFERSIEK - CROSS/DAY

1 A. I testified that Spivey told me that the landlord owner  
2 left it in the garage.

3 Q. Okay. Is that when Detective I tells --

4 A. No --

5 Q. Hold on. Let me ask the question.

6 A. I'm sorry.

7 Q. Is that when Detective I tells Ms. Austin that we've got  
8 this suspicious contraband and this machine perhaps in the  
9 bedroom, you need to answer questions?

10 A. No. He told me that at a subsequent point from that.

11 Q. Okay. What was told to Ms. Austin about -- by who, as to  
12 what had been found in the bedroom?

13 A. Alex.

14 Q. And he told Ms. Austin what?

15 A. That there were suspicious items found in the bedroom.

16 Q. Okay. And that she needed to -- he wanted to ask her about  
17 it, right?

18 A. Correct, yes.

19 Q. He had suspicions, correct?

20 A. Correct, yes.

21 Q. And she needed to give answers to those suspicions, is that  
22 right?

23 A. I don't remember him saying she needed to give answers.

24 Q. Okay. And when she said, I thought you were here on a  
25 burglary investigation, what did you or Detective I say to



1 that?

2 A. I don't recall exactly. I didn't say anything at that  
3 point. I don't really recall what Alex exactly said at that  
4 point. I'm not certain.

5 Q. You don't recall what was said by either of the two of  
6 you --

7 A. I think at that -- it was at that point, I believe, that  
8 Alex separated the two of them and took Ms. Austin outside.

9 Q. Okay.

10 A. To discuss with her what was inside the house.

11 Q. Right. Because she believes you're there for a burglary  
12 investigation, right?

13 A. Correct, yes.

14 Q. Okay. And now you've told her this is something different,  
15 right?

16 A. That's correct.

17 Q. And she was upset, correct?

18 A. I don't recall her getting upset. But, again, like I said,  
19 she may have been outside at that point. So I don't recall her  
20 getting upset when I was around.

21 Q. I'm talking in the house.

22 A. Inside the house, she was never upset with me.

23 Q. Okay. Did you ever hear her and did you discuss this with  
24 her in her post-*Miranda* statement that you said, F-U, I don't  
25 want to talk to you?

1 A. She never said F-U to me.

2 Q. Okay. Do you remember that being said when you and  
3 Detective I were speaking to her post-Miranda?

4 A. I don't recall that, no.

5 Q. Okay.

6 **MR. DAY:** If we could play that.

7 *(Discussion had off the record between counsel and*  
8 *assistant)*

9 *(Audio playing)*

10 **MR. DAY:** Nine hundred forty-eight, DVD.

11 *(Audio playing)*

12 **MR. DAY:** Can you hear that?

13 **THE WITNESS:** I can.

14 *(Audio playing)*

15 **MR. DAY:** Right there, just let it go.

16 *(Audio playing)*

17 BY MR. DAY:

18 Q. Okay. Did you hear that?

19 A. I did, yes.

20 Q. Okay. So what happened is that at the house, Ms. Austin  
21 said, F-U, I don't want to talk to you, is that right?

22 A. I don't recall her saying that to me.

23 Q. But you recall her saying it there.

24 A. Yeah, I just saw --

25 Q. Well, actually, it wasn't her saying it; it was Detective I

1 that said it, right?

2 A. It was very possible that I was not present for that when  
3 she -- if she said that.

4 Q. Okay. But we know it was said, right?

5 **MR. KOBRINSKI:** Objection, your Honor. It says "kind  
6 of like you said it." It clearly wasn't said, actually, based  
7 on the circumstance of the video.

8 **THE COURT:** Overruled.

9 BY MR. DAY:

10 Q. So what you heard was Detective I say, Kind of like what  
11 you said at the house, F-U, I don't want to talk to you, right?

12 A. Correct, yes.

13 Q. You heard that, correct?

14 A. Yes.

15 Q. Okay. And then it continues on. She says, That's because  
16 it was in front of Spivey, right? Did you hear that?

17 A. I -- do you want to play it again? I don't -- was it  
18 played?

19 **MR. DAY:** Yeah.

20 *(Audio playing)*

21 BY MR. DAY:

22 Q. Okay. Did you hear that?

23 A. Yes.

24 Q. Because she said, That's because it was in front of him,  
25 right?

1 A. Correct.

2 Q. What she's referring to is Spivey, right?

3 A. Correct.

4 Q. Okay. So she was upset, according to Detective I, when  
5 Spivey in -- was in her presence, correct?

6 A. I -- that's what she said on the tape, yes.

7 Q. Right.

8 And that's then before she's removed from the house,  
9 correct?

10 A. Again, I'm testifying -- I don't recall her ever getting  
11 upset with me. I don't recall her telling me to "F" off. I  
12 don't recall that.

13 Q. Well, you heard your partner say that, right?

14 A. I heard what was just played in that video right there. I  
15 don't ever recall her saying that to me inside the house.

16 Q. Right.

17 A. I was never even really talking to her outside of path the  
18 burglar took, because the majority of that I was still a crime  
19 scene tech. So I wouldn't have been talking to her about that  
20 at that point.

21 Q. You didn't ask Chenequa Austin for consent to search once  
22 you saw the contraband in the bedroom, right?

23 A. Repeat that, I'm sorry?

24 Q. You never asked Chenequa Austin for consent to search  
25 anywhere in that house after you located what you did in the

1 master bedroom, right?

2 A. No.

3 Q. Okay. You made a decision not to do that, right?

4 A. I never asked her, no. I mean I -- no, I never asked her.

5 Q. Right. You never asked her.

6 Detective I never asked her, right?

7 A. No.

8 Q. She never gave consent -- after you saw what you saw in the  
9 bedroom, that you got through your ruse, you never asked her,  
10 nor Detective I ask her, for consent to search, right?

11 A. No. We asked the other occupant of the house.

12 Q. Right. That I understand.

13 You didn't ask her, right? Is that right?

14 A. Correct.

15 Q. And she's on the lease, right?

16 A. Correct, yes.

17 Q. Do you have any evidence that Spivey's on the lease?

18 A. The only evidence that I have that he lived there was what  
19 both of them told me and his belongings inside the house as  
20 well. Or what appeared to be men's belongings.

21 Q. Right.

22 You didn't tell her that she had a right to refuse you  
23 searching through the house, correct?

24 A. I never told her that, no.

25 Q. Detective I never told her that, right?

1 A. I -- no.

2 Q. Okay. Never told her that she had a right to demand a  
3 search warrant, is that correct?

4 A. I never told her that, no.

5 Q. You didn't hear Detective I demand -- or tell her that she  
6 could demand to have a search warrant, is that correct?

7 A. That's correct.

8 Q. Because if she says no, you're done, right?

9 A. No.

10 Q. Well, if she says no? She's living there?

11 A. If she said no after we discovered all the contraband, we  
12 would have -- had this happened, we would have held the house  
13 while one of us went and got a search warrant, because there's  
14 contraband all over the house. So....

15 Q. So -- and the reason that you could have done that is  
16 because you got in through this ruse, right?

17 A. Correct.

18 Q. Right.

19 So you're able to use the fact that you got a ruse to  
20 be able to hold Ms. Austin there and, therefore, if necessary,  
21 to go get a warrant, correct?

22 A. Theoretically -- yes, theoretically, that's what we would  
23 have done.

24 Q. Right.

25 And that was all part of the plan, as you guys talked

1 this through, the eight to ten officers there at the HIDTA, is  
2 that right?

3 A. That was the plan if they did not consent, but they did, so  
4 we did not do that. Or -- but Spivey did -- I'm sorry.

5 Q. So somebody -- and it was -- and you knew before you went  
6 there that there was a warrant, right?

7 A. I don't think I knew that she had a warrant until we were  
8 at the house. I can't recall if I knew she had a warrant prior  
9 to going there or not.

10 Q. Okay. Did Detective I know that she had a warrant?

11 A. I don't -- I think he thought there may have been a  
12 warrant, but he had to confirm it. I don't -- if he knew that,  
13 I don't know.

14 Q. But do you remember at this planning meeting, where you  
15 have eight to ten officers and you plan for a half hour, if  
16 anyone made the determination or asked for there to --

17 A. Well, we didn't know -- oh, I'm sorry.

18 Q. -- ask for there to be a determination as to are there any  
19 warrants for her?

20 A. I don't recall. But I also recall not knowing who was  
21 actually going to be in the house. So --

22 Q. So how did you find -- I'm sorry -- how did you find out  
23 there was a warrant?

24 **MR. KOBRINSKI:** Objection, your Honor. I'd ask that  
25 he be permitted to answer his questions.

1           **THE COURT:** If you weren't done with your answer, you  
2 can finish your answer.

3 A. I'm sorry, sir. I found out through the Lauderhill Police  
4 Department that she had a warrant.

5 Q. Okay. When?

6 A. Whether it was before we went into the house or during the  
7 search, I'm not -- I'm not a hundred percent certain. That day  
8 I found out she had a warrant, though.

9 Q. Okay. So there's a possibility that you knew there was a  
10 warrant before you went in the house, right?

11 A. A possibility, yes.

12 Q. And if you knew that, then you certainly didn't want to  
13 execute that warrant when you saw her at the front door, right?

14 A. Again, yes. But I don't recall if I knew that there was a  
15 warrant. I don't think I did, until I was already in the  
16 house.

17 Q. Well --

18 A. So....

19 Q. -- you said that you didn't know whether you were aware of  
20 the warrant before you went into the house or later. That's  
21 what you --

22 A. Correct. I don't -- I can't answer whether I knew before  
23 or later. I don't know.

24 Q. Okay. So it could have been before, right?

25 A. It could have been, yes.



1 Q. All right. And if it was before, you certainly, as a --  
2 the law enforcement officer, member of the South Florida  
3 Organized Fraud Task Force, you're not gonna execute that  
4 warrant upon knocking on the door, is that right?

5 A. I wouldn't have executed a state warrant, no.

6 Q. Right.

7 So I'm asking you, right?

8 A. No.

9 Q. Or Detective Iwaskewycz -- or Detective I wouldn't have  
10 executed the warrant, right?

11 A. I don't know.

12 Q. Well, if you arrested her, then you're not gonna be able to  
13 carry out the ruse, right?

14 A. Yeah. Again, I don't know -- I don't -- when we answered  
15 the door (*sic*), though, we didn't know who she was and whether  
16 she was a person with a warrant. We had no clue who she was  
17 when she answered the door. She had to later identify herself.

18 And when she later identified herself, I think that's  
19 when it was discovered that she was a person with a warrant.  
20 Because we didn't know when we arrived to the house who it was  
21 gonna be.

22 Q. Right. But when you --

23 A. So it -- actually, now, I don't think I knew she had a  
24 warrant, because we didn't know who was gonna be there when we  
25 arrived.

1 Q. When you knocked on the door, and she opened the door, she  
2 identified herself as Chenequa Austin, right?

3 A. She identified herself as Chenequa, resident of the house,  
4 yes.

5 Q. Okay. All right. So at that point, you know, right?

6 A. At that point, we know who she is, yes.

7 Q. So if anybody knew that there was a warrant, they're not  
8 going to execute the warrant and have her arrested right then,  
9 right?

10 **MR. KOBRINSKI:** Objection, your Honor. Argumentative.

11 **THE COURT:** Sustain.

12 A. I don't know.

13 **MR. DAY:** I'm sorry, I didn't hear the Court's ruling.

14 **THE COURT:** Sustained.

15 BY MR. DAY:

16 Q. Who made the determination to take Chenequa outside and  
17 arrest her for the -- with -- on the warrant?

18 A. That would have been Alex or Alex's partner, who confirmed  
19 the warrant.

20 Q. Okay. And that was done when you were in the house?

21 A. I was in the house, yes.

22 Q. Okay. So are you saying that Detective I is confirming  
23 that there's a warrant when you're there in the house?

24 A. I don't believe it was Alex who was confirming the warrant.  
25 I believe it was his partner.

## LANFERSIEK - CROSS/DAY

1 Q. So how did Alex find out about it?

2 A. I believe his partner probably told him, if I had to guess.

3 Q. So there's a third guy there in the house.

4 A. No, he's not inside the house. He was outside at this  
5 point.

6 Q. So how is he communicating that to Detective I?

7 A. I believe Alex was walking in and out of the house, so....

8 Q. Okay. So Detective I is walking outside to talk to this  
9 third person -- and who is that, by the way?

10 A. I believe his name is Detective Hardy.

11 Q. Okay. And Detective Hardy, then, is confirming that  
12 there's a warrant? Is that how it worked?

13 A. I believe so, yes.

14 Q. Okay. Now, you were present when the statement was given  
15 by Ms. Austin, is that right?

16 A. Which statement are you referring to?

17 Q. The post-Miranda statement.

18 A. I was there for -- for parts of it and not for parts of it.

19 Q. Okay. Do you recall the beginning? Were you there in  
20 the --

21 A. I do not believe I was there during the beginning. Much of  
22 the very beginning I was -- I would watch from a video monitor,  
23 but we also had Spivey at the police station, and I was talking  
24 to him.

25 Q. Okay. Do you recall Detective I informing Chenequa of what

1 had happened at the house?

2 A. I don't -- I don't recall. I mean....

3 Q. In other words, that, Look, we did a search of the house,  
4 and we've got a lot of property.

5 A. I don't believe I was present at the interview room at that  
6 time.

7 Q. Okay. Because that was in the beginning, right?

8 A. That was in the beginning.

9 Q. She would be told exactly what happened at the house,  
10 right?

11 A. I would imagine.

12 Q. Okay. Have you reviewed a DVD of that interview?

13 A. I've reviewed portions of it, yes.

14 Q. Okay. So you hear Detective I tell Chenequa that they had  
15 a team of agents at the house, right?

16 A. Yes.

17 Q. And that they were there for four hours, is that right?

18 A. I believe so.

19 Q. And that we don't bring a team into a house unless there's  
20 a problem. Right?

21 A. I believe so, yes.

22 Q. Yeah. And he told her that we got a fraud embossing  
23 machine, right?

24 A. I believe so, yes.

25 Q. And we found hundreds of cards, right?

## LANFERSIEK - CROSS/DAY

1 A. I believe so.

2 Q. And a reader/writer in the oven, right?

3 A. I believe so.

4 Q. And that that goes with the computer and the embossing  
5 machine, right?

6 A. I believe so.

7 Q. And she was told that there were stolen credit cards,  
8 right?

9 A. I believe so, yes.

10 Q. And she was told there was a bag of Mollies, correct?

11 A. I believe so, yes.

12 Q. And that she was told, Your name is on a ton of stuff, is  
13 that right?

14 A. I believe so, yes.

15 Q. Okay. So she's being told and confronted about all of the  
16 evidence that you now have against her, right?

17 A. Yes.

18 Q. Okay. And that's at the beginning of the interview, right?

19 A. Sure, yes.

20 Q. Okay. And you and Detective I want her to then explain her  
21 participation with all that evidence, right?

22 A. I wasn't in the room at that point, so it would have been  
23 Alex.

24 Q. Okay. You -- are you familiar with a knock-and-talk?

25 A. Yes.

## LANFERSIEK - CROSS/DAY

- 1 Q. Okay. That's a common police tactic, correct?
- 2 A. Correct.
- 3 Q. That's used by law enforcement, right?
- 4 A. Correct.
- 5 Q. That's where you go, and you knock on somebody's door, and
- 6 you talk to them, right?
- 7 A. Correct.
- 8 Q. Uhm, and many times -- have you done that before?
- 9 A. I have.
- 10 Q. Okay. And what you can do is you can go, and you can knock
- 11 on a person's door and tell them you're conducting an
- 12 investigation, right?
- 13 A. Correct, sure.
- 14 Q. I mean you can tell them, Look, we're --
- 15 A. You can tell them anything, yeah, sure.
- 16 Q. Right. But you could tell them the truth, right?
- 17 A. Sure, yeah.
- 18 Q. You can say, Look, we're conducting a credit card
- 19 investigation, right?
- 20 A. I suppose you could, sure.
- 21 Q. And we have reason to believe that you're involved in
- 22 credit card fraud, right?
- 23 A. Correct.
- 24 Q. And we'd like to talk to you about that, right?
- 25 A. Correct.

1 Q. Okay. You've done that before, right?

2 A. With credit cards, no.

3 Q. Okay. What have you done it with?

4 A. I've done it with tax fraud and identity theft.

5 Q. Okay. You've done it with regard to fraud, right?

6 A. Correct.

7 Q. Okay. And there, you're gonna see if you can get the  
8 individual to agree with -- to allow you to investigate,  
9 correct?

10 A. In your scenario?

11 Q. No, no. I'm talking about in the knock-and-talk.

12 A. Sure, yeah.

13 Q. Right?

14 And you've done that before, you said, with tax fraud,  
15 right?

16 A. I've done knock-and-talks before, yes.

17 Q. Okay. And if people agree, yes, you know, I'm -- you know,  
18 they -- what you would consider to be do the right thing and  
19 just admit to what they did wrong, then you follow up on that,  
20 right?

21 **MR. KOBRINSKI:** Objection, your Honor. Relevance.

22 **THE COURT:** Overruled.

23 BY MR. DAY:

24 Q. Right?

25 A. Could you repeat the question, sir?

1 Q. Yeah.

2 With the knock-and-talk, you certainly do that in the  
3 hope that the person will become complicit and repentant and  
4 tell you what you want to hear regarding your belief as to  
5 their criminal activity, right?

6 **MR. KOBRINSKI:** Objection, your Honor. Argumentative.

7 **THE COURT:** Overruled.

8 A. Sure, yes.

9 Q. Okay. And you did not do a knock-and-talk in this  
10 scenario, right?

11 A. I consider it a knock-and-talk.

12 Q. Well, yours was -- a knock-and-talk, what I'm talking about  
13 is when you tell them the truth as to your investigation.

14 A. I -- I mean -- all right. So you're saying every time you  
15 do a knock-and-talk, you have to tell the truth? Is that what  
16 you're -- law enforcement can't use ruses? Is that what you're  
17 implying in your question?

18 Q. What I'm asking you is that if you've done a knock-and-talk  
19 before where you actually tell the people that you believe  
20 they're involved in a crime, and you'd like to talk to them  
21 about it?

22 A. I've done knock-and-talks like that before, yes.

23 Q. Right.

24 A. But I've done knock-and-talks where I have not told them  
25 that I believe that they're involved in a crime.



1 Q. In this case, you did not do a knock-and-talk where you  
2 tell Ms. Austin about the true purpose of you being there,  
3 correct?

4 A. I did not tell Ms. Austin that I thought she was involved  
5 in a crime, because I didn't know if Ms. Austin was involved in  
6 a crime. I just thought there might be a crime going on inside  
7 that house. I had no idea if Ms. Austin was involved in a  
8 crime.

9 Q. But you, and I guess your other officers, made a decision  
10 to come up with the methodology of employing the ruse, correct?

11 A. Yes, correct.

12 Q. Did you tell or Detective I tell Mr. Spivey that -- when  
13 you offered him the consent form, that you can either sign the  
14 consent form or we can get a search warrant?

15 A. I don't know -- I don't recall if I said that exactly or  
16 not. I don't --

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

18 A. I don't recall one way or the other, no.

19 Q. Okay. And on December the 17th of 2004, at Ms. Austin's  
20 house, you never applied for a search warrant, is that correct?

21 A. No.

22 **MR. DAY:** I don't have anything further, your Honor.

23 **THE COURT:** Mr. Smith.

24 **MR. SMITH:** Just one moment, your Honor.

25 *(Discussion had off the record between counsel)*

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**CROSS-EXAMINATION**

BY MR. SMITH:

Q. Good afternoon, Agent.

A. Sir.

Q. I just want to ask you a couple questions. I'm certainly not gonna repeat anything that Mr. Day did, but I just want to clarify a couple matters, if I might.

First of all, do you recall when you arrived at the residence that you eventually entered and searched? What time? I know it was December 17th, but I didn't hear really a time.

A. I don't remember the exact time, sir. I would estimate it was probably around three or four o'clock, because we were in the home for three or four hours, and when we left the home, it was dark. So I would -- I would estimate three or four p.m, but that's just sort of an educated guess.

Q. Is there anything that you know of that might refresh your recollection as to what time you arrived at the house?

A. I -- no, I don't think it would be in my report.

Q. I've reviewed your report, and I didn't note any times in there.

A. Okay.

Q. So I'm asking you if there's anything else --

A. No, there's nothing --

Q. Let me finish my question.

So I'm just asking if there's anything else that you

1 might be aware of that might refresh your recollection as to  
2 what time you arrived at the house?

3 A. No, sir.

4 Q. Okay. Now, you testified that upon entering the house, you  
5 had some conversations. You engaged -- you and/or Detective I  
6 engaged Ms. Austin in some conversations. And at some point,  
7 you indicated that Mr. Spivey was described as her boyfriend.  
8 How is it that Mr. Spivey came to your attention at that house?

9 A. He was present in the living room when I walked in.

10 Q. So he was already -- according to you, he was already in  
11 the living room when you entered the house?

12 A. He was either walking out of a room or already in the  
13 living room. I don't recall which one right now.

14 Q. Okay. And who described Mr. Spivey as Ms. Austin's  
15 boyfriend?

16 A. They both did.

17 Q. Well, what did Mr. Spivey say?

18 A. I asked him if they were, I mean, together, and he said  
19 yeah.

20 Q. Okay.

21 A. So....

22 Q. And is that the time where you indicated to Ms. Austin that  
23 you were there to investigate this burglary that occurred  
24 sometime previous?

25 A. When I asked Mr. Spivey?

1 Q. No, no, no. Is that the time when you advised Ms. Austin  
2 that you and the detective were there --

3 A. I don't understand the question, sir.

4 Q. When you were inside the house, did you make any indication  
5 that you were there to search and to do a follow-up  
6 investigation of a burglary?

7 A. Yes.

8 Q. Okay. So it was done outside with Ms. Austin, and it was  
9 also repeated inside for Mr. Spivey that that was the purpose  
10 of you being there, correct?

11 A. That's correct, yes.

12 Q. And did you ask Mr. Spivey if he had any information that  
13 might assist in that burglary investigation?

14 A. No, I did not.

15 Q. Well, how did you come to learn that there was perhaps some  
16 surveillance or something that might be located on a computer  
17 that might assist you in investigating the burglary?

18 A. Ms. Austin told Detective Iwaskeycz that.

19 Q. I'm sorry?

20 A. Ms. Austin told Alex that.

21 Q. Okay. And she told him that she felt there was some kind  
22 of surveillance that they might have that may have captured  
23 this burglar.

24 A. That's correct, yes.

25 Q. Okay. And at that time, was it you or Detective I that

1 asked Mr. Spivey if he would sit down and assist them in trying  
2 to locate and retrieve the information off the computer?

3 A. That would have been Alex.

4 Q. Okay. And it was at that time that you and Ms. Austin were  
5 in the back bedroom?

6 A. No, I don't believe so. I believe it was sort of a  
7 contemporaneous event, where I asked Ms. Austin if she would  
8 show me where the burglar came in and Alex sat down with Eric  
9 Spivey to retrieve the video footage.

10 Q. Okay. Now, after you made your -- I'm jumping ahead --  
11 after you made your observations that you testified about in  
12 the master bedroom, I think you testified there came a time  
13 where you told the detective what you had seen in the master  
14 bedroom, correct?

15 A. Correct.

16 Q. And I think you said -- was it you or the detective that  
17 texted some other agents to get to the house?

18 A. That was me.

19 Q. Okay. Where was that conversation -- where did that occur  
20 with the detective regarding your observations in the master  
21 bedroom?

22 A. I believe it was right outside the bedroom or inside the  
23 bedroom.

24 Q. Well, where was Ms. Austin at that time?

25 A. She was somewhere around in the house. I'm not sure if she

1 was in the bedroom or if she was -- excuse me -- the living  
2 room.

3 Q. So Mr. Spivey's seated in another room, the living room,  
4 with the computer, trying to retrieve some videotape of a  
5 burglary with the detective, correct?

6 A. Correct.

7 Q. And you and Ms. Austin are in the bedroom, and you then  
8 decide to relay to the detective your observations. Did you  
9 call the detective over to you and ask Ms. Austin to step aside  
10 or -- I'm just trying to figure out how that occurred.

11 A. I believe I walked out of the bedroom and called Alex over  
12 to me so I could talk with him.

13 Q. Okay. But certainly at that point, you didn't advise  
14 Mr. Spivey or Ms. Austin as your observations or your concern,  
15 correct?

16 A. No, sir.

17 Q. Okay. Now, you indicated that you and the detective  
18 decided to separate Ms. Austin and Mr. Spivey, and I think your  
19 testimony was that the detective went outside with Ms. Austin,  
20 correct?

21 A. Correct.

22 Q. All right. And I think you said you remained inside with  
23 Mr. Spivey, correct?

24 A. Correct.

25 Q. And you engaged in a conversation with Mr. Spivey while the

## LANFERSIEK - CROSS/SMITH

1 detective was outside with Ms. Austin, correct?

2 A. That's correct.

3 Q. What was your conversation with Mr. Spivey at that time?

4 A. About the things that were discovered inside the house.

5 Q. About what?

6 A. The items that were discovered with inside the house (*sic*).

7 Q. Well, what did you say to Mr. Spivey?

8 A. I brought to his attention what was found, asked if he had  
9 any involvement in it. I asked where some of the other items  
10 might be within the house, if he had any information, you know,  
11 if he wanted to cooperate with us, just questions in an  
12 investigative nature.

13 Q. And what was Mr. Spivey's response to your questions?

14 A. He told me -- he told me he knew nothing about what was  
15 going on, that he had no involvement in it, and that, uhm, the  
16 landlord had left the embossing machine in the garage when they  
17 had moved in. It was already there when they had moved in.

18 Q. Did he use the term "embossing machine" or was that  
19 something you used?

20 A. He didn't use "embossing machine." I asked him about the  
21 machine.

22 Q. Okay. And so he basically denied knowledge of the stuff  
23 and said whatever was there was there when Ms. Austin had been  
24 there originally?

25 A. He said the landlord left it there.

## LANFERSIEK - CROSS/SMITH

1 Q. Okay. By the way, did he give you any indication as to  
2 whether or not he was staying at that house?

3 A. Yeah, he said he stays there.

4 Q. And did he tell you how long he had been staying there?

5 A. I don't recall exactly, but he did tell me he stays there.

6 Q. Okay. Now, you testified that -- and I'm not sure about  
7 this, so I'll ask you -- something about 30 minutes had elapsed  
8 from the time that, I believe you said, you had arrived and  
9 Ms. Austin was taken outside. Is that my understanding of your  
10 testimony?

11 A. It sounds about correct, yes.

12 Q. Okay. So it took you about 30 minutes to do your search  
13 through the house to make your observations, is that fair to  
14 say?

15 A. About, yeah.

16 Q. Okay. And when Ms. Austin was taken outside, could you  
17 overhear the conversation that she had with the detective?

18 A. I don't believe so. I don't know. I think they had the  
19 door closed.

20 Q. Okay. How long a period of time was she outside with the  
21 detective before they executed the warrant and took her away?

22 A. I would say it took them maybe 30 minutes to confirm the  
23 warrant. I'm not exactly sure.

24 Q. So your testimony, am I correct in characterizing, you  
25 arrived at the house, you spend about 30 minutes searching,



1 Ms. Austin is taken outside, she remains there for 30 minutes  
2 with the detective before she's taken away? Is that --

3 A. That's about correct, yes.

4 Q. All right. Now --

5 *(Discussion had off the record between counsel)*

6 BY MR. SMITH:

7 Q. All right. Did you present the consent or the waiver of  
8 search warrant to Mr. Spivey or did Detective I do that?

9 A. Detective I did that.

10 Q. All right. And I'm referring to what the government has  
11 referred to as Exhibit 54-1, which was attached to a pleading.  
12 It's a waiver of search warrant. And there's another document,  
13 but let's talk about the waiver.

14 So who presented that waiver form to Mr. Spivey?

15 A. Alex did.

16 Q. Alex did. Okay.

17 And were you present when he did that?

18 A. I was.

19 Q. And was that done before or after Ms. Austin was removed  
20 from the premises?

21 A. That was done after.

22 Q. Okay. That would have been somewhere near about an hour  
23 from the time you first arrived on the premises until the time  
24 this was presented to Mr. Spivey?

25 A. Roughly, yes. But I mean I wasn't keeping track of it,

1 but, yes, roughly an hour.

2 Q. Okay. How long after Ms. Austin was led away did  
3 Detective I and you then approach Mr. Spivey with this proposed  
4 waiver of the search warrant?

5 A. I mean it was contemporaneous. I mean it was -- happened  
6 right after.

7 Q. Okay.

8 **MR. SMITH:** May I approach, your Honor?

9 **THE COURT:** Sure.

10 BY MR. SMITH:

11 Q. The Exhibit 54-1 -- let me just ask you -- this is the  
12 waiver of search warrant. This is the document we're  
13 discussing, correct?

14 A. Yes, sir.

15 Q. All right. And whose signature is this at the bottom as  
16 witnessed by?

17 A. That's mine.

18 Q. That's your signature?

19 A. Yes, sir.

20 Q. Okay. And whose signature is this where it says "signed"?

21 A. That would be Spivey's.

22 Q. All right. And this indicates, if you would, that he was  
23 made aware of his right of not having a search made of the  
24 premises without a warrant, correct?

25 A. Correct.

## LANFERSIEK - CROSS/SMITH

1 Q. And his right to refuse consent, correct?

2 A. Correct.

3 Q. Now, there's a name here, Detective A something. Is this  
4 who we're referring to as Detective I?

5 A. Yes, sir.

6 Q. Okay. And it says "and also Secret Service" is  
7 yourself (*sic*), correct?

8 A. Yes, sir.

9 Q. And it's got the location and the date?

10 A. Yes, sir.

11 Q. And right here, is there an indication of the time of this  
12 document being executed or signed?

13 A. Yes, sir. It looks approximately to say 3:45? 3:41?

14 Q. Is that what it says?

15 A. 15:41, so --

16 Q. And that's military time, so that would be what?

17 A. 3:45.

18 Q. Okay. And that would be the time that this was filled out  
19 and signed, according to you?

20 A. Yes.

21 Q. Okay. And that would have been somewhere around about an  
22 hour after you arrived at the scene, correct?

23 A. Correct.

24 Q. Now, by the way, nobody advised Mr. Spivey that he was  
25 under arrest at that time, did they?

1 A. He wasn't under arrest.

2 Q. Did they told (*sic*) him he might be arrested for what was  
3 found in the house?

4 A. No.

5 Q. Okay. Now, was this for a search -- or was it made clear  
6 to Mr. Spivey whether this was for a search of the house that  
7 was done by the ruse for the burglary evidence or something  
8 else --

9 A. At this point -- at this point, the ruse was over. It was  
10 for a search for the credit cards.

11 Q. All right. Now, there's another document that was attached  
12 to 54.

13 **MR. SMITH:** May I approach, your Honor?

14 **THE COURT:** All right.

15 BY MR. SMITH:

16 Q. And this is consent search, and it appears to be for cell  
17 telephones, computers, peripherals, et cetera, correct?

18 A. Yes.

19 Q. Well, let me ask you. That first document that I showed  
20 you, the waiver for the search, was this document read in its  
21 entirety to Mr. Spivey?

22 A. I believe it was, yes.

23 Q. Who would have read it to him?

24 A. He would have read it to himself, and I don't recall if  
25 Alex read it out loud or not.

## LANFERSIEK - CROSS/SMITH

1 Q. Well, you didn't read it out loud.

2 A. I did not read it out loud, no.

3 Q. And you don't recall whether Alex read it or not, correct?

4 A. I don't recall.

5 Q. And you don't know whether Mr. Spivey ever read it or not,  
6 correct?

7 A. He looked at it like he was reading it.

8 Q. He looked at it, but you don't know whether he was reading  
9 it. You don't even know if he can read, correct?

10 A. I don't know if he can read.

11 Q. Okay. Now, this other form, the consent to search form,  
12 again this is filled out with a bunch of stuff here. There's a  
13 signature here, and whose signature is that, according to you?

14 A. It looks like Spivey's.

15 Q. But it's certainly not the same signature that's affixed to  
16 the waiver of search warrant, is it?

17 A. They look fairly different, but I was not present for this,  
18 so....

19 Q. Okay. So this consent to search for the paraphernalia, you  
20 weren't present when this was done?

21 A. No.

22 Q. This is not your signature as a witness?

23 A. No. That's Special Agent Tyler Jett.

24 Q. Okay. This document does have a date and time noted on it,  
25 and what time would that be?

## LANFERSIEK - CROSS/SMITH

1 A. It says 4:26 p.m., December 17, 2014.

2 Q. So that would be roughly within an hour of the first waiver  
3 of the search warrant, correct?

4 A. Yes.

5 Q. Okay. But at least as to this consent to search form, you  
6 weren't present, you don't know what may have been said to  
7 Mr. Spivey about that, correct?

8 A. On the second consent to search form?

9 Q. Yes.

10 A. No, I was not present.

11 Q. Okay. And you didn't witness anything?

12 A. On the second form? No.

13 Q. Okay. Well, we know it was time printed around 4:26 p.m.  
14 Had you already left the premises by then?

15 A. I was searching.

16 Q. You were searching still while this was being signed?

17 A. Correct, yes.

18 Q. Okay. And how many agents were in the house at the time  
19 after Ms. Austin was taken out?

20 A. It's myself, Alex, Alex's partner, there was another  
21 detective from the Lauderhill Police Department, so that's  
22 four, and then there were three Secret Service. So I believe  
23 there were seven.

24 Q. Okay. So seven or eight law enforcement -- seven law  
25 enforcement officers there, correct?

## LANFERSIEK - CROSS/SMITH

1 A. Give or take an officer, yes.

2 Q. And at that time, clearly Mr. Spivey was a suspect in the  
3 fraud crime, correct?

4 A. No, not -- he -- yeah -- no -- I don't know. He -- you  
5 know, he was -- there was definitely evidence inside his house  
6 that he was living in, but I don't recall at that point if I  
7 saw any names on the cards of his, and I had not talked to  
8 Chenequa Austin yet. She had yet to be interviewed. So he  
9 really wasn't a suspect at that point.

10 Q. Okay. Did you have occasion to take Mr. Spivey down to the  
11 police station?

12 A. Alex and I did, yes.

13 Q. Okay. Now, approximately what time did you all finally  
14 leave the premises to head to the police station?

15 A. Again, this is a complete approximation. I'm estimate --  
16 I'm guessing it took us between three and four hours to search.  
17 If we started searching at 1:45, I would say it was December,  
18 so it got dark out early, I'm gonna guess around six o'clock,  
19 seven o'clock, maybe.

20 Q. Okay. Now, all those other agents arrived to assist you in  
21 the search and I assume inventory and whatever else you do,  
22 correct?

23 A. Yes, sir.

24 Q. During that period of time, did anybody take any  
25 photographs of the scene as to where the items were located

## LANFERSIEK - REDIRECT/KOBRINSKI

1 according to you?

2 A. No, sir.

3 Q. Okay. No video recording or anything of the search?

4 **MR. KOBRINSKI:** Objection, your Honor. Purpose of the  
5 hearing, outside the scope.

6 **THE COURT:** What's the relevance, Mr. Smith? This  
7 isn't discovery.

8 **MR. SMITH:** Okay.

9 One moment, your Honor.

10 *(Discussion had off the record between counsel and*  
11 *client)*

12 **MR. SMITH:** I have no further questions, your Honor.  
13 Thank you.

14 **THE COURT:** Redirect?

15 **MR. KOBRINSKI:** Yes, your Honor, very briefly. Just  
16 three lines of redirect.

17 **REDIRECT EXAMINATION**

18 BY MR. KOBRINSKI:

19 Q. You were asked about the arrest of Mr. Spivey. Did -- were  
20 you aware of his criminal history when you went to the house?

21 A. I was not, no.

22 Q. And were you aware of his criminal history, to the best of  
23 your recollection, when the search was done?

24 A. I was not, no.

25 Q. Okay. Now, you were asked about Ms. Austin and the



## LANFERSIEK - REDIRECT/KOBRINSKI

1 cooperation in that video you saw about kind of said F-U?

2 A. Um-hum.

3 Q. Was Ms. Austin cooperative?

4 A. Yes, she was.

5 Q. What happened that night with regards to her cooperation,  
6 generally?

7 A. After we interviewed Ms. Austin at the Lauderhill Police  
8 Department, she accompanied Detective Iwaskewycz and I to a  
9 house that she told us Spivey was -- almost a coconspirator of  
10 Spivey's, who was in the business of manufacturing credit cards  
11 and IDs inside the house, and that she had gone into this house  
12 with Spivey on numerous occasions before. So she was pointing  
13 this house out to us to further our investigation.

14 Q. How did you guys found that house?

15 A. She rode with us and pointed it out to us.

16 Q. Now, through the course of the conversation -- through the  
17 course of the interview and the exchange that you had with her  
18 from the time of the initial encounter at the house through  
19 that evening, did you ever see anyone yell at her or raise  
20 their voice at her?

21 A. Never.

22 Q. Okay. Now, with regard to Mr. Spivey, describe his  
23 cooperation, generally.

24 A. He was very cooperative and friendly with us from the  
25 get-go. I mean he never was argumentative. He was never

## LANFERSIEK - REDIRECT/KOBRINSKI

1 combative. He was polite, respectful, never -- never an issue  
2 with him.

3 Q. Okay. Between the time of this get -- the search being  
4 concluded and going to the station, were there any stops on the  
5 way?

6 A. Yes. We took -- we took Eric to Chick-fil-A to get him  
7 dinner.

8 Q. Okay. Was that a promise, just sign the search warrant and  
9 we'll get you dinner?

10 A. No, not at all. We were hungry, and I'm sure he was  
11 hungry.

12 Q. And during the course of -- if the judge, which is now in  
13 evidence, listens to the interviews and also reviews the video,  
14 there's laughter in the background when Ms. Austin is just  
15 sitting there. Would you describe that as basically being the  
16 atmosphere -- that it wasn't antagonistic with Mr. Spivey?

17 A. That's correct.

18 Q. Now, did he cooperate vis-a-vis any additional  
19 investigations?

20 A. No.

21 Q. Okay. And did he -- well, did he tell you information that  
22 turned out to be false?

23 A. I mean he lied to me a couple of times, so....

24 Q. But he spoke with you, and he gave you information.

25 A. Correct.

1           **MR. SMITH:** Objection. Beyond the scope of  
2 cross-examination.

3           **THE COURT:** Overruled.

4 BY MR. KOBRINSKI:

5 Q. Spoke with you, he gave you information.

6 A. Spoke with us freely and gave us information freely.

7 Q. And you said that you were able to verify it, and it turned  
8 out it was false.

9 A. That's correct.

10 Q. Okay. Now, at any point were any promises or threats made  
11 to either of these individuals?

12 A. Never.

13           **MR. KOBRINSKI:** Nothing further. Thank you.

14           **THE COURT:** Anything further, Mr. Day?

15           **MR. DAY:** Nothing, your Honor.

16           **THE COURT:** Anything further, Mr. Smith?

17           **MR. SMITH:** No, your Honor.

18           **THE COURT:** Thank you, Agent. You may step down.

19           *(Witness excused)*

20           **MR. KOBRINSKI:** The United States calls  
21 Detective Iwaskewycz.

22           **THE COURT:** You guys want to continue going, or do you  
23 want to reset it till next week?

24           **MR. KOBRINSKI:** I'm fine with either. I mean I prefer  
25 to do it, but --

1           **THE COURT:** How long do you think his testimony's  
2 going to be?

3           **MR. KOBRINSKI:** Roughly the same, your Honor. On  
4 direct, it will be about 20 to 30 minutes.

5           **THE COURT:** I mean if we're going to do that, I have  
6 to give my court reporter a break, and I don't know how long  
7 she can work tonight.

8           Do you guys want to just come back next Monday and  
9 continue?

10          **MR. SMITH:** That's fine.

11          **THE COURT:** What time is good on Monday for everybody?

12          **MR. KOBRINSKI:** Can I just check?

13          **MR. DAY:** Any time.

14          **MR. KOBRINSKI:** If we could, the morning, but if -- he  
15 has a state court proceeding that can be pushed obviously, if  
16 necessary.

17          **THE COURT:** 9:30 Monday?

18          **MR. DAY:** That's fine.

19          **MR. SMITH:** That's fine.

20          **THE COURT:** All right. So we'll be in recess until  
21 9:30 on Monday.

22          **ROOM CLERK:** All rise.

23                 *(The Judge exited the courtroom)*

24                 *(Proceedings concluded at 4:39 p.m.)*

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INDEX OF WITNESSES

<b>GOVERNMENT'S WITNESS</b>	<b>PAGE</b>
<b>Jason Lanfersiek</b>	
Direct by Mr. Kobrinski	9
Cross by Mr. Day	39
Cross by Mr. Smith	96
Redirect by Mr. Kobrinski	110

- - - - -

INDEX OF EXHIBITS

<b>GOVERNMENT'S EXHIBITS:</b>	<b>MARKED</b>	<b>RECEIVED</b>
2A and 2B	30	31

- - - - -

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/Francine C. Salopek	8-12-15
Francine C. Salopek, RMR-CRR Official Court Reporter	Date

## **APPENDIX E**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
CASE NO. 15-60082-CR-WPD

UNITED STATES OF AMERICA, .  
 .  
Plaintiff, . Fort Lauderdale, Florida  
 . August 10, 2015  
v. . 9:29 a.m.  
 .  
ERIC JERMAINE SPIVEY AND .  
CHENEQUA AUSTIN, .  
 .  
Defendants. .  
. . . . .

- - - - -

Transcript of Motion Hearing had  
before the Honorable William P. Dimitrouleas,  
United States District Judge.

- - - - -

VOLUME 2

- - - - -

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

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## APPEARANCES:

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Official Court Reporter  
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(954)769-5657

- - - - -



1 MONDAY, AUGUST 10, 2015, 9:29 A.M.

2 *(The Judge entered the courtroom)*

3 **THE COURT:** Please be seated.

4 **MR. SMITH:** Good morning. How are you?

5 *(The defendants entered the courtroom)*

6 **THE COURT:** All right. We're back on the record.

7 Counsel are present. Mr. Spivey's present.

8 Ms. Austin's present.

9 Everybody ready to proceed?

10 **MR. KOBRINSKI:** No, your Honor. Jonathan Kobrinski  
11 for the United States. Unfortunately, the case agent just  
12 contacted me. He had a paperwork problem at the station. He's  
13 making his way as fast as possible. He expects to be here  
14 within ten minutes.

15 **THE COURT:** Okay. We'll wait.

16 How many other witnesses do you have besides him?

17 **MR. KOBRINSKI:** He's the next and last witness.

18 **THE COURT:** Okay. Well, we'll be in recess until he  
19 gets here.

20 **ROOM CLERK:** All rise.

21 *(The Judge exited the courtroom)*

22 *(Recess taken at 9:30 a.m. until 9:40 a.m.)*

23 *(The Judge entered the courtroom)*

24 **THE COURT:** Please be seated.

25 All right. We're back on the record.

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## IWASKEWYCZ - DIRECT/KOBRINSKI

1 Counsel are present. Mr. Spivey and Ms. Austin are  
2 present.

3 The government may proceed.

4 **MR. KOBRINSKI:** The United States calls Detective Alex  
5 Iwaszewycz.

6 **ROOM CLERK:** Please raise your right hand.

7 (*ALEX IWASKEWYCZ, GOVERNMENT'S WITNESS, WAS SWORN*)

8 **ROOM CLERK:** Thank you. You may be seated.

9 Please state your name and please spell your last name  
10 for the record.

11 **THE WITNESS:** Detective Alex Iwaszewycz,  
12 I-W-A-S-K-E-W-Y-C-Z.

13 **MR. KOBRINSKI:** May I inquire, your Honor?

14 **THE COURT:** Okay.

15 **DIRECT EXAMINATION**

16 BY MR. KOBRINSKI:

17 Q. Where are you employed, sir?

18 A. City of Lauderhill.

19 Q. And what do you do there?

20 A. I'm a detective with the Criminal Investigations Division,  
21 SWAT team leader, and currently detached to the United States  
22 Secret Service Organized Fraud Task Force.

23 Q. How long have you been a member of that task force?

24 A. Almost five years now.

25 Q. Okay. And how long have you been a police officer?

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1 A. Coming up on 12 years.

2 Q. Okay. And what different assignments have you had as a  
3 police officer?

4 A. Road patrol function, street crimes, plainclothes unit, the  
5 SWAT team for the past almost ten years, the task force I just  
6 mentioned, and then criminal investigations the past six --  
7 six, seven years.

8 Q. And with the task force, what types of crimes do you  
9 investigate?

10 A. Bank fraud, wire fraud, identity theft, aggravated identity  
11 theft, various types of organized theft and fraud.

12 Q. How did you get involved in this case?

13 A. I was contacted by a colleague, a detective from the City  
14 of Sunrise, who informed me of some possible fraud going on in  
15 a residence within the city of Lauderhill.

16 Q. And what was the report that you received?

17 A. That they had a burglar that they had just arrested, who  
18 had given them information during a drive -- what they call a  
19 drive-by or a drivethrough, where the defendant was picking  
20 out -- or, I'm sorry -- showing different locations that the  
21 suspect had burglarized. And in particular one house, the  
22 information was relayed to me, that was in Lauderhill, was  
23 burglarized at least twice because of the amount of high-value  
24 items from with inside (*sic*) of this particular home.

25 Q. And do you know whether his information was more detailed

1 than that?

2 A. He gave a little more information stating -- which was why  
3 it was relayed to me is, his -- some of his commentary was to  
4 the extent of the house being -- he actually said to the  
5 detective, who related to me, that even though you guys have me  
6 as an arrestee and under arrest and think I'm bad, what's going  
7 on in this house is some real crime stuff with credit cards and  
8 equipment and a whole plant-type operation operating from  
9 within.

10 Q. And did you ever speak directly with this individual?

11 A. No.

12 Q. So you received this report from the colleague, you said, a  
13 detective, and then you -- what did you do with it?

14 A. At that point, I did some background information, just to  
15 check the house, see if the house had, in fact, been  
16 burglarized, if any of that information could be verified just  
17 through reporting systems and investigative measures.

18 Q. And what were you able to determine?

19 A. That through checking what's called an RMS system, which is  
20 an internal reporting system for the City of Lauderhill, I  
21 determined that two burglaries had, in fact, recently occurred  
22 there in the previous month. I think it was within like three  
23 weeks of each other, so in a relatively short time period. So  
24 that information did initially appear to be accurate up to that  
25 point so far. And then there was some -- some of the residents

1 I was trying to check that as well, some of the information.

2 Q. So you had an address to verify this --

3 **MR. DAY:** Objection to the leading questions.

4 **THE COURT:** Sustain.

5 BY MR. KOBRINSKI:

6 Q. How were you able to determine what address to look at?

7 A. The address was actually given to me through my colleague,  
8 and I was able to research the address from the information  
9 which she had provided.

10 Q. And you mentioned reports. Did you actually review those  
11 reports?

12 A. I did.

13 Q. Were you able to determine who filed the reports?

14 A. I was. I don't have them in front of me, but, yes, the  
15 reporting person was on both reports.

16 Q. And can you describe to the judge the reporting process and  
17 whether it's continual or whether the reports stop at each  
18 individual time?

19 A. So a report is filed by a complainant, a reportee. That  
20 report is taken -- it's what's called an initial offense  
21 incident report form. A uniform officer will respond to  
22 wherever that complainant is, take a report, gather basic  
23 information at that time and place, and the report will be  
24 submitted. And there are several steps it takes to being  
25 approved and ultimately entered into the reporting system that

1 I just mentioned. And then eventually assigned to a detective  
2 for follow-up investigation if need be.

3 Q. And if there is follow-up investigation, and the report --  
4 or the information obtained generates a supplemental, does that  
5 fall within the initial reporting? Do you have access to that?

6 A. I do have access to that, yes.

7 Q. Okay.

8 *(Discussion had off the record between counsel)*

9 **MR. KOBRINSKI:** May I approach the witness, your  
10 Honor?

11 **THE COURT:** Okay.

12 BY MR. KOBRINSKI:

13 Q. Detective Iwaskewycz, you have what's in your hand what's  
14 been marked for identification as Government's Exhibit 1?

15 *(Government's Exhibit 1 marked for identification)*

16 **MR. KOBRINSKI:** And I'd move to admit it without any  
17 objection?

18 **MR. DAY:** Excuse me?

19 **MR. KOBRINSKI:** I understand there's no objection.

20 **MR. DAY:** No, I said the reports are not admissible.

21 **MR. KOBRINSKI:** Oh, I'm sorry. I misunderstood.

22 Okay.

23 **MR. DAY:** Objection. The reports that were made by  
24 somebody else that contain hearsay information are not  
25 admissible as evidence.

1           **MR. KOBRINSKI:** Okay. Can I lay a foundation, your  
2 Honor, before you decide?

3           **THE COURT:** Okay.

4           **MR. KOBRINSKI:** I just misunderstood. I thought he  
5 said not -- without objection.

6 BY MR. KOBRINSKI:

7 Q. Detective Iwaskewycz, are those the reports that you  
8 obtained subsequent to the investigation conducted in this  
9 case?

10 A. Yes, they both appear to be.

11 Q. And there appear some redactions of personal information?

12 A. Yes, it does appear so.

13 Q. And so those are the two reports that you obtained -- at  
14 least the initial part is the two reports you obtained before  
15 you responded to the house in December?

16 A. Yes, that's correct.

17 Q. Okay. And do they appear to be in substantially the same  
18 condition as when you retrieved them subsequent to that  
19 operation?

20 A. They do.

21 Q. Okay.

22           **MR. KOBRINSKI:** Your Honor, I'd move to admit them. I  
23 understand there's a hearsay objection. I'd say for the  
24 purpose of this hearing, you can consider hearsay. Your  
25 Honor's in a unique position to understand whether to review it

1 for the truth of the matter asserted or not. And I think it's  
2 appropriate for you to have the actual reports rather than just  
3 have the agent testify about his recollection being refreshed.

4 **MR. DAY:** Your Honor, his recollection is relevant as  
5 to what he reviewed from the reports. The reports themselves  
6 are not admissible. And so that's my objection.

7 **THE COURT:** Overruled. They'll be received.

8 *(Government's Exhibit 1 admitted into evidence)*

9 **MR. KOBRINSKI:** Okay.

10 BY MR. KOBRINSKI:

11 Q. And so, with regard to the reports, having had a chance to  
12 review them, do you recall who made the actual reports of the  
13 incidents?

14 A. The first incident was reported by Mr. Eric Spivey.

15 Q. And what was the date?

16 A. I'm sorry. That's November 6, 2014.

17 Q. Okay. Let's stay on that first incident that's reported by  
18 Mr. Eric Spivey on November 6, 2014.

19 Can you read the highlighted portion of that report to  
20 the Court?

21 A. Sure.

22 "On Thursday, November 6, 2014, at approximately  
23 1550 hours, I was dispatched to 7945 Northwest  
24 50th Street in reference to a delayed burglary. Upon  
25 arrival, I made contact with Eric Spivey (as the



1 reporting person), who stated he stays with his  
2 girlfriend at the above address, Chenequa Austin" --  
3 who's listed as the victim -- "who was not on scene.

4 "Spivey stated that the residence was broken into  
5 via front door" -- I'm sorry -- "front porch door, and  
6 that jewelry and his Sony PlayStation 4 was taken  
7 (listed as property number one and two). Spivey  
8 stated that other items may have been taken, but he  
9 did not go back to check for other items upon my  
10 arrival."

11 Q. For the day of that report, what's a "delayed reporting  
12 burglary"?

13 A. It means that the burglary happened prior to the victim or  
14 the officer responding there, basically meaning that it's --  
15 was not reported as an in-progress crime.

16 Q. And do you know who took that report from Mr. Spivey?

17 A. This report was taken by Officer Uri Tal.

18 Q. And do you know whether Officer Tal -- and can you spell  
19 that for the court reporter, please?

20 A. I'm sorry. The first name is U-R-I, last of T-A-L.

21 Q. And do you know if Officer Tal -- what position they hold  
22 in the department?

23 A. He holds a position of road patrol officer, which is a  
24 uniform branch division.

25 Q. In Lauderdale?

1 A. Yes, sir.

2 Q. Now, let's move to the second report. What happened on  
3 that date? And what was the date?

4 A. The second report is listed as Sunday, November 23, 2014.  
5 The time of the report was at 1557 hours. And it was taken by  
6 an Officer Peterson, P-E-T-E-R-S-O-N, last name of Hackshaw,  
7 H-A-C-K-S-H-A-W.

8 Q. And do you know the position Officer Hackshaw holds?

9 A. Same position, uniform road patrol.

10 Q. And who made the report on that date, November 23rd?

11 A. The reporting person on this report was Chenequa Austin,  
12 via telephone.

13 Q. And so that's -- is that the same address that you received  
14 the report from, from the Sunrise Police Department officer?

15 A. Yes, sir, it is.

16 Q. Okay. And I'll --

17 **MR. KOBRINSKI:** Permission just to retrieve those  
18 exhibits, your Honor.

19 **THE COURT:** All right.

20 BY MR. KOBRINSKI:

21 Q. So you were describing how to you had to verify information  
22 in the system, and then having done that, what did you do next?

23 A. I did a little bit of background on both individuals just  
24 to see if address is verified. I believe some arrest record  
25 information would have been pulled as well to look at prior

1 arrests. And, uhm, at that time, then I notified my direct  
2 supervisor of information that I had received, and -- that was  
3 with the City of Lauderhill, and then I also notified my  
4 supervisor with the Secret Service as well.

5 Q. Did you do any property search evaluations?

6 A. I think I did pull the property appraiser's website search.

7 Q. And so who did you identify, if anyone, that would be  
8 associated with that address?

9 A. I remember that the -- the property was deemed -- or being  
10 leased. I can't remember who the actual homeowner was. I  
11 remember he -- it was determined that he actually was an  
12 employee for the City of Lauderhill, who was renting the house  
13 out. I don't remember having any lease information or  
14 paperwork available at that time, though.

15 Q. And were you able to identify any of the individuals you  
16 expected to be present when you arrived?

17 A. Yes.

18 Q. Who did you identify?

19 A. Both Chenequa Austin and Eric Jermaine Spivey.

20 Q. Okay. And then you mentioned conducting an operational  
21 plan? What's that entail?

22 A. Pretty simple, this one was pretty basic. Again, it was  
23 information that had been received and simply just needed to be  
24 verified. There was a -- the -- as just mentioned, two reports  
25 that had been filed, so there was a need -- follow-up that

1 needed to be conducted anyways. I spoke with the detective who  
2 was assigned to both of those cases. His name was  
3 Detective Steve Coulson.

4 Q. Can you spell that?

5 A. I'm sorry. S-T-E-V-E, last name of C-O-U-L-S-O-N, I  
6 believe.

7 Q. Had Detective Coulson responded to that address?

8 A. No, he had not. When I spoke to him, he had not been able  
9 to address that -- either one of those cases yet.

10 Q. Was what the state of his investigation before you went to  
11 the address on December 17th?

12 A. It was pending. He -- there's a large caseload for the  
13 detectives, and he had yet to begun -- begin any follow-up  
14 investigation with either one of those reports.

15 Q. Had Lauderhill made any arrests at that point?

16 A. No, sir.

17 Q. Okay. So what else did you do from the operational plan?

18 A. I notified my direct supervisor at the time, informed him  
19 of my information, and told him that I was gonna likely do a  
20 follow-up with it, as a burglary follow-up, in conjunction with  
21 the exploration of any possible fraud from with inside (*sic*)  
22 the residence. He said it was fine.

23 And I then notified my supervisor, Tim Donahue, with  
24 Secret Service, and mentioned it to him, and he said it was  
25 also a good idea, and a date was formed when I could gather all

1 parties and conduct a briefing at the Lauderhill Police  
2 Department. And then we began.

3 Q. And when you say "we began," what did you do?

4 A. There was a briefing that was conducted that afternoon at  
5 the police department between Lauderhill, my partner, and my  
6 supervisor there, the sergeant, and then I believe three Secret  
7 Service agents, including the supervisor. And after a short  
8 briefing, we then drove to the actual residence.

9 Q. Okay. And you mentioned "that afternoon." What day are we  
10 talking about?

11 A. I'd have to double-check the record, but I believe it was  
12 December 17, 2014.

13 Q. Okay. And so you just testified about driving to the  
14 residence. Which residence?

15 A. The previous residence mentioned of Mr. Spivey and  
16 Ms. Austin.

17 Q. And so who did you drive there with?

18 A. I drove there in my unmarked police vehicle with Special  
19 Agent Jason Lanfersiek of the Secret Service.

20 Q. And just walk us through, tell us what you saw when you got  
21 there.

22 A. Drove to the house, pulled right into the actual driveway  
23 on the far east side of it. And it was immediately apparent  
24 that there was a white Buick in the driveway, which we had  
25 known to belong to, at that time, Ms. Austin. There was two

1 children, I believe, in or on the car. And Ms. Austin -- who  
2 we later learned was Ms. Austin -- she was at the front door at  
3 the threshold, saw us, and then immediately went back inside  
4 the residence.

5 Q. What did you do next?

6 A. Exited the vehicle and simply just walked up to the front  
7 door.

8 Q. And then when you got there, what did you do?

9 A. Knocked on the door, might have rung the doorbell as well,  
10 and waited for a response at the front door.

11 Q. Do you know how long you waited?

12 A. Approximately 30 seconds.

13 Q. And after that 30 seconds what happened?

14 A. Ms. Austin then came to the door. I identified myself to  
15 her, asked her who she was, had her identify herself, and then  
16 told her that I was there to follow up on two burglary reports  
17 that had been filed. And she then was happy to lead me in the  
18 house and help address that.

19 Q. Were you with anybody?

20 A. Yes. Special Agent Lanfersiek was next to me.

21 Q. And what were you wearing and what was he wearing?

22 A. I was wearing a shirt, I think I had a tie on, slacks, and  
23 my gun and badge openly displayed on my right hip.

24 Q. And what about Special Agent Lanfersiek?

25 A. He had a police jacket on -- he actually borrowed it from

1 me -- and a -- he had his gun and badge concealed from inside  
2 the jacket.

3 Q. And why did he need to borrow a jacket from you?

4 A. At that time, I introduced him as my crime scene  
5 technician. I'm sorry, he also had a black, like a duffel bag  
6 that contained some crime scene investigative tools.

7 Q. And is Special Agent Lanfersiek a crime scene technician?

8 A. No, he's not.

9 Q. Was that part of the ruse operation you were describing?

10 A. Yes, it was.

11 Q. Now, just get into a little bit more of the detail of the  
12 exchange at the door between you and Ms. Austin. Or was that  
13 all there was to it, what you've already described?

14 A. It was pretty simple. I think I introduced him as well,  
15 and I introduced him as my partner, and his role there was to  
16 aid me in follow-up investigation, with her permission, to come  
17 in the house -- inside the house and begin a follow-up  
18 investigation for those two reported incidents.

19 Q. Did you tell her that if she didn't follow up on the  
20 incident, that her cases would be dismissed?

21 A. No, I did not.

22 Q. Did you threaten her that it's her civic duty to comply  
23 with police officers?

24 A. No.

25 Q. Did you otherwise make any comments suggestive of that?

1 A. No, sir.

2 Q. Did you yell at her at all?

3 A. No.

4 Q. Did Special Agent Lanfersiek do any of those things?

5 A. No. I don't even think he spoke to her.

6 Q. Once -- you said she invited you into the house, and once  
7 you're in the house, what happened next?

8 A. When I mentioned the -- my reason for being there to be to  
9 follow up with the burglaries and asked her if the burglaries  
10 had occurred there, she actually kind of appeared a little  
11 relieved and even excited, saying that, Oh, yeah, we were  
12 waiting for someone to contact us, and we have video for you  
13 guys.

14 I didn't know about that. Apparently  
15 Detective Coulson had not known or had not relayed that to me,  
16 so he was unaware as well. So I asked her if they could  
17 provide that to us, or I would gladly collect it at that time,  
18 as we began to enter the house when we were then invited in.

19 Q. And when you say "they," who's -- so far you've only  
20 introduced Ms. Austin and her children. Is that who we're  
21 talking about?

22 A. Yeah, at this time, the children are still outside.

23 Ms. Austin now invites us inside the residence. And as we were  
24 entering the house, I think either myself or Agent Lanfersiek  
25 asked if there was any other individuals inside the house for



1 us to be aware of, and she said her boyfriend was in the house.

2 Q. Let me ask, did you guys do a protective sweep of the  
3 house?

4 A. No.

5 Q. So you just took her word for it.

6 A. Yes.

7 Q. Okay. And was her boyfriend in the house?

8 A. He was. He -- I think she called out to him, and he  
9 came -- after several seconds, he emerged from the master  
10 bedroom.

11 Q. Okay. And let's take a step back, because you subsequently  
12 interviewed Ms. Austin, and you also interviewed Mr. Spivey.  
13 Did you learn of any events that were occurring in the house  
14 between when you knocked on the door and the door was --  
15 between when Ms. Austin went in the house and when she came  
16 back out and answered the door?

17 A. Subsequent to us arriving there?

18 Q. Yeah.

19 A. Yes. We later learned via Ms. Austin that the reason for  
20 the delay was she went back into the residence to warn  
21 Mr. Spivey that the police were at the residence, and at that  
22 time, she said that he was hiding contraband or evidence at  
23 that time.

24 Q. Okay. So let's talk about that period between when you  
25 initially knock and possibly ring the doorbell, and she comes

1 to the door. How loud were you knocking?

2 A. Fairly loud.

3 Q. And how often did you ring the doorbell?

4 A. Whether it was a doorbell or a knock, I mean it was -- both  
5 were prominent. I would say it was to the point to whether  
6 there was no mistaking that we were there.

7 Q. And did you announce your presence verbally?

8 A. Yes.

9 Q. What did you say?

10 A. "Lauderhill Police."

11 Q. Anything else?

12 A. Not that I recall at this time.

13 Q. So did you pat down either Ms. Austin or Mr. Spivey?

14 A. No, sir.

15 Q. Now, you mentioned earlier, in the planning stage, you did  
16 some background information. Were you aware of the arrest  
17 record of Mr. Spivey?

18 A. Yes, I believe his record was reviewed.

19 Q. What did you know about it?

20 A. There was a long list of charges to include several felony  
21 convictions.

22 Q. And at the time were you aware of any pending charges for  
23 Mr. Spivey?

24 A. Not that I recall at that time. Not that I remember.

25 Q. You don't recall being aware of it.

1 A. I may have. Again, there was a lot of moving parts at the  
2 time. So whether it was the pending or the actual convictions,  
3 I don't recall differentiating between them at this time.

4 Q. And today are you aware of pending charges that Mr. Spivey  
5 faces?

6 A. Yes, I am.

7 Q. And what are they?

8 A. The one that I recall learning or at least being very aware  
9 of subsequent to the investigation later that evening was the  
10 pending attempted homicide charge out of the City of Miami.

11 Q. And at the -- before -- with your awareness today, what  
12 convictions did Mr. Spivey have on or before that date?

13 **MR. SMITH:** Objection. Relevance.

14 **MR. KOBRINSKI:** It goes to his age, experience,  
15 intelligence for the totality of circumstances, your Honor.

16 **THE COURT:** Overruled.

17 A. There was the -- there was an occupied -- I believe it was  
18 an occupied burglary charge that I was aware of. I think there  
19 was an aggravated battery with I think great bodily harm or  
20 injury. There was a traffic felony offense as well, I think  
21 that resulted in a death, also. There's several substantial  
22 convictions and charges.

23 Q. And are you aware of his age?

24 A. I believe 20 -- like mid-20s, something of that sort. I  
25 don't remember the exact age.

1 Q. Would seeing his DAVID record refresh your recollection?

2 A. Yes.

3 Q. Okay. And --

4 **MR. KOBRINSKI:** Permission to approach?

5 **THE COURT:** All right.

6 BY MR. KOBRINSKI:

7 Q. On the day of the search, how old was he?

8 A. I believe he was 28 years old, if I did the math right.

9 Q. Why don't I show this to you again.

10 So he's about to turn 27 on the day of the search,  
11 right?

12 A. I'm sorry. Yeah, so he's 26, turning 27.

13 Q. And Ms. Austin also has -- had several arrests in advance  
14 of the encounter you had with her, correct?

15 **MR. DAY:** Objection. Leading questions.

16 **THE COURT:** Sustain.

17 **MR. KOBRINSKI:** Okay.

18 BY MR. KOBRINSKI:

19 Q. Were you aware whether Ms. Austin was ever arrested before  
20 December 17, 2014?

21 A. I was.

22 Q. Okay. And did she discuss that at all in her post-*Miranda*  
23 interviews with you?

24 A. Yes, she did.

25 Q. And that was that exchange that we played in the -- on

1 the -- with the video transcript, where you were discussing ROR  
2 and bonded out, right?

3 A. Yes, sir.

4 Q. Okay. Just generally throughout your interactions with  
5 Ms. Austin, did you get the sense that she understood what you  
6 were saying?

7 **MR. DAY:** Objection to the speculation.

8 **THE COURT:** Overruled.

9 A. Yes, absolutely.

10 Q. Did you learn whether she was employed?

11 A. I did.

12 Q. And was she?

13 A. She was.

14 Q. Generally, what did she do?

15 A. If I recall, it was a -- like a quality assurance-type  
16 position, where she did follow-up to transactions that  
17 occurred -- had occurred over the phone through customer  
18 relations, and she would check the satisfaction of that  
19 transaction.

20 Q. And do you know how old Ms. Austin is?

21 A. I believe early to mid-30s, off memory. I don't know  
22 exactly.

23 Q. Would seeing her DAVID record refresh your recollection?

24 A. Yes, it would.

25 **MR. KOBRINSKI:** May I approach?

1           **THE COURT:** All right.

2 BY MR. KOBRINSKI:

3 Q. And we don't need the specific age, but mid -- was your  
4 answer accurate?

5 A. Later 30s, yes.

6 Q. Okay. Now, walk us through what happened when you first  
7 encounter Mr. Spivey back in the house.

8 A. Myself and Agent Lanfersiek were in the living room-type  
9 area right outside the kitchen, and he came out of the master  
10 bedroom. I introduced myself and Special Agent Lanfersiek as  
11 my crime scene technician, told him why we were there, and I  
12 think Ms. Austin asked him at that time to go ahead and do the  
13 video.

14           And, in fact, I asked about video, because I didn't  
15 see any mention of it in either report. I asked how the video  
16 came about, and one of them -- I don't remember exactly who --  
17 then showed me to I think two different monitors that were  
18 actually inside the house that they said they had installed  
19 after the first burglary, and it had captured the second  
20 burglar actually inside the residence during the act.

21 Q. And so then what did you do next?

22 A. I asked if they could obtain or provide a copy of that  
23 video to myself.

24 Q. And did that happen?

25 A. It took a while, but, yes, it did happen.

1 Q. Who got that for you?

2 A. Uhm, Mr. Spivey then went to the -- inside that same living  
3 room-type area, there was a desk, with a computer I guess was  
4 linked to the monitors, and they were able to -- or he was able  
5 to -- I'm sorry -- try to copy it. There were numerous  
6 attempts. I think we tried a disk and a jump drive and then  
7 eventually an e-mail process to finally get it uploaded. But  
8 he assisted me with the -- that video collection.

9 Q. Can you estimate approximately how long this took?

10 A. Well over a half hour, maybe -- maybe even 45 minutes. It  
11 took a pretty extensive amount of time to finally get it.

12 Q. And during that time, where's Special Agent Lanfersiek?

13 A. At that time, I think he had spoken to Ms. Austin and asked  
14 to retrace some steps or be shown the route or the path of  
15 travel that the burglary suspect had taken, and also the areas  
16 where items had been taken as well.

17 Q. And did they go and do that?

18 A. Yes.

19 Q. And you stayed, for the most part, with Mr. Spivey.

20 A. Yes.

21 Q. And then what happened next?

22 A. After several minutes, Agent Lanfersiek, I believe he  
23 started at the rear portion of the kitchen, which would have  
24 been the north end of the house. I think he was on --  
25 reviewing some sliding glass doors, which would have been, I

1 think, the point of entry or exit. And then eventually made  
2 his way into the master bedroom, where I believe Ms. Austin  
3 told him items had been taken.

4 Q. And then what did you do next?

5 A. I had stayed with Mr. Spivey the whole time. I think at  
6 first, he was trying to show me video, so first we were trying  
7 to look at it prior to the copying/retrieval portion of that  
8 afternoon.

9 And Agent Lanfersiek after several minutes, maybe  
10 15 minutes or so, came back and had a discussion with me about  
11 what his observations were up to that point.

12 Q. And then once you had that discussion, what did you do?

13 A. I then asked Ms. Austin if she could show me some of the  
14 same areas as well, while Mr. Spivey was still attempting to  
15 upload the video.

16 Q. And did she do that?

17 A. She did.

18 Q. Describe her demeanor at that point.

19 A. Very cooperative, very pleasant, showed us throughout the  
20 master bedroom, the routes that were taken. I then made  
21 some -- the same observations that Special Agent Lanfersiek had  
22 just mentioned to me regarding issues inside of the residence.

23 Q. And what were -- what did you observe?

24 A. It was immediately apparent upon entering the master  
25 bedroom that on the -- there was a television stand on the



1 right side of the threshold there, there was a stack of gift  
2 cards right on the -- I guess a mantel, at least -- at least 15  
3 cards, maybe 20.

4 Also, in the -- there was a his-and-hers closet past  
5 the bed that had opposing doors, and both of the doors were  
6 open, and you could see an embosser right on the lower right  
7 portion of the left side closet, which I believe was -- I  
8 believe that was the "his" side closet. I can't remember  
9 exactly, but it was the closet to the left.

10 Q. And when you said "his side closet," can you describe to  
11 the judge why you're even making an assessment like that?

12 A. The bedroom was set up just like any type bedroom that you  
13 would see from a spouse, boyfriend/girlfriend-type  
14 relationship, where there was some type of domesticated  
15 partnership with cohabitants. I've done hundreds, if not  
16 thousands, of searches over the years, and it's very typical of  
17 what you would see for a companion-type or his/her-type  
18 relationship to include sides of the bed and closets that were  
19 filled with male-type items and female-type items separately.

20 Q. And so you draw on your experience when you're making --  
21 like your SWAT team experience, your task force officer  
22 experience when you're making assessments about attribution and  
23 ownership?

24 A. Yes, sir.

25 Q. And were you able to determine, based on your training and

1 experience, who appeared to be living in that residence?

2 A. Yes, sir.

3 Q. And who's that?

4 A. Chenequa Austin and Jermaine Spivey.

5 Q. And you say "Jermaine Spivey." Why do you call him  
6 Jermaine Spivey?

7 A. He -- I'm sorry -- he was referred to -- or introduced to  
8 us as Jermaine, and -- throughout that afternoon, into the  
9 evening. I believe his legal name -- I think it's Eric on  
10 his -- according to his DAVID sheet.

11 Q. And so in the room, what else do you see, in the bedroom?

12 A. Ms. Austin opened up the drawers where she said items had  
13 been taken. Those drawers were -- I guess you would describe  
14 them as a nightstand drawer on the -- on, again, opposing sides  
15 of the bed.

16 Items on her side were just primarily personal objects  
17 to include jewelry, I think some clothing items, various  
18 miscellaneous items.

19 And then on his side, the top drawer, once she opened  
20 that top nightstand dresser drawer, if you will, it was full of  
21 hundreds -- hundreds of Green Dot and what we call an access  
22 device, meaning plastic-type cards with magnetic strips.

23 Q. And did you see any other items in the bedroom?

24 A. At that time, those were the three most apparent things --  
25 the stack of the cards on the TV mantel, the dresser drawer on

1 his side, and then the credit card -- or, I'm sorry -- the  
2 embossing machine in the closet.

3 Q. And when you say "apparent," what does that -- apparent  
4 regarding what?

5 A. Open, plain view, just readily available, immediately  
6 available for observation.

7 Q. But why do those items have any significance to you?

8 A. The reason those three particular things stood out is that  
9 investigating these types of credit card-type thefts,  
10 specifically what the -- one of the main reasons for us being  
11 there that afternoon was to investigate possible fraud as well  
12 as burglary. These three things are extremely indicative of  
13 fraudulent-type activity.

14 Q. And did you see any luxury items in the bedroom?

15 A. I'm sorry, any what?

16 Q. Like luxury or high-end items?

17 A. Yes, sir. Very high-end clothes, stacks of -- like boxes  
18 of iPads, laptops, a lot of high-end brand new merchandise to  
19 include designer clothing, like Gucci, I think some Prada,  
20 Louie -- high-end retail merchandise.

21 Q. So what did you do next?

22 A. At that time, I went back into the living room, checked on  
23 the status of the video. It still had not been -- we weren't  
24 able to successfully upload it at that time. So I asked  
25 Ms. Austin if I could speak with her outside.

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1 Q. And what did she say?

2 A. She said, "Sure."

3 Q. To that point, had she ever asked you to leave?

4 A. No, sir.

5 Q. To that point, did you ever yell at her?

6 A. No, sir.

7 Q. Did you ever threaten her, coerce her, make any promises to  
8 her about anything?

9 A. No.

10 Q. Coming into the house, did you or Special Agent Lanfersiek  
11 say, "We're just here to investigate a burglary; anything else  
12 we see, we're gonna ignore"?

13 A. Absolutely not.

14 Q. And so she agreed to go outside with you?

15 A. Yes, she did.

16 Q. And what happened out there?

17 A. I walked out with her while Special Agent Lanfersiek stayed  
18 with Mr. Spivey. I told him, Hey, just -- if you can get that  
19 working, just hand it to my partner or get it to him, maybe he  
20 can help you. And I went outside and spoke with Ms. Austin.

21 And at that time, we were right at the threshold of  
22 the door, the front door. And I told her that, while taking  
23 the path that she had led us to, where the burglary suspect or  
24 suspects had been, there were some questions that I had  
25 regarding some -- some of the items in the house. And those

1 were the three items that I just mentioned.

2 Q. And what did she say?

3 A. The first thing I asked her about was the stack of gift  
4 cards that was on the TV mantel. And her response to that was  
5 that they're all gift cards. I just have them, just because I  
6 do.

7 Q. And did that response make sense to you?

8 A. No, not at all.

9 Q. Why not?

10 A. Well, one of the main things that individuals purchase  
11 with -- regarding these types of cases is gift cards. It's  
12 almost a type of washing of money or laundering, if you will.  
13 And they'll buy multiple gift cards at a time. And there's  
14 really no reason for someone to purchase gift cards for the  
15 purpose of spending, as she said that she was. She said,  
16 "They're all in my name. Go ahead, you can check. What's  
17 wrong with it?"

18 Q. And when you say there's no reason for a person to do those  
19 purchases, you're talking about somebody who's not committing  
20 access device fraud, right?

21 **MR. DAY:** Objection to the leading questions.

22 **THE COURT:** Sustain.

23 BY MR. KOBRINSKI:

24 Q. Can you explain -- you testified it didn't make sense to  
25 you, but you also testified that there's no reason for someone

1 to make those purchases. Just explain a little bit of the  
2 context there to the judge.

3 A. To purchase these gifts cards, for one, it's  
4 time-consuming. If you're purchasing them simply for yourself,  
5 with your name on them, I don't know anyone that can buy a gift  
6 card with your actual name on it. And there's typically a  
7 service charge assessed. I believe for the Visa cards, it's  
8 typically \$5. The American Express cards, it will go up to, I  
9 think, almost \$10, especially if it's over a hundred-dollar  
10 purchase. So just for the time and the service charge alone,  
11 it would make no sense that someone would buy gift cards for  
12 themselves and then use them to make purchases, when --

13 **MR. DAY:** Objection to the speculation, your Honor.

14 **THE COURT:** Overruled.

15 A. When a prudent person would realize that they're actually  
16 wasting -- or losing time and money by using this process.

17 Q. Well, based on your interaction with Ms. Austin, did you  
18 assess whether she was intelligent?

19 A. Yes, I did.

20 Q. What was your view?

21 A. At that point in time, and throughout the course of the  
22 investigation, she appeared to be very intelligent.

23 Q. Okay. So you're outside having this conversation with her.  
24 What else happens out there relevant to this case?

25 A. At that time, we go -- that was kind of a mute (*sic*) point.

1 I think she gave one or two different explanations, neither one  
2 of them made any sense to me. So I -- we got off the topic of  
3 the gift cards themselves and asked her about the actual  
4 embossing machine and asked her why -- what that was in the  
5 closet, the reason for that.

6 I think at first, she said she didn't know what it  
7 was.

8 I then described it and told her where I had seen it  
9 and why it was there.

10 And she made a comment to the extent of it was -- it's  
11 been left there or that was there from the previous landlord  
12 when she moved into the residence.

13 Q. And did she tell you anything else about the landlord?

14 A. She -- I questioned that, saying that, uhm -- I said for  
15 being left, it's commingled with other items right on top of  
16 actual items that are obviously belonging to -- I can't  
17 remember if that was the his or her side, but whoever had that  
18 closet, they're mixed right there on top of personal  
19 belongings, so it doesn't appear to have just been left there.  
20 It seems that there's some type of purpose.

21 And she said, Oh, no, there's all kinds of other stuff  
22 like that in the house. And I asked her -- thinking that maybe  
23 there was other items of such, I gave her the opportunity to  
24 show me, and I asked if she would show me where other items of  
25 such were located.

1 Q. Did she agree to show you?

2 A. She did.

3 Q. And what happened?

4 A. She led me to the garage, and the garage was empty. It was  
5 full of, I think, like shutters and like paint buckets, like  
6 work material-type items, nothing even remotely related to the  
7 object that I was speaking of.

8 Q. What did she tell about those work-related materials?

9 A. She said those -- these are -- Look, this stuff was left  
10 here by the landlord as well.

11 Q. Did you eventually arrest Ms. Austin?

12 A. I did.

13 Q. And describe the circumstance of why you arrested her.

14 A. At that point in time, I realized that she knew about the  
15 items I was referring to, was not interested in discussing them  
16 with me.

17 I had my partner run what's called a teletype check of  
18 her status. I think I had information that she had possibly  
19 had a warrant, so I had my partner confirming that. I asked  
20 her to step back outside with me to discuss that, where I  
21 eventually had the warrant confirmed. And at that point in  
22 time, she was arrested.

23 Q. Did she ever tell you the words F-U or actually the full  
24 term?

25 A. No.



1 Q. Okay. And you saw the video that described the kind of F-U  
2 incident back at the house. What was that about?

3 A. It was a statement more referred to the state of mind,  
4 where basically I had given her the opportunity to discuss the  
5 items that had alerted me to fraud-type behavior occurring in  
6 the house and her general attitude of being, Well, I said F-U,  
7 meaning that, look, I'm gonna pretend that I don't know what  
8 you're talking about or go otherwise, and basically,  
9 essentially just not cooperate with the line of questioning  
10 that you're offering at this time.

11 Q. Okay. Let's go back into the house now. The arrest,  
12 et cetera, takes place. Do you ever go back into the house?

13 A. Yes, I do.

14 Q. What do you see when you get in there?

15 A. After Ms. Austin's arrest, I go back in the house and speak  
16 to Mr. Spivey. I think I inform him at that point in time that  
17 Ms. Austin is -- has just been arrested.

18 Q. Okay. So from that time period, when you inform him that  
19 Ms. Austin has just been arrested, to the time when you asked  
20 her to step outside and all of those intervening events --  
21 those other events, like the conversation you had with her,  
22 going through the garage, running the warrant, et cetera, how  
23 much time elapses? If you have an estimate.

24 A. It would have to be, obviously, an approximation, but I'd  
25 say approximately an hour.

1 Q. An hour from when she left the house to when you went back  
2 inside the house?

3 A. I'm sorry. When I had her come outside?

4 Q. Yeah.

5 A. When she came outside to when I went back in the house --  
6 I'm sorry -- that was more like 15 minutes, maybe 30, give or  
7 take.

8 Q. Between 15 and 30 minutes.

9 A. Yes, sir.

10 Q. When you go back inside, and you inform Mr. Spivey that  
11 Ms. Austin had been arrested, who's there?

12 A. Just Mr. Spivey and the two children -- I'm sorry -- there  
13 was two children also still present. I believe at that time,  
14 they were -- they had been coming back and forth between their  
15 bedrooms and the living room.

16 Q. And was Mr. Spivey ever restrained in any manner?

17 A. No.

18 Q. Now, after you made that initial comment regarding the  
19 arrest, what happened next?

20 A. I explained to Mr. Spivey that although I was a detective,  
21 and that I was trying to gather some burglary information  
22 regarding the follow-up of the two incidents that occurred at  
23 the residence, I informed him that I also investigate fraud,  
24 and that is my primary function, and that Mr. Lanfersiek was an  
25 agent with the United States Secret Service, and that there

1 were several items in the house that raise our levels of  
2 suspicion to possible fraudulent behavior or activity occurring  
3 within the residence.

4 Q. What did he say to that?

5 A. He basically said, Okay, that's fine. I don't really know  
6 what you're talking about.

7 And at that time, I told him that I'd like to show --  
8 I'd like to further look at the residence to make sure there's  
9 not any other items of concern. And if there was any items,  
10 that they would need to be removed, as they were, at this  
11 point, clearly regarded as contraband. And at that point, I  
12 need to dispel my alarm that any other items were now located  
13 and/or removed from the residence, and that at this point, we  
14 were gonna need to conduct a complete investigation or search  
15 of the residence. In order to do so, I needed his permission  
16 to continue to do that.

17 And he said, Absolutely. He was very cooperative.

18 And I said, Well, prior to that, I'm gonna have to  
19 read to you and have you sign a form, which is called the  
20 waiver of search warrant.

21 Q. And did you, in fact, do that?

22 A. I did.

23 Q. Did you read it to him?

24 A. I did.

25 Q. Do you know whether -- did you hand it to him?

1 A. I did.

2 Q. And do you know whether he read it?

3 A. I can't say if he read it aloud, but he was looking at it  
4 and what I would presume reading along with, or at least  
5 listening and watching as I was reading the words to him.

6 Q. And when you read the words to him, did it appear like he  
7 understood what you were saying?

8 A. Yes, it did.

9 Q. And is that based on the conversation you were having and  
10 the nonverbal clues that you were able to pick up on?

11 A. Prior to and during, yes.

12 Q. Now, what happens if he would have said, No, I don't give  
13 you the consent? What would you have done?

14 A. Then that would have been fine. At that point, we would  
15 have removed everyone from the house or isolated them in a  
16 portion of the house that we were able to clear. And I had an  
17 assistant state attorney -- actually, the supervisor from the  
18 Economic Crimes Unit, who at that point in time, I would have  
19 completed a search warrant and submitted it to them for  
20 approval.

21 Q. Had you been in touch with this assistant state attorney  
22 before the investigation took place, this operation?

23 A. Yes, sir, I had been.

24 Q. But he consented.

25 A. He did.

1 Q. Orally?

2 A. Orally and by signing, also, the document.

3 Q. And that's the document that we previously went over?

4 A. Yes, sir.

5 Q. Now, there's a handwritten addition -- there's handwritten  
6 information on the document. Do you know -- let me just hand  
7 this to you to go through. This is Docket Entry 54-1, page 1  
8 of 2.

9 Now, who's the person who signed this?

10 A. It would be Mr. Spivey.

11 Q. And when you say "would be," do you recall him he actually  
12 signing it, or is this based on your habit, that you think it  
13 was him?

14 A. No, I specifically recall it.

15 Q. Now, who wrote the other information on here above his  
16 signature?

17 A. That would have been myself.

18 Q. Okay. And that addition regarding -- that information,  
19 including his name, your name, the U.S. Secret Service, and the  
20 address and date and time, would that have been there before or  
21 after he signed it?

22 A. That's all before. As I'm reading it, I'm completing the  
23 form, and at the very end, he signs it.

24 Q. Okay. And who witnessed it?

25 A. Special Agent Jason Lanfersiek.

1 Q. Now, what did you do after this was signed?

2 A. Once it was signed, we called -- I called, I should say, my  
3 partner, who had assisted with confirming the warrant for  
4 Ms. Austin, and I believe one or two other agents that were  
5 available. And they came and helped us execute the search at  
6 that time.

7 Q. And during the course of the search, did you find any items  
8 that you didn't see when you walked through the house with --  
9 that either you or Special Agent Lanfersiek didn't see when you  
10 walked through the house?

11 A. Yes, we did.

12 Q. What were they?

13 A. One item in particular was the -- a loaded firearm. It was  
14 a Glock-type weapon with a camouflage-type painting.

15 Q. Did you have any idea -- did you have any inclination that  
16 you were looking for a firearm that day when you got this  
17 consent to search?

18 A. No.

19 Q. And what -- any other items that you hadn't seen during the  
20 course of the earlier walk-throughs?

21 A. Yes. Towards the latter portion of the search, there was a  
22 re-encoder found from with inside the kitchen oven. And I  
23 think numerous other receipts and gift cards were also found  
24 inside of some bag items commingled with Mr. Spivey's personal  
25 belongings.

1 Q. Now, what about electronics? Did you find any electronics  
2 that you eventually searched?

3 A. Yes. There was, I believe, two different telephones,  
4 cellular telephones, as well as I believe a laptop and the  
5 electronics that I previously mentioned, to include the  
6 iPad-type devices.

7 Q. Now, I'm showing you what's been marked as Docket  
8 Entry 54-1, page 2 of 2.

9 What is that?

10 A. This is an electronic media consent-to-search form.

11 Q. What did you -- how does that document come into play in  
12 this case?

13 A. Once I'd recovered the two cellular telephones from with  
14 inside -- from inside the bedroom, I asked Mr. Spivey if he  
15 knew whose phones they were or who used them. And he informed  
16 me that they were his cell -- cellular telephones.

17 Q. And the information -- did that form get generated in like  
18 manner to the form we went over the first time?

19 A. Yes, it did.

20 Q. Okay. Now, for that -- for those phones, he gave you  
21 consent to search them. Did you perform any sort of forensic  
22 analysis on the -- at the scene?

23 A. I did. Post having the form signed, I did perform an  
24 initial search at the residence in front of Mr. Spivey with  
25 both cellular telephones.

1 Q. And what is an initial search -- what comprises an initial  
2 search?

3 A. It's more or less just a cursory search. Again, at that  
4 time, we're -- there were so many different items and issues  
5 going on with inside the house that I just wanted to see if his  
6 phones contained any possible information that was along the  
7 same line of investigation that we were conducting from within  
8 the house.

9 Q. But are you using tools, or are you just scrolling through  
10 the phone yourself?

11 A. Simply just scrolling through the archives of the cell  
12 phones myself, meaning pictures and text content, while in  
13 front of Mr. Spivey.

14 Q. And this took place in his presence.

15 Were the phones password protected?

16 A. Yes, they were.

17 Q. And how were you able to get around the password  
18 protection?

19 A. I simply just asked him for the password, and he provided  
20 it to me.

21 Q. Okay. Generally, links to the house, what have we got that  
22 ties -- what do you recall seeing that tied Ms. Austin and  
23 Mr. Spivey to the house?

24 **MR. DAY:** Objection to the relevance.

25 **MR. KOBRINSKI:** Well, it's not clear what the base --



1 whether there's any basis that Mr. Spivey's denying living  
2 there or having common authority to consent. I mean if that's  
3 conceded, which I think it should be --

4 **THE COURT:** Overruled.

5 BY MR. KOBRINSKI:

6 Q. Go ahead, sir.

7 A. I'm sorry, you asked what was found?

8 Q. Let's start with Mr. Spivey. What are the links that you  
9 observed over the course of -- just a summary, it doesn't have  
10 to be exhaustive, of what you saw that tied him to the house?  
11 And not just what you saw, conversations as well.

12 A. Personal items, to include male clothing, extensive  
13 clothing, not just an outfit or two; drawers, again a  
14 his-and-her side; the residence, particularly the master  
15 bedroom that had an entire section from his side of the bed to  
16 the dressers to the actual closet; bathroom, to include men's  
17 product, bathroom products, toothbrush, shaving stuff; anything  
18 that you would see in a normal capacity of dual living for a  
19 man and a woman.

20 Q. And how about any verbal representations -- or nonverbal,  
21 for that matter -- between Mr. Spivey and Ms. Austin?

22 A. The same. He mentioned that he lived there; that the items  
23 that we had found there from even food items, what were his;  
24 clothing receipts; the cell phones, which contained photographs  
25 from him being inside; various different poses of the

1 electronics, other items of purchase, including jewelry. There  
2 was some high-end jewelry that was found and even hidden in a  
3 bed -- there was a top portion of the bed, where an expensive  
4 chain had just been found, as well. And I think he told me  
5 that that had just been purchased the day before. He was very  
6 interested in getting that back. I think it had like a \$7,000  
7 retail value. So he had made a comment about trying to get  
8 that back or being able to get that back. Uhm --

9 Q. What about the firearm itself, did it link back in any way  
10 through forensic testing to Mr. Spivey?

11 A. It did. It was examined in Miami-Dade, the lab there,  
12 where once the firearm -- once it was learned that that firearm  
13 had possibly been used -- excuse me -- in the attempted  
14 homicide case of his -- Mr. Spivey's children's mother, or at  
15 least one child's mother, the year before, my partner,  
16 Detective Hardy, contacted Miami-Dade and was put in touch with  
17 the detective that was handling that case. And they informed  
18 us of the type of firearm, I think, that they believed was used  
19 that day, or at least through casings or other investigative  
20 measures. And they asked us to immediately have a hold placed  
21 on it and made available for them to come and perform a search,  
22 as that case, I think, was set for trial I think within the  
23 upcoming week.

24 Q. Just generally, what was the result of the ballistic  
25 testing?

1 A. I'm sorry. It was conclusive that it was, in fact, the  
2 firearm that was used by Mr. Spivey in that incident.

3 Q. Now, with regard to Ms. Austin, did you also observe ties  
4 that -- besides -- you already testified about her answering  
5 the door, et cetera. Did you observe other ties to her to the  
6 residence?

7 A. Yes, the same thing -- clothing, mail, items, photographs,  
8 typical things of that sort.

9 Q. Okay. Now, during the course of the evening, you -- did  
10 you ever arrest -- did you arrest Mr. Spivey that evening?

11 A. No, I did not.

12 Q. But he went back to the station with you, right?

13 A. Yes. He voluntarily did so.

14 Q. And on the way there, did you make any stops?

15 A. We did. We stopped at a restaurant, Chick-fil-A.

16 Q. Was that a reward for allowing you guys to do the consent  
17 to search without getting a search warrant?

18 A. No, it was not.

19 Q. Okay. Did you make him any promises over the course of the  
20 evening that if he did what you wanted, things were gonna be  
21 better for him?

22 A. No.

23 Q. Did you make him -- did you threaten him at any point?

24 A. No.

25 Q. Okay. Now, did you speak with him and get information from

1 him?

2 A. I did.

3 Q. And did he tell you about access device fraud and about  
4 other people that participated in access device fraud?

5 A. He did.

6 Q. And the same goes for Ms. Austin?

7 A. Yes.

8 Q. And after -- but she was arrested, right?

9 A. Yes, sir.

10 Q. But before being brought to county jail, did she actually  
11 participate in a drive-through with you guys?

12 A. Yes, what we call a drive-by, yes.

13 Q. Okay. And what does that entail?

14 A. Based on the information that she had given us that  
15 evening, along with what Mr. Spivey had also given us,  
16 regarding another suspect or person of interest who was also  
17 involved in this same type of crimes but to an even greater  
18 extent, we asked if she would be willing to show us -- she  
19 didn't have a physical address, and neither did Mr. Spivey,  
20 and, in fact, Mr. Spivey was saying that the address was on  
21 another side of town, not in the actual city, that there was  
22 conflicting addresses there. She told us that she was a  
23 hundred percent sure of where it was and was willing to show  
24 us, so we did a drive-by of that area -- residence.

25 Q. Okay. What about the video that you obtained eventually

1 or -- like from Mr. Spivey of the burglar itself? What did you  
2 do with that?

3 A. I uploaded it and was able to provide it to  
4 Detective Coulson.

5 Q. And do you know whether Detective Coulson used that in the  
6 Lauderhill police case?

7 A. Yes, I believe --

8 **MR. SMITH:** Objection. Calls for hearsay.

9 **THE COURT:** Overruled.

10 A. Yes, he was able to use that specific video to close out  
11 both of those cases by arrest of the suspect that was  
12 determined to be committing those burglaries.

13 Q. And do you know whether he actually did anything with the  
14 video itself?

15 A. I believe it was submitted --

16 **MR. SMITH:** Objection as to what he believes.

17 BY MR. KOBRINSKI:

18 Q. Well, do you think looking at the report would refresh --  
19 that's in evidence would refresh your recollection about that?

20 A. Yes.

21 *(Discussion had off the record between counsel)*

22 BY MR. KOBRINSKI:

23 Q. So tell us about the state of the Lauderhill investigation  
24 before you responded to the -- Ms. Austin and Mr. Spivey's  
25 residence.

1 A. Prior to me responding to the residence, it was pending.

2 Q. And then having obtained the video, what happened with the  
3 case?

4 A. The case moved forward quickly at that point, and the  
5 defendant was able to be arrested for both of those separate  
6 incidents.

7 Q. And what investigative work did you do on December 17th  
8 that led to that result, if any?

9 A. The gathering of the video. I actually had  
10 Detective Coulson physically respond to the address that  
11 evening to also see and obtain the same information that I had  
12 received. And then I was able to also show him, while still on  
13 scene conducting the search, the monitors, where they were at,  
14 how they recorded it, and then the actual video itself.

15 Q. And then did Detective Coulson or another Lauderhill police  
16 officer use that video any further?

17 A. Yes. He was able to have it admitted into evidence and  
18 used, along with the Sunrise detectives, to arrest the suspect  
19 for those crimes.

20 Q. And to the best of your knowledge, it's accurately  
21 reflected in the report that was admitted as Government's  
22 Exhibit 1?

23 A. Yes, sir.

24 **MR. KOBRINSKI:** Nothing further.

25 **THE COURT:** All right. Let's take a ten-minute recess

1 for the court reporter.

2 During the break in your testimony, Agent, you're not  
3 allowed to discuss your testimony with anyone.

4 Do you understand?

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** And we'll see you back in about ten  
7 minutes.

8 **ROOM CLERK:** All rise.

9 *(The Judge exited the courtroom)*

10 *(Recess taken at 10:45 a.m. until 10:59 a.m.)*

11 *(The Judge entered the courtroom)*

12 **THE COURT:** Please be seated.

13 All right. We're back on the record.

14 Counsel are present. Mr. Spivey's present.

15 Ms. Austin's present.

16 Detective, do you understand you're still under oath?

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Mr. Day, you may proceed.

19 **MR. DAY:** Thank you, your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. DAY:

22 Q. Agent, good morning. My name is Tim Day, representing  
23 Ms. Austin here today. And if I ask you a question that you  
24 don't understand, I'm gonna ask you to stop me and ask me to  
25 rephrase it so you do understand.

1 Will you do that, sir?

2 A. Sure.

3 Q. Okay. You're the case agent involved in this particular  
4 matter?

5 A. Yes, sir.

6 Q. Okay. And you're with the Lauderhill Police Department, is  
7 that correct?

8 A. That's correct.

9 Q. Okay. And a task force officer, correct?

10 A. Yes, sir.

11 Q. Did you compile any reports with regard to this particular  
12 matter?

13 A. Yes, I did.

14 Q. Okay. And what report is that?

15 A. I compiled the majority of the background --

16 Q. Sorry, I can't hear you, sir.

17 A. I compiled the majority of all the background reports. Did  
18 I author any reports, is that what you're asking?

19 Q. Yes.

20 A. No.

21 Q. Okay. Did you author any particular report specifically  
22 with regard to the credit card fraud investigation that you  
23 conducted at Ms. Austin's house on December the 17th of 2014?

24 A. No.

25 Q. Did you compile any reports with regard to any burglary



1 investigation that was conducted by either Lauderhill Police  
2 Department or Sunrise Police Department or any other police  
3 departments?

4 A. No.

5 Q. Okay. You're a task force agent with the South Florida  
6 Organized Fraud Task Force, correct?

7 A. That's correct.

8 Q. As you've indicated on your direct examination, correct?

9 A. Yes.

10 Q. Okay. And you've been there for four years, right?

11 A. Almost five years now, yes.

12 Q. Almost five years. Okay.

13 And as a task force agent with the South Florida  
14 Organized Fraud Task Force, you investigate fraud, correct?

15 A. That's correct.

16 Q. Specifically, the fraud that you testified to in your  
17 direct examination was you investigate tax fraud, correct?

18 A. Yes, sir.

19 Q. Bank fraud, right?

20 A. Yes, sir.

21 Q. Credit card fraud, correct?

22 A. That's correct.

23 Q. Okay. And in this particular case, you specifically worked  
24 with Agent Lanfersiek, is that correct?

25 A. Yes.

## IWASKEWYCZ - CROSS/DAY

1 Q. And that's the gentleman that testified on Friday, right?

2 A. Yes.

3 Q. And have you worked on other cases with him before?

4 A. Yes.

5 Q. Okay. And those are fraud cases, correct?

6 A. Yes.

7 Q. And you were the individual that initiated his involvement  
8 in this case, correct?

9 A. That's correct.

10 Q. That would have been December the 15th of 2014, correct?

11 A. I believe -- somehow I thought it was the 17th, but....

12 Q. Well, the incident occurred on December the 17th, correct?

13 A. Yes.

14 Q. You would have contacted Agent Lanfersiek prior to that,  
15 correct?

16 A. I'm sorry. Yeah. I didn't hear the first part of that.  
17 Yes.

18 Q. Okay. That was the question, when you contacted him. That  
19 would have been prior to the date of December 17th, correct?

20 A. That's correct.

21 Q. Okay. That was December the 15th of 2014, correct?

22 A. It sounds correct.

23 Q. Well, that's what he testified to on Friday, right?

24 A. I believe so.

25 Q. You heard that, right?

1 A. I did.

2 Q. So that was accurate, correct?

3 A. Yes --

4 **MR. KOBRINSKI:** Objection, your Honor. He's not here  
5 to testify about the accuracy of Special Agent Lanfersiek's  
6 testimony.

7 **THE COURT:** Overruled.

8 BY MR. DAY:

9 Q. Is that right?

10 A. Yes, sir.

11 Q. That's what he said, that you contacted him on the 15th of  
12 December, right?

13 **MR. KOBRINSKI:** Objection, your Honor. Now he's  
14 asking him to recall the testimony and not even --

15 **MR. DAY:** Yeah, that's right. That's exactly what I'm  
16 asking him.

17 **THE COURT:** Overruled.

18 A. Yes.

19 Q. Okay. And you relayed information to him, correct?

20 A. Yes.

21 Q. And the reason that you're relaying this information to him  
22 is you want to enlist his support as a fellow task force  
23 officer to investigate the credit card fraud investigation,  
24 correct?

25 A. If found to be true, then, yes.

- 1 Q. I'm sorry, I couldn't hear you.
- 2 A. Yes. If found to be true, then, yes.
- 3 Q. Okay. All right. That's why you contacted him, right?
- 4 A. Yes.
- 5 Q. He's a Secret Service agent, correct?
- 6 A. He is.
- 7 Q. Okay. And he's with the task force, correct?
- 8 A. Yes.
- 9 Q. And he investigates fraud, right?
- 10 A. Yes.
- 11 Q. He investigates the same fraud that you investigate as a
- 12 task force agent, correct?
- 13 A. Yes.
- 14 Q. Tax fraud, right?
- 15 A. Yes.
- 16 Q. Bank fraud?
- 17 A. Yes.
- 18 Q. And credit card fraud, correct?
- 19 A. Amongst others, yes.
- 20 Q. Amongst other fraud, right?
- 21 A. Correct.
- 22 Q. Okay. And the reason you're contacting him is because, as
- 23 you testified in your direct examination, you had received
- 24 information from a fellow officer there at the Lauderhill
- 25 Police Department that there had been a home that was

## IWASKEWYCZ - CROSS/DAY

1 burglarized in Lauderhill that contained a, possibly, access  
2 card manufacturing plant, correct?

3 A. Yes.

4 Q. Okay. And, of course, as a member of the task force, that  
5 is of -- in your area of investigation, correct?

6 A. That's correct.

7 Q. And so you contacted and communicated this information to  
8 Agent Lanfersiek, correct?

9 A. Yes.

10 Q. Okay. Agent Lanfersiek investigates fraud, is that right?

11 A. Yes.

12 Q. Okay. And did he agree to assist you in this  
13 investigation?

14 A. Yes.

15 Q. Okay. And you communicated to Agent Lanfersiek the  
16 information that had been communicated to you, correct?

17 A. Yes.

18 Q. Okay. That is that there was a burglar who had been  
19 arrested, right?

20 A. Yes.

21 Q. And he had given information regarding items that were  
22 found inside a house, correct?

23 A. Yes.

24 Q. And those items were numerous credit cards, right?

25 A. Yes.

## IWASKEWYCZ - CROSS/DAY

1 Q. Green Dot cards, correct?

2 A. Yes.

3 Q. Prepaid debit cards, right?

4 A. Yes.

5 Q. And high-end merchandise, correct?

6 A. Yes.

7 Q. And as you testified here this morning to

8 Judge Dimitrouleas, the burglar made a comment that, you know,

9 what I did is bad, but, you know, what's in that house is more

10 serious, right?

11 A. That's correct.

12 Q. And that was all communicated by you to Agent Lanfersiek,

13 correct?

14 A. Yes.

15 Q. Okay. And you contacted him to initiate a federal

16 investigation, correct?

17 A. Was that my purpose for contacting him?

18 Q. Yeah. You brought him in, you contacted him to initiate a

19 federal investigation, right?

20 A. No, not to initiate an investigation.

21 Q. Well, you wanted to bring the feds in, right?

22 A. I did.

23 Q. Right. And that's why you contacted him, because he's with

24 the feds, right?

25 A. As a possibility. There was no known way to know if we

1 would be conducting a federal investigation that afternoon.

2 Q. You contacted Agent Lanfersiek because he's a member of the  
3 Secret Service, right?

4 A. Yes.

5 Q. Okay. And the reason that you contacted Agent Lanfersiek  
6 is you wanted to bring the feds in on the investigation of the  
7 case, correct?

8 **MR. KOBRINSKI:** Objection, your Honor. Argumentative.

9 **THE COURT:** Overrule.

10 A. Yes.

11 Q. Okay. And you, in fact, did that, correct?

12 A. I did.

13 Q. Okay. A federal investigation was initiated, correct?

14 A. No, that's not correct.

15 Q. Well, an indictment was returned, right?

16 A. Eventually, yes.

17 Q. A federal indictment, correct?

18 A. That's correct.

19 Q. Pursuant to the investigation that you conducted with  
20 Agent Lanfersiek, correct?

21 A. Yes.

22 Q. And he agreed to work with you jointly on the case, right?

23 A. Yes.

24 Q. As a member of the South Florida Organized Fraud Task  
25 Force, is that right?

1 A. Yes.

2 Q. You did not contact Agent Lanfersiek to ask him to  
3 investigate a burglary for you, is that right?

4 A. That's correct.

5 Q. Okay. The Secret Service doesn't investigate burglaries,  
6 do they?

7 A. No.

8 Q. Okay. There's no federal burglary statute, is there?

9 A. Not that I'm aware of.

10 **MR. KOBRINSKI:** Objection, your Honor. Relevance.

11 **THE COURT:** Overruled.

12 BY MR. DAY:

13 Q. Right?

14 A. Not that I'm aware of.

15 Q. Okay. Burglary is a state violation, right?

16 **MR. KOBRINSKI:** Objection, your Honor. Outside the  
17 purview of this witness's knowledge.

18 **THE COURT:** Overruled.

19 BY MR. DAY:

20 Q. Well, you do know that burglary is a crime in the state of  
21 Florida, right?

22 A. I do.

23 Q. There's a statute that covers that, right?

24 A. Yes.

25 Q. And as you just indicated, there's no federal burglary



1 statute, correct?

2 A. Yes.

3 Q. Okay. So you would not have contacted Agent Lanfersiek to  
4 investigate a burglary, right?

5 A. Correct.

6 Q. The information that you got from the individual in your  
7 department eventually came from or eventually was -- or  
8 originated from a Detective Gordon from the Sunrise Police  
9 Department, correct?

10 A. I believe so, yes.

11 Q. Well, actually, Detective Gordon arrested Mr. Hunt, is that  
12 right? The burglar, correct?

13 A. Yes.

14 Q. I mean you've said you reviewed the reports that were  
15 generated with regard to the case, correct?

16 A. Yes.

17 Q. And in Government's 1 and 2, Detective Gordon is mentioned  
18 in that, correct?

19 A. He is.

20 Q. Okay. Detective Gordon actually, along with another  
21 detective, investigated the fact that Mr. Hunt was seen driving  
22 a car, and they got his tag number, and he was arrested, right?

23 A. Yes.

24 Q. Okay. And based on that arrest, Detective Gordon was able  
25 to get a confession from Mr. Hunt, the burglar, is that right?

1 A. To my understanding, yes.

2 Q. Both audio and video, right?

3 A. I believe so.

4 Q. And you reviewed a copy of the confession, right?

5 A. No.

6 Q. You never did?

7 A. No.

8 Q. You never got that?

9 A. No.

10 **MR. KOBRINSKI:** Objection, your Honor. Just asked and  
11 answered.

12 **THE COURT:** Sustain.

13 BY MR. DAY:

14 Q. So that -- but the information from the burglar was  
15 communicated to you through -- from Detective Gordon through  
16 the person that contacted you, right?

17 A. That's correct.

18 Q. Okay. Detective Gordon actually filed a probable cause  
19 affidavit specifically with regard to the arrest of Caleb Hunt,  
20 correct?

21 A. I believe so.

22 Q. Okay. And that occurred -- that arrest of Mr. Hunt  
23 occurred on December the 9th of 2014, correct?

24 A. I don't know the date.

25 Q. Okay. Do you want to refer -- do you want to refresh your

1 recollection with the reports in the case?

2 **MR. KOBRINSKI:** Objection, your Honor. It's improper  
3 for refreshing recollection. He never said his recollection --  
4 he knew the date to begin with.

5 **THE COURT:** Overruled.

6 **MR. SMITH:** Tim, these were introduced into evidence.  
7 These are the originals.

8 **MR. DAY:** Okay.

9 *(Discussion had off the record between counsel)*

10 **MR. SMITH:** Okay.

11 **MR. DAY:** May I approach the witness, your Honor?

12 **THE COURT:** Okay.

13 BY MR. DAY:

14 Q. I want to show you what's been marked as Defense Exhibit 1  
15 for identification and ask you if you recognize what that  
16 document is.

17 *(Defendants' Exhibit 1 marked for identification)*

18 A. It looks like a probable cause affidavit.

19 Q. Okay. And it's a probable cause affidavit of what, as you  
20 look at it?

21 A. For one count of grand theft.

22 Q. Okay. And with regard to who?

23 A. As the arresting officer, is that what you're asking?

24 Q. No, with regard to who? Who was arrested for one count of  
25 grand theft?

1 A. Caleb Terrence.

2 Q. Okay. And does it indicate that the person's name is  
3 actually Caleb Hunt?

4 A. I'm sorry, I was looking at the middle name. Yes, Caleb  
5 Terrence Hunt.

6 Q. Okay. And does the probable cause affidavit indicate the  
7 date that Caleb Hunt was arrested?

8 A. It says December 9th.

9 Q. Okay. And that arrest was made by who?

10 A. Detective William Gordon.

11 Q. Okay. And you've filed these complaint affidavits,  
12 probable cause affidavits before, right?

13 A. Similar format, but, yes.

14 Q. Okay. And these are documents that have to be filed when  
15 anyone is arrested, correct?

16 A. Yes.

17 **MR. KOBRINSKI:** Objection, your Honor. At this point,  
18 may I voir dire on this -- on the document that's been used to  
19 refresh his recollection?

20 **THE COURT:** No. You can do it on redirect.

21 BY MR. DAY:

22 Q. So that is a document that's required to be filed with the  
23 clerk of the court showing the reason why an individual's been  
24 arrested, right?

25 A. Yes.

1 Q. Okay. And that's a document that's sworn to, correct?

2 A. Yes.

3 Q. Okay. And in this particular case, it was Detective Gordon  
4 that filed the probable cause affidavit that documents that  
5 Caleb Hunt was arrested on December the 9th, right?

6 **MR. KOBRINSKI:** Objection, your Honor. Which  
7 particular case? It hasn't been clarified. Is this a  
8 Lauderhill document or a Sunrise document?

9 **MR. DAY:** This probable cause affidavit.

10 **MR. KOBRINSKI:** For which particular case?

11 **THE COURT:** If the witness understands the question,  
12 he can answer it.

13 BY MR. DAY:

14 Q. Right?

15 A. Sorry, what was the question again?

16 Q. The probable cause affidavit that I showed you,  
17 Government's Exhibit 1 for -- excuse me -- Defense Exhibit 1  
18 for identification, okay, is a probable cause affidavit that  
19 indicates that Caleb Hunt was arrested on December the 9th of  
20 2014 by Detective Gordon, right?

21 A. Yes.

22 Q. Okay. And do you have any reason to believe that that is  
23 not accurate?

24 A. No.

25 Q. Okay. And Detective Gordon followed up on the arrest of

1 Caleb Hunt, correct?

2 A. I don't know what Detective Gordon did.

3 Q. Well, in Government's 1 and Government's 2 that's in  
4 evidence that you said that you reviewed, it indicates that  
5 Detective Gordon followed up on the arrest of Mr. Hunt, right?

6 A. Are you referring to the Lauderhill case or for the Sunrise  
7 case?

8 Q. I'm talking about Detective Gordon following up on the  
9 arrest of Caleb Hunt. You're familiar with that, right? You  
10 know that he did that, correct?

11 A. I know he did portions of that. I don't know to what  
12 extent you're referring to.

13 Q. Well, he followed up with regard to Ms. Austin and her  
14 case, correct?

15 A. I did -- I believe he did, as well as other individuals,  
16 yes.

17 Q. Okay. My question to you was whether or not  
18 Detective Gordon followed up with Ms. Austin regarding the  
19 burglary of her home?

20 **MR. KOBRINSKI:** Objection, your Honor. What does  
21 "followed up" mean?

22 **THE COURT:** Overruled.

23 A. I believe he did to some extent.

24 Q. Yes. He took a statement from her, didn't he?

25 A. I believe it was indicated in a report.

1 Q. Yeah, a sworn statement, right?

2 A. I believe it said so.

3 Q. And that's standard protocol for someone who's been the  
4 victim of a crime, correct?

5 A. Yes.

6 Q. Okay. He also got a declaration from her that she wanted  
7 to go forward with the prosecution, correct?

8 A. Yes.

9 Q. Okay. That's also standard protocol for the victim of a  
10 burglary, correct?

11 A. Yes.

12 Q. Okay. And you know that that's standard protocol, because  
13 you're a police officer in the state of Florida, correct?

14 A. That's correct.

15 Q. Okay. She also signed a property receipt with regard to  
16 Detective Gordon, correct?

17 A. I believe so.

18 Q. Okay. Indicating that certain property of hers was taken,  
19 is that correct?

20 A. Yes.

21 Q. And the case was closed by Detective Gordon because of the  
22 arrest of Caleb Hunt, right?

23 A. I believe. I don't know how many cases he had with  
24 Mr. Hunt.

25 Q. Okay. But you do know that the case was cleared by -- and

1 closed by the arrest of Caleb Hunt, regarding the burglary of  
2 Ms. Austin, correct?

3 **MR. KOBRINSKI:** Objection, your Honor. Asked and  
4 answered.

5 **THE COURT:** Overruled.

6 A. It appears that it would have been. I didn't look at the  
7 final disposition.

8 Q. I'm sorry, I didn't hear you, sir.

9 A. It appears that it would have been. I didn't review a  
10 final disposition.

11 Q. Okay. But you did know and you did see information that  
12 Detective Gordon closed the case by the arrest of Caleb Hunt,  
13 is that right?

14 A. I believe so, yes.

15 Q. Okay. And, in fact, Detective Gordon did a report  
16 regarding his investigation of the burglary, correct?

17 A. Yes.

18 Q. Okay. And Detective Coulson also did a report, correct?

19 A. Yes.

20 Q. And there were other officers that did reports in the case,  
21 correct?

22 A. That's correct.

23 Q. Officers that were investigating the burglary, is that  
24 right?

25 A. Yes.



1 Q. Okay. And that's standard protocol, correct?

2 A. It can be.

3 Q. Well, you said that on direct examination, right?

4 A. *(No response)*

5 Q. The prosecutor asked you, What's the standard protocol with  
6 regard to a burglary? And you said, Initially, an officer, a  
7 road patrol officer responds to the scene of the burglary,  
8 right?

9 A. I was testifying to the initial officer. I think you were  
10 just asking about detectives involved.

11 Q. All right. I asked you the question. I'm asking you the  
12 question.

13 Standard protocol, someone is the victim of a  
14 burglary, they call the police, a road patrol officer is  
15 dispatched to the home, is that right?

16 A. Yes.

17 Q. To take a report of the burglary, right?

18 A. Yes.

19 Q. That's standard protocol, correct?

20 A. Yes.

21 Q. Then there's follow-up investigation that is undertaken by  
22 detectives thereafter, correct?

23 A. Yes.

24 Q. And you testified that they document that, they write  
25 reports, right?

1 A. Yes.

2 Q. Regarding what they did in that investigation, correct?

3 A. Usually, yes.

4 Q. So that when they're called to testify in court, they have  
5 those reports to refresh their recollection, if need be, to  
6 testify at a trial, correct?

7 A. Sure.

8 Q. So Detective Gordon did that with regard to the burglary of  
9 Ms. Austin, correct?

10 A. Yes.

11 Q. Detective Coulson did that with regard to the burglary of  
12 Ms. Austin's home, correct?

13 A. Yes.

14 Q. But you did no report, correct?

15 A. That's correct.

16 Q. And you didn't have her sign any property receipts,  
17 correct?

18 A. Not that I recall.

19 Q. Okay. And you didn't take a sworn statement from her,  
20 correct?

21 A. That's correct.

22 Q. Okay. And all of that is standard procedure for  
23 individuals who are investigating a burglary, correct?

24 Individual officers that are investigating a burglary, correct?

25 A. It can be.

1 Q. It can be? Well, is it or isn't it, that you actually take  
2 a sworn statement from the victim of a burglary as to what  
3 happened? Is that standard procedure or not?

4 **MR. KOBRINSKI:** Objection, your Honor. Objection,  
5 your Honor. Asked and answered.

6 **THE COURT:** Overruled.

7 A. That would depend if you're an actual assigned detective to  
8 a case or if you're assisting with.

9 Q. Right. If you're the assigned detective to the case, it's  
10 standard protocol you take a sworn statement from the victim,  
11 right?

12 A. As an assigned detective, yes.

13 Q. And you get an indication or a declaration from the victim  
14 that they're willing to prosecute, correct?

15 A. Yes.

16 Q. And you get an indication from the victim as to what kind  
17 of property was taken from them, correct?

18 A. Typically.

19 Q. Okay. And that was done in this particular case, right?

20 A. Yes.

21 Q. And that was done by other detectives and not you, is that  
22 right?

23 A. That's correct.

24 Q. This house was eventually fully searched, is that right?

25 A. It was searched. What do you mean by "fully searched"?

1 Q. Well, you went through the -- the house was entirely gone  
2 through by agents, correct?

3 A. No, that's not correct.

4 Q. Okay. So it was only partially searched by the agents?

5 A. Yes, sir.

6 Q. Okay. Well, they searched in the oven, right?

7 A. Yes.

8 Q. Okay. And they searched in the master bedroom, right?

9 A. Yes.

10 Q. And they looked through all the clothes and all the  
11 drawers, right?

12 A. Of the master bedroom?

13 Q. Yeah.

14 A. Yes.

15 Q. And they looked in the closet, and they located a firearm,  
16 right?

17 A. Yes, that's correct.

18 Q. And that was not seen by you when you were there initially  
19 and entered the residence, right?

20 A. Correct.

21 Q. Okay. And all of that was done by these task force agents,  
22 correct?

23 A. Yes.

24 Q. These are task force agents that are assigned with the  
25 South Florida Organized Task Fraud, correct -- excuse me --

1 South Florida Organized Fraud Task Force, correct?

2 A. Yes.

3 Q. Okay. And they were alerted prior to you going to  
4 Ms. Austin's residence that, in fact, they might be needed,  
5 correct?

6 A. That's correct.

7 Q. And you were hoping that, in fact, this information that  
8 you got from Caleb Hunt that there was an access card  
9 manufacturing plant -- you were hoping to find evidence of that  
10 particular crime, right?

11 A. No.

12 Q. Okay. You didn't want to find any evidence of credit card  
13 fraud?

14 A. No.

15 Q. Okay. You didn't contact Agent Lanfersiek to ask his help  
16 to investigate credit card fraud?

17 A. I did.

18 Q. Okay. So you did then. You were hoping, when you  
19 contacted Agent Lanfersiek, that you would be able to find  
20 evidence of credit card fraud, right?

21 A. No, I was not hoping that there be credit card fraud  
22 present inside the house.

23 Q. Okay. So Caleb Hunt tells a detective who tells you that  
24 there's access device -- there's an access credit card  
25 manufacturing plant going on in the house, right?

## IWASKEWYCZ - CROSS/DAY

1 A. That's correct.

2 Q. Okay. You contacted Agent Lanfersiek to help -- to ask him  
3 to help investigate this for you, right?

4 A. Yes.

5 Q. He's an agent with the South Florida Organized Task  
6 Fraud (*sic*), right?

7 A. Yes.

8 Q. You're an agent with the South Florida Organized Fraud Task  
9 Force, correct?

10 A. That's correct.

11 Q. Caleb Hunt tells a detective who tells you that what he did  
12 was bad, but what was being done in that house was worse,  
13 correct?

14 A. That's correct.

15 Q. Okay. You're duty bound and obligated to investigate that  
16 information, correct?

17 A. That's correct.

18 Q. And that's what you did on December the 17th with  
19 Agent Lanfersiek, correct?

20 A. Yes.

21 Q. Okay. You knocked on the door of Ms. Austin's residence on  
22 December the 17th, correct?

23 A. Yes.

24 Q. And you were there with Agent Lanfersiek, correct?

25 A. Yes.

## IWASKEWYCZ - CROSS/DAY

1 Q. Ms. Austin opened the door, right?

2 A. Yes.

3 Q. You introduced yourself as a police officer, correct?

4 A. I did.

5 Q. You had your gun and badge and that was visible, right?

6 A. Yes.

7 Q. You introduced Agent Lanfersiek as your crime scene expert,  
8 correct?

9 A. I did.

10 Q. Okay. And that was not true, correct?

11 A. That's correct.

12 Q. That was a lie, right?

13 A. Yes.

14 Q. Okay. That was the ruse, correct?

15 A. Yes.

16 Q. Okay. And you were allowed entrance into the house by  
17 Ms. Austin, correct?

18 A. That's correct.

19 Q. And as you indicated, that -- that she was excited about  
20 the fact that somebody was coming to investigate the burglary,  
21 correct?

22 A. Yes.

23 Q. Okay. And what happened thereafter was that  
24 Agent Lanfersiek -- well, I guess the first thing that happens  
25 is, you go to the living room area, and you find -- Mr. Spivey

1 comes out, and you're told that there's a videotape regarding  
2 the burglary, correct?

3 **MR. KOBRINSKI:** Objection, your Honor. Compound  
4 question.

5 **THE COURT:** Overrule.

6 A. Yes.

7 Q. Okay. And you and Mr. Spivey then went through that  
8 computer while he's trying to obtain video of the burglary,  
9 correct?

10 A. Yes.

11 Q. Okay. What Agent Lanfersiek did is he told Ms. Austin that  
12 he was gonna follow the route that the burglar took, right?

13 A. Yes.

14 Q. Okay. And he, in fact, did that, correct?

15 A. Yes.

16 Q. And he went to the sliding glass door at the back of the  
17 house, correct?

18 A. Yes.

19 Q. Okay. And the reason he went to the sliding glass door at  
20 the back of the house was to dust for fingerprints, correct?

21 A. Yes.

22 Q. Okay. And that was false, right?

23 A. *(No response)*

24 Q. He was not dusting for fingerprints, was he?

25 A. I believe he was dusting for fingerprints.



1 Q. Okay. Did he have any black powder?

2 A. He did.

3 Q. Did he apply that to the sliding glass door?

4 A. I don't recall. I wasn't really paying attention to his  
5 efforts.

6 Q. Right.

7 He would know whether he applied black powder or not,  
8 right?

9 A. I would think so.

10 Q. Okay. He's not a crime scene expert, is he?

11 A. No.

12 Q. Doesn't have any expertise in taking fingerprints, correct?

13 A. No.

14 Q. Doesn't know how to take latent fingerprints, as far as you  
15 know, correct?

16 A. Not that I'm aware of.

17 Q. Okay. So he's going to the back of the sliding glass door  
18 telling Ms. Austin that he's dusting for fingerprints, correct?

19 A. Yes.

20 Q. Okay. Thereafter, he asks Ms. Austin where else the  
21 burglar went, right?

22 A. Yes.

23 Q. And she tells him the master bedroom, correct?

24 A. Yes.

25 Q. Okay. And so he then follows her into the master bedroom,

1 correct?

2 A. Yes.

3 Q. Okay. You're with Mr. Spivey, so you don't see exactly  
4 what goes on in there, right?

5 A. That's correct.

6 Q. Okay. At some point in time thereafter, Agent Lanfersiek  
7 comes out and tells you that -- of what he has seen, correct?

8 A. Yes.

9 Q. Okay. And he tells you that he's seen multiple debit  
10 cards, right?

11 A. I think he said plastic cards. I don't remember if he said  
12 debit cards or not, but multiple cards.

13 Q. Multiple cards, correct?

14 A. Yes.

15 Q. Told you that he saw an embossing machine, correct?

16 A. Yes.

17 Q. Okay. Now, there's no reason for anybody to have an  
18 embossing machine in their house, right?

19 A. No, there's several reasons.

20 Q. Well, one of them is to create credit card fraud, right?

21 A. That's correct.

22 Q. Okay. So that's what you believed it was there for,  
23 correct?

24 A. I believed it was a possibility.

25 Q. Okay. And that confirmed what the burglar, Caleb Hunt, had

1 said to the detective who relayed that to you, correct?

2 A. Yes.

3 Q. Okay. You then asked to speak to Ms. Austin, correct?

4 A. I did.

5 Q. About what had been relayed to you by Agent Lanfersiek,  
6 correct?

7 A. Yes.

8 Q. And you told her that you had seen -- or that  
9 Agent Lanfersiek had seen items that were in the master bedroom  
10 that were indications of fraud, right?

11 A. Yes.

12 Q. Like stack of cards and other items, right?

13 A. Yes.

14 Q. And then you told her that Agent Lanfersiek had seen an  
15 embossing machine, right?

16 A. I had seen them, too. So, yes, I mentioned my own  
17 observations.

18 Q. And so you then told her that she needed to -- or that you  
19 wanted to know about those particular items, correct?

20 A. Yes.

21 Q. Okay. And I guess your testimony is that with regard to  
22 the stack of cards, that they were in her name, is that right?

23 A. That's what she said.

24 Q. Okay. And she said that there was nothing wrong with them,  
25 correct?

1 A. Yes.

2 Q. Okay. Now, you testified on direct examination that, you  
3 know, it was a stack of about 15 cards, right?

4 A. Approximately.

5 Q. Okay. And that that's not typical that somebody would have  
6 15 gift cards, is that right?

7 A. Yes.

8 Q. Okay. So that was an indication to you of some kind of  
9 fraud, at least a possibility, right?

10 A. Yes.

11 Q. Okay. This is December the 17th, correct?

12 A. Yes.

13 Q. Okay. So it's the week before Christmas, right?

14 A. Yes.

15 Q. Okay. It's not unusual for people to buy gifts cards,  
16 multiple ones, for family members and friends, correct?

17 A. She said they are for herself, not as gifts or for family  
18 or friends. They were already opened and being used.

19 Q. My question to you, sir, is: It's not unusual, the week  
20 before Christmas, for someone to have gift cards that they  
21 would give to family and friends for Christmas, right?

22 A. That could have been a reasonable explanation.

23 Q. Right.

24 And you didn't know the explanation for that until you  
25 were able to do forensic analysis after the 17th, right?

1 A. No, I asked her for an explanation, and she didn't provide  
2 that one.

3 Q. Right.

4 And you weren't able to do any forensic analysis until  
5 after that, is that right? Until after the 17th, correct?

6 A. That's correct.

7 Q. So you would not have known there on the 17th the legality  
8 or the illegality of those cards, correct?

9 A. Well, I could tell that -- by looking at them, that they  
10 were not for the purpose of gifts. I could tell that they were  
11 already open and used.

12 Q. Okay. So they were open and used, and they may have been  
13 open and used legally, correct?

14 A. It's possible.

15 Q. Okay. So if they're open and they're used legally, they're  
16 not illegal, right?

17 A. Possibly not.

18 Q. So just by looking at the stack of cards, as was done there  
19 on the 17th, you could not tell whether or not they were legal  
20 or illegal at that point in time, correct?

21 A. Not definitively, no.

22 Q. Did Ms. Austin ask you the purpose -- after you had told  
23 her about the credit cards and the debit cards and the  
24 embossing machine, did she ask you to explain whether you were  
25 there investigating a burglary or if you were there for some

1 other reason?

2 A. I think she did make a mention of -- an inquiry of such.

3 Q. Okay. Because she thought you were there investigating a  
4 burglary, right?

5 A. Initially, yes.

6 Q. Okay. And did you tell her that you were there  
7 investigating credit card fraud?

8 A. I told her that in addition to the follow-up for the  
9 burglary, I told her what my primary role is as a detective and  
10 why the items that I had seen were of particular concern to me.

11 Q. Okay. And that was your primary role, was the credit card  
12 fraud investigation, right?

13 A. No, not that day. That day I was acting as a dual-purpose  
14 role.

15 Q. Well, you just said you told her what your primary role  
16 was, right?

17 A. My primary assignment. Sorry. I might have misspoken.

18 Q. Oh, you misspoke?

19 **MR. KOBRINSKI:** Objection, your Honor. I think the  
20 record actually wouldn't bear out that he misspoke.

21 **THE COURT:** Overruled.

22 BY MR. DAY:

23 Q. When you told Ms. Austin that you were there to now  
24 investigate this credit card fraud that you had seen, did  
25 she -- was she upset with that?

1 A. A bit concerned. I wouldn't say upset.

2 Q. Okay. And she was concerned, because she thought that you  
3 were there for a burglary investigation, right?

4 **MR. KOBRINSKI:** Objection, your Honor. It calls for  
5 speculation.

6 **THE COURT:** If he knows.

7 A. I couldn't know for certain, but --

8 Q. Well, but that's what you told her, right? At the front  
9 door, correct?

10 A. Which point are you referring to? The initial approach or  
11 when --

12 Q. Yeah, when you knocked on the door, you initially told her  
13 it was a burglary investigation, right?

14 A. Yes.

15 Q. Is that right?

16 A. Yes.

17 Q. Okay. And you told her that you were there with  
18 Agent Lanfersiek, and he was the crime scene expert, right?

19 A. Yes.

20 Q. Okay. And you told her that to gain entry into the house,  
21 correct?

22 A. Yes.

23 Q. Okay. And you told her that -- to gain entry into the  
24 house, that you and Agent Lanfersiek were there investigating a  
25 burglary, and he was the crime scene expert, because as you

1 approached the residence, you saw her exit and then go back  
2 into the residence, correct?

3 A. No. When we approached the house, she was already outside.  
4 She simply went back inside the residence.

5 Q. She went back inside the house. And when she went back  
6 inside -- well, while she was outside the house, you were able  
7 to observe her demeanor, correct?

8 A. Yes.

9 Q. And you believed that she was defensive, correct?

10 A. It appeared so.

11 Q. And that she was alarmed, is that correct?

12 A. Yes.

13 Q. Okay. And so that's why you and Agent Lanfersiek was  
14 introduced as the crime scene expert, right?

15 A. Yes.

16 Q. Okay. To gain entry into the house, correct?

17 A. Yes.

18 Q. Okay. So when you're there at the -- in the house, you've  
19 told Ms. Austin of your observations. Now, does -- and you  
20 believe that she said, I thought you were here for a burglary.  
21 Was she upset at that point in time?

22 A. I wouldn't say upset.

23 Q. Well, did she use profanity?

24 A. No, not that I recall.

25 Q. Okay. Well, have you made a statement different from that?



## IWASKEWYCZ - CROSS/DAY

1 A. Is there something specific that you --

2 Q. Yeah, yeah, the videotaped confession, the statement that  
3 Ms. Austin gave.

4 A. The interview, yes.

5 Q. Okay. You heard us play that on Friday, right?

6 A. I did.

7 Q. Okay. Did you say, "You told us to F-U, I don't want to  
8 talk to you"?

9 A. I did.

10 Q. You said that, right?

11 A. In the interview room, yes.

12 Q. In the interview, correct?

13 A. Yes.

14 Q. And was that accurate?

15 A. The interview portion, yes. Was it accurate as to what was  
16 said on scene, is that what you're asking?

17 Q. Did you tell Ms. Austin at the house, "You told us to F-U,  
18 I don't want to talk to you"? Did you say that during the  
19 interview?

20 A. During the interview, yes.

21 Q. Okay. And is that accurate? Is that what she told you  
22 when you were in the house?

23 A. No, it is not.

24 Q. Okay. So you lied to her during her statement and told her  
25 something that wasn't -- that she said that wasn't, in fact,

1 true, is that your testimony?

2 A. No, I didn't -- I didn't lie to her. It wasn't a lie.

3 Q. Okay.

4 **MR. DAY:** Go ahead and play that.

5 *(Video playing)*

6 *(Discussion had off the record between counsel and*  
7 *paralegal)*

8 *(Video playing)*

9 **MR. DAY:** Just go back to 948.

10 *(Video playing)*

11 **MR. DAY:** Lower the volume a little bit so the agent  
12 can hear.

13 *(Video playing)*

14 BY MR. DAY:

15 Q. Okay. Were you able to hear that, Detective Iwaskewycz?

16 **MR. DAY:** Pause it.

17 BY MR. DAY:

18 Q. Okay. Were you able to hear that, Detective?

19 A. I was.

20 Q. Did you say, "F-U, I don't want to talk to you, kind of  
21 like you did at the house"? Yes or no?

22 A. I did.

23 Q. Okay. Was that a truthful statement that you made?

24 A. It's an interview tactic. It's more of a generalization  
25 referring to the level of cooperation at the house.

1 Q. Indicating that she was not cooperative, correct?

2 A. With information that I was seeking, yes.

3 Q. Okay. "F-U, I don't want to talk to you" indicates that  
4 she's uncooperative, is that correct?

5 A. It could, sure.

6 Q. And that was -- that particular time in which she indicated  
7 her lack of cooperation was in front of Mr. Spivey, is that  
8 right?

9 A. He was -- yeah, they were both present in the house, so,  
10 yes.

11 Q. Well, that's what she said, that "I didn't want to talk to  
12 you in front of him," right?

13 A. Yes. We weren't directly in front of him, is the -- an  
14 explanation I was trying to give. We were somewhat outside.

15 Q. Right.

16 So she's uncooperative with Spivey being present. She  
17 communicated that to you, right?

18 A. Yes.

19 Q. Okay. And she was upset, is that right?

20 A. I didn't see her as upset, just noncooperative in  
21 information giving at that point.

22 Q. Well, did you tell her during the confession that you were  
23 clearly upset?

24 **MR. DAY:** Play the next one.

25 A. I may have.

1 Q. Okay. Well, might you have told her that she was clearly  
2 upset, because she was clearly upset?

3 A. At exactly which point? Once she was handcuffed, she was  
4 definitely upset. I don't know what point of upset, prior to  
5 the arrest or postarrest, because --

6 Q. Yeah, at the same time when you're investigating the case,  
7 and she's told you to "F-U, I don't want to talk to you," or  
8 she's uncooperative with Spivey present, she was clearly upset,  
9 correct?

10 A. No, she was uncooperative, but I wouldn't say upset. She  
11 wasn't upset until she was handcuffed.

12 Q. Make a statement different from that, sir?

13 *(Video playing)*

14 **MR. KOBRINSKI:** Objection. Is that a question?

15 **MR. DAY:** Hold on.

16 **UNIDENTIFIED WOMAN:** Sure.

17 BY MR. DAY:

18 Q. Have you made a statement different from that, sir, that  
19 she wasn't clearly upset?

20 A. You're speaking about inside the interview room?

21 Q. Right.

22 Did you tell her, You were clearly upset, in the  
23 interview room?

24 A. I may have.

25 Q. And did you tell her that she was clearly upset in the

1 interview room, because she was clearly upset at the house?

2 **MR. KOBRINSKI:** Objection, your Honor. This has been  
3 asked and answered.

4 **THE COURT:** Overruled.

5 A. Upset, defensive, I mean, either one's possible. They're  
6 kind of somewhat related, I would say.

7 Q. Okay. So she said that she was clearly upset, because she  
8 was upset at the house, is that right?

9 A. Again, I took it as being defensive.

10 Q. You did not ask her for consent to search the house, is  
11 that correct?

12 A. That's correct.

13 Q. You did not inform her of her right to refuse a search of  
14 her house without a search warrant, correct?

15 A. That's correct.

16 Q. And this was her house, correct?

17 A. Yes.

18 Q. She was the lessor -- the lessee of that residence,  
19 correct?

20 A. Yes.

21 Q. In other words, she was on the lease, right?

22 A. Yes.

23 Q. And she was living there with her children, correct?

24 A. The children and Mr. Spivey, yes.

25 Q. Okay. Now, you -- Ms. Austin was transported to the

1     Lauderhill Police Department, right?

2     A.   Yes.

3     Q.   And at the Lauderhill Police Department, she gave a  
4     tape-recorded statement, correct?

5     A.   She did.

6     Q.   Okay.  And what time did that statement begin?

7                 **MR. KOBRINSKI:**  Objection, your Honor.  Outside the  
8     scope of this hearing.

9                 **THE COURT:**  Overruled.

10    A.   I don't know.  I'd have to look at the video time bar, but  
11    I'm assuming somewhere after eight o'clock p.m.

12    Q.   Okay.  And what time did you leave the residence that day,  
13    you, yourself?

14    A.   I don't recall exactly, but probably close to  
15    eight o'clock.

16    Q.   Right.  Because you were at the house for four to five  
17    hours, right?

18    A.   Approximately four hours, I'd say.

19    Q.   Okay.  And that's -- you were there with the agents from  
20    the South Florida Organized Fraud Task Force, right?

21    A.   Yes.

22    Q.   Conducting the search, correct?

23    A.   Yes.

24    Q.   After Ms. Austin was taken from the scene, correct?

25    A.   Yes.

## IWASKEWYCZ - CROSS/DAY

1 Q. And you told her that upon your initial contact with her in  
2 the interview room, right?

3 A. I'm sorry, what did I tell her?

4 Q. You told her, We've been at -- we've got a lot of stuff out  
5 of your house, right?

6 A. Yes.

7 Q. You told her, We've been at your house for four to five  
8 hours, right?

9 A. I believe so, yes.

10 Q. You told her, We had a team of agents there, right?

11 A. Yes.

12 Q. You told her that we don't bring a team of agents unless  
13 there's a big problem, right?

14 A. I did.

15 Q. And you're telling her this when you're initially having  
16 contact with her in the interview room, correct?

17 A. Yes.

18 Q. Before she goes and gives you the statement that she gave,  
19 correct?

20 A. Correct.

21 Q. Okay. And you told her that you found an embossing  
22 machine, correct?

23 A. Yes.

24 Q. And you told her that you had found hundreds of cards, is  
25 that right?

1 A. Yes.

2 Q. And you told her that you found a reader/writer in the  
3 oven, right?

4 A. Yes.

5 Q. And that that reader/writer you know is a -- is used with  
6 the computer and the embossing machine, correct?

7 A. Yes.

8 Q. That's how the operation works, right?

9 A. Yes.

10 Q. And you know how the operation works, correct?

11 A. Yes.

12 Q. Because this is what you investigate, right?

13 A. Yes.

14 Q. And you told her that there were stolen credit cards,  
15 correct?

16 A. Yes.

17 Q. And you told her there was a bag of Mollies, is that right?

18 A. I believe so, yes.

19 Q. Okay. And Mollies are a drug, right?

20 A. That's correct.

21 Q. You told her that you found a gun.

22 A. Yes.

23 Q. And you said to her, Your name is on a ton of stuff, right?

24 A. Yes.

25 Q. Okay. After you told her that, she then gave a statement



1 to you about her involvement, is that correct?

2 A. Yes.

3 Q. Okay. When you spoke to Mr. Spivey, and you offered him a  
4 waiver form, a consent form, he had observed all the actions of  
5 law enforcement prior to you showing him that form, right?

6 A. Yes.

7 Q. Okay. He had -- he knew that you had observed debit cards,  
8 right?

9 A. If he didn't know it, I believe I informed him prior to.

10 Q. You informed. Right.

11 And that you had debit cards and credit cards and the  
12 embossing machine, correct?

13 A. Yes.

14 Q. Okay. And that was all told to Mr. Spivey before you  
15 showed him the form, right?

16 A. Yes.

17 Q. You did not apply for a search warrant in this particular  
18 case, correct?

19 A. That's correct.

20 Q. And all of the evidence that you retrieved from the house  
21 was located in the master bedroom, correct?

22 A. *(No response)*

23 Q. Except for the reader/writer in the oven, right?

24 A. I believe so, yes.

25 Q. Okay.

1           **MR. DAY:** I don't have any further questions, your  
2 Honor.

3           **THE COURT:** Mr. Smith.

4   **CROSS-EXAMINATION**

5 BY MR. SMITH:

6 Q. Good morning, Detective.

7 A. Good morning.

8 Q. My name is Mike Smith. I'm representing Eric Spivey. And  
9 I just have just a couple questions for clarification purposes  
10 I want to ask that, at least to my satisfaction, I'm not  
11 completely understanding based on your testimony.

12           Now, you started off testifying that you received some  
13 information regarding a Detective Gordon investigation and  
14 relayed some of that information to Special Agent Jason  
15 Lanfersiek in this case, I believe it was on December 15,  
16 correct?

17 A. Yes, sir.

18 Q. Okay. When did you first receive the information about  
19 this burglary that apparently occurred, I believe, probably in  
20 November sometime?

21 A. I don't recall exactly, but probably a couple days or so  
22 prior to that.

23 Q. Okay. So you sat on whatever information you had about  
24 this burglary for some time before contacting the Secret  
25 Service agent in this case, correct?

1 A. I wouldn't say I sat on it. There was other issues that I  
2 was currently working on, but I got to it as soon as I could.

3 Q. I'm sorry?

4 A. There was other cases and other issues that I had to do  
5 throughout the day or week prior to, but I did get to it as  
6 soon as possible. Whether it was a day or two days, three, I  
7 don't recall exactly.

8 Q. I don't mean to suggest that this is the only case that you  
9 work on, and you did nothing for three or four days or a week  
10 or two. I'm just suggesting -- or I'm asking you, you received  
11 information about this burglary at some point prior to relaying  
12 it to the Secret Service agent in this case, correct?

13 A. That's correct.

14 Q. Okay. And some of the information that you received, at  
15 least that you were aware of as of December 15th, when you had  
16 a meeting and a conversation with the Secret Service agent,  
17 when you all decide to effectuate a plan to investigate what  
18 appeared to be some fraud going on in this case, some of the  
19 information you received was that a fellow by the name of Eric  
20 Spivey was residing at this residence also, is that correct?

21 A. I don't remember if we knew that -- how far in advance we  
22 knew that, with him residing there, to what extent. We just  
23 knew that he'd be likely -- well, we didn't even know if he'd  
24 be present. In fact, there was -- prior to going to the house,  
25 there was no vehicle, so we didn't know if anyone was gonna be

1 present.

2 Q. Well, didn't you testify earlier that at some point before  
3 December 15th, maybe a few days, maybe a week, or some point  
4 earlier, you received information about the Detective Gordon  
5 investigation, and would it be fair to say at some point during  
6 that period of time, you obtained the either probable cause  
7 affidavit or the incident report or some kind of investigative  
8 materials?

9 A. Yes, sir.

10 Q. Okay. And in those investigative materials, did it not  
11 reflect that there was an interview back in November with a  
12 Mr. Eric Spivey regarding the burglary at that residence?

13 A. Yes.

14 Q. Okay. So at least since November, and according to you, I  
15 would assume sometime prior to contacting the Secret Service in  
16 this case, you had information that tied Mr. Spivey to that  
17 residence, correct?

18 A. Yes, sir.

19 Q. And you were aware, in fact, he had been interviewed or at  
20 least questioned, or something about the burglary, some month  
21 or two before that time, correct?

22 A. Yes.

23 Q. Okay. Now, you then testified that you had occasion to do  
24 some background on the individuals prior to going to the house.  
25 And I would assume that would be to learn as much as you could

## IWASKEWYCZ - CROSS/SMITH

1 about the residents you were about to approach, correct?

2 A. Yes, sir.

3 Q. Okay. And one of the individuals you did a background  
4 check on was Mr. Spivey, is that fair to say?

5 A. Yes.

6 Q. Okay. When would that background check have been done,  
7 prior to December 15th, contacting the Secret Service agent, or  
8 at some point after contacting the Secret Service and then  
9 developing the plan to go out to the residence actually and to  
10 try to contact the people?

11 A. I don't know for sure. Any time from the beginning to  
12 right before.

13 Q. I'm sorry?

14 A. Any time from right beginning to -- from the very beginning  
15 of learning the information up until right before going to the  
16 house itself. I don't know the exact time.

17 Q. Okay. Well, would it be fair to characterize that really  
18 from whatever time you received the information about the  
19 Detective Gordon report until your contact with the Secret  
20 Service agent, you really didn't do much on that case? Would  
21 that be fair to say?

22 A. I think it was just preliminary background, so nothing in  
23 depth.

24 Q. Okay. And, by the way, that wasn't your investigation,  
25 that was another detective's investigation, Detective Gordon,

1 correct? And I'm referring to the burglary.

2 A. That's correct.

3 Q. Okay. Now, you said at some point, though -- did you not  
4 just testify a little bit earlier that prior to going to the  
5 house, you were aware of Mr. Spivey's background? Is that what  
6 your testimony was?

7 A. Yes, sir.

8 Q. Okay. And what did you do? Did you do an NCIC check? Did  
9 you do -- how is it that you checked Mr. Spivey's background?

10 A. It would have been either that or a -- what's called a --  
11 there's a couple different databases that are used, whether  
12 it's TLO or Accurint, I don't remember exactly which one.

13 Q. Okay. And you were doing an investigation and a background  
14 report, because you wanted to get a real good idea as best you  
15 could as to the people that might be present in the residence  
16 when you and the Secret Service agent approached to try to do  
17 the inquiry regarding the fraud investigation, correct?

18 A. Yes.

19 Q. Okay. And were you aware at that time that Mr. Spivey was  
20 on probation for another case that had been resolved earlier?

21 A. I don't recall at the time if I knew or remembered that.

22 Q. Well, what do you recall -- what information do you recall  
23 gleaned about Mr. Spivey prior to going to the house?

24 A. I remember the extensive list. I mean I think it was, I  
25 want to say, like 30, 33 counts or charges or pages. It was

1 pretty extensive. So I can't remember exactly what I  
2 remembered going up to the house that day other than he did  
3 have a felony history.

4 Q. And at that time, you also -- since you were interested  
5 along with the agent to investigate some kind of a fraud, and  
6 you had information at least from this fellow, Mr. Hunt, via  
7 Detective Gordon, that there was a processing plant in there,  
8 some kind of a fraud processing plant, it was your suspicion  
9 that Mr. Spivey may be involved in that kind of activity also  
10 at that time, correct?

11 A. It was a possibility, yes.

12 Q. And so, at that time, you knew he had some kind of a  
13 background. You don't recall exactly what at this time. You  
14 did a background check on him. You know that he gave some  
15 information back in November to Detective Gordon regarding the  
16 burglary, correct?

17 A. I don't think Mr. Spivey gave information to  
18 Detective Gordon. The reports that I had were that he gave  
19 information to a Lauderhill police officer.

20 Q. Oh, okay. So one of the police that showed up at the  
21 residence or some such for an interview, but not necessarily  
22 Detective Gordon, is that fair to say?

23 A. Yes, sir.

24 Q. But there's no question, though, at the time, you did have  
25 information and evidence that Mr. Spivey was present and at

1 least your estimation was residing in that residence, correct?

2 A. Residing, yes. And, again, whether or not he was actually  
3 present that day, we didn't know -- we had no way of knowing.

4 Q. Now, let me jump ahead, if I could, just to actually on  
5 December 17th.

6 When you knocked on the door, it was not Mr. Spivey,  
7 it was Ms. Austin that first you made contact with, correct?

8 A. That's correct.

9 Q. And Mr. Spivey did not make his presence known until some  
10 point when you got in the house and either you or the Secret  
11 Service agent asked, Is there anybody else in here, for your  
12 own protection or for whatever reason, correct?

13 A. Yes, sir.

14 Q. And is it your testimony that Ms. Austin then called Eric  
15 to the living room, or did he just appear in the living room?

16 A. I believe she called him out.

17 Q. And did you identify yourself then as police officers to  
18 him?

19 A. Yes, sir.

20 Q. And at that time, really following up on the ruse to get in  
21 the house and the intent to do a fraud investigation, you told  
22 them you were there really to further the burglary  
23 investigation, and you wanted to talk to either he or  
24 Ms. Austin about the burglary and the events then, correct?

25 A. Yes. It was a dual-purpose investigation.



1 Q. And was it he or Ms. Austin that indicated that there was  
2 some kind of -- there may be some kind of videotape of the  
3 events that might be of interest to law enforcement to further  
4 their burglary investigation?

5 A. I don't recall who initially made mention. I think she may  
6 have, and then she may have instructed him to assist with it.  
7 We were made aware by, I think, her initially and then maybe by  
8 him helping out. I don't recall exactly.

9 Q. All right. But there's no question at that point that  
10 Mr. Spivey was, if not to use the word eager, certainly  
11 agreeable to assist you in the burglary investigation, correct?

12 A. Yes.

13 Q. And it was Mr. Spivey that remained with you in the living  
14 room at the desk with the laptop attempting to retrieve some  
15 surveillance video, correct?

16 A. Yes.

17 Q. And while he was doing that with you, the Secret Service  
18 agent was with Ms. Austin in the back bedroom and different  
19 areas of the house, correct?

20 A. Yes.

21 Q. All right. Did you remain with Mr. Spivey the entirety of  
22 the time while the Secret Service agent was in the back of the  
23 house conducting his own observations?

24 A. While Agent Lanfersiek was with Chenequa, I believe so.

25 Yeah, I was with -- at least for the initial portion, yes. For

1 the initial portion, yes.

2 Q. Okay. Well, what portion did you not remain with him?

3 A. Well, once Agent Lanfersiek came back and met with me, I  
4 then went into the bedroom and made my own observations. So I  
5 was not with Mr. Spivey at that time.

6 Q. All right. And so during that time, was the Secret Service  
7 agent remain with Mr. Spivey (*sic*)?

8 A. I believe so.

9 Q. So at all times while you were in the house, there was some  
10 law enforcement presence with Mr. Spivey in the living room  
11 area at the computer, correct?

12 A. I believe so.

13 Q. Okay. How long a period of time, as best you can -- well,  
14 do you know what time it was when you first knocked on the door  
15 and approached the residence and asked Ms. Austin if you could  
16 come in? Do you know what time that was?

17 A. No. Approximately middle of the afternoon, I would assume.

18 Q. Okay. Approximately how long a period of time do you  
19 believe you were in the house prior to requesting Mr. Spivey to  
20 execute a consent for the search of the house?

21 A. Maybe an hour or close to.

22 Q. How long?

23 A. Approximately close to an hour.

24 Q. Okay. And the consent -- the waiver of search warrant --  
25 oh, you were here Friday, and you saw the questioning of the

## IWASKEWYCZ - CROSS/SMITH

1 Secret Service agent about that form, the consent-to-search  
2 form, correct?

3 A. I did.

4 Q. Okay. And it's got a signature. It looks like a name of  
5 Jermaine. And it's witnessed by Jason Lanfersiek, which you  
6 know to be the Secret Service agent that spoke -- testified on  
7 Friday, correct?

8 A. Yes.

9 Q. And that form was signed, or at least it's time lined, it  
10 appears to be 1545 or 1546, something like that.

11 A. *(No response)*

12 Q. You want to take a look at it just to refresh your  
13 recollection?

14 A. If you say so, I believe it.

15 Q. Okay. Well, 1546, that's military time. What time would  
16 that be?

17 A. 3:46 p.m.

18 Q. Okay. And according to you, that would have been  
19 approximately an hour after you and the Secret Service agent  
20 already gained entrance into the house?

21 A. About that, yes.

22 Q. And during that hour period of time, by the way, there's no  
23 question that Mr. Spivey was aware of the search going on in  
24 the back room with the Secret Service agent and Ms. Austin,  
25 correct?

## IWASKEWYCZ - CROSS/SMITH

1 A. I don't know what -- what he interpreted it as. I don't  
2 think it was a search at that time. I think it was just a --

3 Q. Well --

4 A. -- a showing, if you will.

5 Q. Well, it wasn't -- well, okay, an observations (*sic*), the  
6 ability to make an observation, if you don't want to call it a  
7 search. He was well aware that that's what the Secret Service  
8 agent was conducting along with Ms. Austin in the back room,  
9 correct?

10 A. He should have known that, yes.

11 Q. Okay. Well, I mean it wasn't a surreptitious-type thing  
12 that they snuck off into another room. In fact, didn't --  
13 wasn't there conversation with the Secret Service agent and  
14 Ms. Austin that they wanted to retrace the steps of what they  
15 believe the burglar had took, correct?

16 A. Yes.

17 Q. Okay. So he was clearly aware of that, correct?

18 A. I would assume. I can't testify to his observations.

19 Q. All right. And he was also aware, when the agent came back  
20 and had a conversation with you, that there was something that  
21 was -- piqued your interest, and you then went back into the  
22 back room, in the bedroom, to take a look, correct?

23 A. I'm sorry, were you asking if he was aware of that?

24 Q. The Secret Service agent comes back, has a conversation  
25 with you, and then you leave Mr. Spivey at the desk with the

## IWASKEWYCZ - CROSS/SMITH

1 Secret Service agent this time, and then you go into the back  
2 bedroom to make your own observations, correct?

3 A. Yes, sir.

4 Q. All right. And, again, you didn't go off in the middle of  
5 the night and sneak into it. That was well known to anybody  
6 who was there that's what you were doing, correct?

7 A. Yes.

8 Q. In fact, at some point afterwards, you confronted  
9 Ms. Austin about some concerns you had, and you wanted to speak  
10 with her, correct?

11 A. Yes.

12 Q. Now, was that done inside the house or was that done  
13 outside the house?

14 A. Right at the threshold of the front door.

15 Q. Okay. At that time, you indicated you wanted to talk to  
16 her, and you would talk to her outside, correct?

17 A. Yes.

18 Q. Now, did the Secret Service agent go out with you or was it  
19 just you alone with Ms. Austin?

20 A. I believe it was just myself and Ms. Austin.

21 Q. I'm sorry?

22 A. I believe it was just myself and Ms. Austin.

23 Q. Okay. Did there come a period of time that you were on the  
24 porch with Ms. Austin that the Secret Service agent came out  
25 and engaged you in some kind of brief conversation?

1 A. He may have.

2 Q. Did there come a time where actually Mr. Spivey came  
3 outside and opened the door to see what was going on regarding  
4 your conversation with Ms. Austin?

5 A. Not that I recall.

6 Q. Who else was present with you and Ms. Austin outside?

7 A. I believe it was just the two of us at the front door. I  
8 think there may have been another agent, or my partner might  
9 have been out -- outside.

10 Q. Okay. And how long a period of time would that have been,  
11 as best you recall now, that you were outside alone with  
12 Ms. Austin?

13 A. Ten, maybe 15 minutes, if that.

14 Q. And then when you came back inside, at that point, it was  
15 apparent that Ms. Austin was not gonna be cooperative with you  
16 and assist you in giving you any consent to search the house,  
17 correct?

18 A. Yeah, I gave her several opportunities, and it wasn't being  
19 met with positive feedback.

20 Q. Well, it was apparent she wasn't gonna be cooperative, and  
21 she was not giving you consent to search the house, correct?

22 A. No, that was never asked. In fact, she gave -- after we  
23 went outside, she then led me to other portions of the house  
24 that we hadn't even been in yet. So I would say she was  
25 cooperative in that regard.

1 Q. Now -- well, you went back in the house, and at that point,  
2 you clearly had no consent to search anything, correct? From  
3 anybody.

4 A. That's correct.

5 Q. Okay. And you went back in the house, and it was at that  
6 time that you presented Mr. Spivey with some kind of a waiver  
7 for a search warrant, is that correct?

8 A. Yes.

9 Q. And you told him that you had concerns, you'd addressed  
10 some of them earlier, that indicated some kind of fraud-type  
11 activity, and you told him you wanted to search the house, is  
12 that correct?

13 A. Yes.

14 Q. And you had a conversation with him. And at what point did  
15 you actually get him to sign the waiver of the search warrant?

16 A. Right after I finished speaking with him.

17 Q. I'm sorry?

18 A. Right after I finished speaking with him.

19 Q. Did he give you verbal or oral consent at all? Or did you  
20 simply say, I want to search, and you handed him a piece of  
21 paper to sign?

22 A. I believe there was oral, and then we went over the form as  
23 well.

24 Q. Okay. Now, you had the conversation with him first, and  
25 then afterwards, you gave him the waiver -- the search warrant

1 waiver, correct?

2 A. Correct.

3 Q. And in that waiver, there's no indication that he has a,  
4 for instance, a right to consult with a lawyer before giving  
5 consent, correct?

6 A. That's correct.

7 Q. And there's nothing in that waiver form that reflects that  
8 any evidence that you find may or could be used against him in  
9 any court of law, correct?

10 A. That's correct.

11 Q. The information that was handwritten in that form, that was  
12 filled out after the signature of Jermaine was placed on that  
13 form, is that fair to say?

14 A. I don't believe so. I think it was done before and even  
15 during the actual going over the form -- or reading of, I  
16 guess.

17 Q. Is it your testimony that you read this form to him?

18 A. Yes.

19 Q. And, of course, you heard the testimony of the Secret  
20 Service agent on Friday that nobody read this form aloud to  
21 him; it was simply handed to him, correct?

22 **MR. KOBRINSKI:** Objection, your Honor. I don't  
23 believe that was the testimony.

24 **THE COURT:** Sustain.  
25



1 BY MR. SMITH:

2 Q. Were you here Friday?

3 A. I was.

4 Q. Did you hear the Secret Service agent's testimony?

5 A. I did.

6 Q. And he, in fact, was a witness -- his signature is a  
7 witness on that form, correct?

8 A. It is a witness signature, yes.

9 Q. Okay. Now, there's also another form that was presented to  
10 Mr. Spivey. Do you recall that?

11 A. Yes.

12 Q. And when was that form presented to Mr. Spivey?

13 A. *(No response)*

14 Q. And I'm referring to -- the government refers to 54-1,  
15 page 2.

16 A. Could you read me the title of that form, please?

17 Q. I'm sorry?

18 A. Could you read me the title of that form, please?

19 Q. Uhm, just one minute.

20 A. Behind you is....

21 **MR. KOBRINSKI:** Here.

22 **MR. SMITH:** Thanks.

23 BY MR. SMITH:

24 Q. It's the consent to search cellular telephones, computers,  
25 computers, related paraphernalia, related media, that form.

1 A. That would have been done, I'd say, about 45 minutes into  
2 the search.

3 Q. All right. So that would have been done about 45 minutes  
4 after the first consent was signed?

5 A. Yes, sir.

6 Q. And the time reflected is 4:26. Would that be fairly  
7 accurate, as far as you recall?

8 A. It sounds like it.

9 Q. Now, the information on that document -- there's a lot of  
10 handwritten information, but when it was presented to  
11 Mr. Spivey for his signature, that handwritten information was  
12 not on that document, is that correct?

13 A. No, it would have been. I present the form completed, not  
14 blank.

15 Q. Well, how did you have information that a Samsung SM.695A8  
16 and some other kind of cell phone you wanted to search -- how  
17 did you have that information? Did you have the cell phones  
18 already?

19 A. Those items had already been located and were now being  
20 considered for a search, which is why that form was presented.

21 Q. Well, didn't Mr. Spivey actually have one of those cell  
22 phones on him, and there was another cell phone in the master  
23 bedroom?

24 A. He may have. I can't remember whether they were both found  
25 in the bedroom, or he had one and another one was found in the

1 bedroom.

2 Q. So you don't recall that. But, in fact, you had possession  
3 of the cell phones before this consent was ever searched (*sic*),  
4 before you ever asked for permission for the cell phones,  
5 because you wrote the information, serial number and the name,  
6 the type of cell phone on this form, isn't that correct?

7 A. Yes.

8 Q. And that was done before he signed it, according to you,  
9 correct?

10 A. Yes.

11 Q. And who was it that witnessed the signature on the second  
12 consent to search, the electronics?

13 A. You'd have to show it to me.

14 **MR. SMITH:** May I approach, your Honor?

15 **THE COURT:** All right.

16 A. It's Special Agent Tyler Jett.

17 Q. Okay. Is this your handwriting on the document, but for --  
18 I'm -- but for the two signatures, is this pretty much your  
19 handwriting?

20 A. Yes, it is.

21 Q. All right. If you could, just for the record, because I'm  
22 not real good at reading your handwriting, just read what you  
23 have handwritten in regarding the particular electronic devices  
24 you wanted to search.

25 A. Samsung SMG960A, I believe, and Huawie -- that's spelled

1 H-U-A-W-I-E -- cell phones. And it says located at 7945  
2 Northwest 50th Street. I'm sorry, and computers.

3 Q. And did you -- what did you do with the phones while he was  
4 signing that document? You had them in your custody already,  
5 you had them open, you were reading off the serial numbers or  
6 the make and stuff. What else were you doing with those  
7 phones?

8 A. Probably just getting the identifiers off of them.  
9 Probably just getting the identifiers off of them.

10 Q. And did you also, at that point, start reviewing the  
11 phones, looking through the phones, right in front of  
12 Mr. Austin (*sic*) at that time?

13 A. No. It wasn't until the form would have been signed that  
14 any search would have been conducted of any of the electronic  
15 media.

16 Q. Well, you testified earlier, actually about this event, the  
17 signing of that consent form and your review of the forms,  
18 earlier in another case, did you not?

19 A. I believe so.

20 Q. You did or you don't believe so?

21 A. About testifying -- about the phones?

22 Q. Um-hum.

23 A. I did earlier this morning.

24 Q. Well, do you recall back in February 18th of this year  
25 testifying in a deposition in a case that Mr. Eric Spivey is

1 pending before Judge Ward in Dade County?

2 A. I do.

3 Q. Okay. And do you recall this question and this answer that  
4 you gave at that time?

5 **MR. SMITH:** I'm referring to page 41 of the  
6 deposition.

7 BY MR. SMITH:

8 "Question: So did you take custody of those  
9 phones in order to perform the search?

10 "Answer: Yes. I handed him again the waivers of  
11 the search for electronics media for the, I think,  
12 laptop and cell phones, and I started reviewing. I  
13 think one or -- I think one of the cell phones while  
14 in front of him.

15 "Question: And when you say 'reviewing,' just,  
16 what, like scrolling through? You are plugging it  
17 into any kind of particular software or hardware?

18 "Answer: No. At that time, it was just a manual  
19 search of photographs, tech (*sic*) messages at that  
20 time."

21 Correct?

22 A. (*No response*)

23 Q. Do you recall you that?

24 A. Yes, I do.

25 Q. Okay. So at the time that you hand the consent form to

1 Mr. Spivey, you already have his phones, you've already got  
2 them open, you're looking at the serial numbers, the make, the  
3 type, because you already wrote it on the form, according to  
4 you, and gave it to him. And as he's reviewing the form,  
5 you're actually opening the phones, reviewing the information,  
6 photographs, and text messages, correct?

7 A. Again, I don't recall reviewing the information prior to  
8 having the form signed. I still needed the password  
9 information from the devices to even review anything.

10 Q. But you do recall that question and your answer.

11 And, by the way, at that deposition, you were placed  
12 under oath just as you are now, correct?

13 A. Yes.

14 Q. Now, let me just jump ahead quickly.

15 By the way, just going back to the -- when Mr. Spivey  
16 was looking at the laptop and trying to download something to  
17 e-mail to you, who was it that actually was able to e-mail the  
18 information to you about that surveillance activity at the  
19 burglary? Do you recall?

20 A. No, I don't. I just know that it was e-mailed.

21 Q. All right. Now, back at the police shop, after you had  
22 arrested Ms. Austin -- and, by the way, on that day, you never  
23 had occasion to seek an arrest warrant against Mr. Spivey for  
24 any kind of probation violation, did you?

25 **MR. KOBRINSKI:** Objection, your Honor. "Police shop?"

1           **THE COURT:** Overrule.

2           A. No, I did not obtain a warrant for Mr. Spivey's arrest.

3           Q. Okay. And you knew he was on bond on his present state  
4 case at that time also, because you'd run a little check about  
5 him to see what kind of background this fellow had, correct?

6           A. I don't remember whether or not I recalled or remembered  
7 him being on bond or not.

8           Q. All right. Well, do you recall when you got back to the  
9 police station actually -- who drove Mr. Spivey to the police  
10 station?

11          A. I did.

12          Q. Okay. And who was it that instructed Mr. Spivey that he  
13 needed to get in the police car and go down to the police  
14 station, because you wanted to ask him some more questions;  
15 there was some more information that you wanted to elicit?

16          A. That would have been me, but I don't believe he was  
17 instructed to do anything.

18          Q. He just opened the door and got in your car when you were  
19 ready to leave?

20          A. Yeah, he was willing to voluntarily come back to the police  
21 department to further speak about the items that had been  
22 gathered from the residence that day.

23          Q. Well, who told him that his presence was wanted down at the  
24 police station to give some more information?

25          A. I did, and maybe one of the other agents did as well. But

1 I remember having that conversation.

2 Q. And who told him to get into the front seat of your car,  
3 and there was another officer in the back seat of the car, for  
4 the ride down to the police station?

5 A. I must have offered him the front seat.

6 Q. At any time that day, was he ever advised of his rights to  
7 remain silent?

8 A. He was offered no *Miranda* warning, sir.

9 Q. Okay. And that was at any time during the day, either  
10 before or even after signing any of the two consents or before  
11 or any time during his presence at the police station, correct?

12 A. Correct, because his interviews were noncustodial.

13 **MR. SMITH:** If I may have just one moment, your Honor.

14 **THE COURT:** Okay.

15 *(Discussion had off the record between counsel and*  
16 *client)*

17 **MR. SMITH:** No further questions, your Honor. Thank  
18 you.

19 **THE COURT:** All right. I think we're going to go  
20 ahead and recess for lunch.

21 What time do you guys want to come back?

22 **MR. DAY:** Whenever the Court wants us here, I'll be  
23 here.

24 **THE COURT:** 1:30, 1:45?

25 **MR. DAY:** 1:30 is fine.



1           **MR. KOBRINSKI:** That's fine. Your Honor, I really  
2 just have one line of questions.

3           **THE COURT:** I imagine there's going to be some  
4 argument.

5           **MR. KOBRINSKI:** Oh, yeah, that's right.

6           **THE COURT:** So we'll come back at 1:30.

7           **MR. KOBRINSKI:** Okay.

8           **MR. DAY:** Could we do the one last question?

9           **THE COURT:** Sure.

10          **MR. KOBRINSKI:** It's just one line, not necessarily  
11 one question.

12          **THE COURT:** Then we'll wait till 1:30.

13          **MR. DAY:** Okay.

14          **THE COURT:** And, again, during the break in your  
15 testimony, you're not allowed to discuss your testimony with  
16 anyone.

17                   Do you understand, Detective?

18          **THE WITNESS:** Yes, sir.

19          **THE COURT:** And we'll see you back at 1:30.

20          **ROOM CLERK:** All rise.

21                   *(The Judge exited the courtroom)*

22                   *(Proceedings concluded at 12:24 p.m.)*

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**MONDAY, AUGUST 10, 2015, 1:31 P.M.**

*(The Judge entered the courtroom)*

**THE COURT:** Please be seated.

All right. We're back on the record.

Counsel are present. Mr. Spivey and Ms. Austin are present.

Detective, do you understand you're still under oath?

**THE WITNESS:** Yes, sir.

**THE COURT:** Redirect.

**MR. KOBRINSKI:** Thank you, your Honor.

**REDIRECT EXAMINATION**

BY MR. KOBRINSKI:

Q. Detective, you were asked a series of questions about the case against the burglar. Do you recall being asked those questions?

A. Yes, I do.

Q. And is there one single -- as far as you're aware, is there one single case against the burglar or are there several?

A. Several.

Q. And as far as you're aware, the information relayed in the Lauderhill police report is accurate as it relates to the timing for the case against the burglar in the jurisdiction of Lauderhill, correct?

A. Yes, that's correct.

**MR. DAY:** Objection to leading questions.

1           **THE COURT:** Sustain.

2 BY MR. KOBRINSKI:

3 Q. Okay. With regard to the case against the burglar in  
4 Lauderhill, on December 17, 2014, do you know whether any other  
5 detectives had followed up to the house?

6 A. None that I'm aware of.

7 Q. And do you know, with regard to Lauderhill's investigation  
8 of the burglary of the Spivey and Austin residence, whether the  
9 video that you obtained on December 17, 2014, was used?

10 A. Yes.

11 Q. Okay.

12           **MR. KOBRINSKI:** Nothing further. Thank you.

13           **THE COURT:** Anything further, Mr. Day?

14           **MR. DAY:** Nothing, Judge.

15           **THE COURT:** Mr. Smith?

16           **MR. SMITH:** No, your Honor.

17           **THE COURT:** Thank you, Detective. You may step down.

18           *(Witness excused)*

19           **THE COURT:** Anything further from the government?

20           **MR. KOBRINSKI:** No, your Honor. We just have the  
21 items that we actually admitted. I believe your Honor has the  
22 transcript, but I would just like to give you the actual report  
23 that was admitted as Government's Exhibit --

24           **THE COURT:** Pass up anything you want me to look at.

25           **MR. KOBRINSKI:** Okay.

1           So I'm handing you -- the transcript was already  
2 admitted as 2B. I'm handing you also 2A, which is the  
3 accompanying video. And then, also, we have Government's  
4 Composite Exhibit 1, which are the burglary reports from  
5 Lauderhill.

6           **THE COURT:** Mr. Day?

7           **MR. DAY:** Your Honor, we have no evidence to submit.

8           **THE COURT:** Mr. Smith?

9           **MR. SMITH:** We have no evidence to present, your  
10 Honor.

11           **THE COURT:** Any objection to my having a colloquy with  
12 your client regarding the right to testify, Mr. Day?

13           **MR. DAY:** No objection, your Honor.

14           **THE COURT:** Mr. Smith?

15           **MR. SMITH:** No objection.

16           **THE COURT:** Do you understand you have a  
17 constitutional right to testify, Mr. Spivey?

18           **DEFENDANT SPIVEY:** *(No response)*

19           **THE COURT:** Do you want me to repeat the question?

20           **DEFENDANT SPIVEY:** Yes.

21           **THE COURT:** Do you understand that you have a  
22 constitutional right to testify, Mr. Spivey?

23           **DEFENDANT SPIVEY:** Yes.

24           **THE COURT:** Ms. Austin?

25           **DEFENDANT AUSTIN:** Yes.

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1           **THE COURT:** You have a constitutional right not to  
2 testify.

3           Do you understand that, Mr. Spivey?

4           **DEFENDANT SPIVEY:** Yes.

5           **THE COURT:** Ms. Austin?

6           **DEFENDANT AUSTIN:** Yes.

7           **THE COURT:** Your lawyers have been to law school,  
8 they've tried a lot of cases, they give you the benefit of  
9 their legal advice, but it's your life, you don't have to  
10 follow the advice.

11          Do you understand that, Mr. Spivey?

12          **DEFENDANT SPIVEY:** Yes.

13          **THE COURT:** And Ms. Austin?

14          **DEFENDANT AUSTIN:** Yes.

15          **THE COURT:** And there may be strategy reasons for or  
16 against your testifying.

17          Do you understand that, Mr. Spivey?

18          **DEFENDANT SPIVEY:** Yes.

19          **THE COURT:** And Ms. Austin?

20          **DEFENDANT AUSTIN:** Yes.

21          **THE COURT:** And have you had enough time to think  
22 about this and talk about it with your lawyer, Mr. Spivey?

23          **DEFENDANT SPIVEY:** Yes.

24          **THE COURT:** And Ms. Austin?

25          **DEFENDANT AUSTIN:** Yes.

1           **THE COURT:** And do you understand whatever decision  
2 you make, you're pretty much going to be stuck with that  
3 decision?

4           Do you understand that, Mr. Spivey?

5           **DEFENDANT SPIVEY:** Yes.

6           **THE COURT:** And Ms. Austin?

7           **DEFENDANT AUSTIN:** Yes.

8           **THE COURT:** For example, if you decided to testify,  
9 and you turned out to be a lousy witness, and I deny the motion  
10 to suppress, you can't complain about that later on, because  
11 you decided to testify.

12          Do you understand that, Mr. Spivey?

13          **DEFENDANT SPIVEY:** Yes.

14          **THE COURT:** And Ms. Austin?

15          **DEFENDANT AUSTIN:** Yes.

16          **THE COURT:** On the other hand, if you decide not to  
17 testify, and I deny the motion to suppress, you can't come back  
18 later on and say, Oh, Judge, if you would have just heard my  
19 side of the story, you would have granted the motion to  
20 suppress.

21          Do you understand that, Mr. Spivey?

22          **DEFENDANT SPIVEY:** Yes.

23          **THE COURT:** And Ms. Austin?

24          **DEFENDANT AUSTIN:** Yes.

25          **THE COURT:** And have you had enough time to think

1 about this and talk about it with your lawyer, Mr. Spivey?

2 **DEFENDANT SPIVEY:** Yes.

3 **THE COURT:** And Ms. Austin?

4 **DEFENDANT AUSTIN:** Yes.

5 **THE COURT:** And is it your decision that you do or do  
6 not want to testify in the motion to suppress, Mr. Spivey?

7 **DEFENDANT SPIVEY:** Yes.

8 **THE COURT:** Which one? Do or do not want to testify?

9 **DEFENDANT SPIVEY:** Do not.

10 **THE COURT:** Ms. Austin?

11 **DEFENDANT AUSTIN:** Do not.

12 **THE COURT:** Okay. It's your motion, Mr. Day. Do you  
13 want to argue?

14 **MR. DAY:** Yes, sir.

15 Your Honor, this is a warrantless search, and as a  
16 result of a warrantless search, the government has the burden  
17 of demonstrating that this search fits within one of the  
18 recognized exceptions to the warrant requirement.

19 **THE COURT:** What's the burden? Is it clear and  
20 convincing evidence or a preponderance of evidence? I know you  
21 cite the Sixth Circuit. I couldn't find anything in the  
22 Eleventh Circuit.

23 **MR. DAY:** Judge, I'm gonna have to confess ignorance  
24 on that one. If you'd like, I'll -- I can't -- you know, I  
25 wouldn't want to say, because I --

1           **THE COURT:** Well, you cite a Sixth Circuit case that  
2 says -- maybe it wasn't clear and convincing, but it's clear  
3 and something evidence.

4           Go ahead.

5           **MR. DAY:** Okay. But, more importantly, your Honor,  
6 this is a warrantless search of a home. The Supreme Court has  
7 indicated that the expectation of privacy for a citizen or  
8 anyone living in the United States is the greatest inside the  
9 home. The Supreme Court has indicated that the need to protect  
10 the government (*sic*) from unwarranted intrusion is the greatest  
11 in the home. And, in fact, warrantless searches of homes are  
12 presumptively unreasonable. That's U.S. Supreme Court case  
13 law. Your Honor, it's the *Kyllo* case that said, at the core of  
14 the Fourth Amendment is the need to protect the citizenry and  
15 the ability for individuals to be able to retreat into their  
16 home, into the sanctity of their home and be free from  
17 unwarranted government intrusion.

18           Now, that's the *Kyllo* case, your Honor, and then  
19 followed up -- well, prior to that is the *Payton* case, I know  
20 the Court is aware of, where the Supreme Court drew the line at  
21 the threshold of the home and denominated that and delineated  
22 that as the area that was of -- that should be given the  
23 greatest protection by the Constitution through the Fourth  
24 Amendment.

25           Now, one of the exceptions -- recognized exceptions to



1 the warrant requirement is consent. But the government bears  
2 the burden of showing that that consent is freely and  
3 voluntarily given. They have to demonstrate that, and they  
4 have to demonstrate that with evidence.

5 Consent, your Honor, obtained through fraud,  
6 misrepresentation, deceit, and trickery is not valid. And that  
7 is according to binding Fifth Circuit case law, now Eleventh  
8 Circuit case law, adopted by the Eleventh Circuit in the case  
9 of *U.S. vs. Jimenez (sic)* last year, wherein they said that  
10 exact same principle. They laid it out. It's in my --

11 **THE COURT:** I read the cases. But I don't know that I  
12 necessarily agree that the Eleventh Circuit, or even the Fifth  
13 Circuit earlier, had made a bright-line decision that any time  
14 there's a ruse involved that the consent is tainted.

15 **MR. DAY:** Disagree, your Honor. And I believe -- and  
16 I laid it out in my response --

17 **THE COURT:** I've read your memo. It's an excellent  
18 memo. I read the cases that you cite from the Fifth Circuit  
19 and the Eleventh Circuit. And I'm just wondering if that  
20 language is loose language and is dicta, where they said  
21 because of the ruse in this particular case, there wasn't a  
22 valid consent. I think that other areas -- other circuits have  
23 said that a ruse is a factor, a strong factor, but a factor to  
24 determining whether consent was voluntary. I don't know that  
25 any circuit has said that there's a bright-line rule that if

1 that ruse is involved, you don't consider all the other factors  
2 and automatically the consent is vitiated.

3 **MR. DAY:** Respectfully, I disagree, your Honor. And I  
4 think it was very clear in the *Jaimez* case, which was an  
5 unpublished opinion, but did absolutely adopt that phrase,  
6 which I have put in my response and which the Court is speaking  
7 of now. They adopted that particular language from  
8 *U.S. vs. Tweel*, where the former Fifth Circuit said that a  
9 sneaky, deliberate deception of the true purpose of the  
10 investigation rendered that particular consent invalid.

11 **THE COURT:** Wasn't *Tweel* an IRS case?

12 **MR. DAY:** It was an IRS case. But there are --

13 **THE COURT:** Isn't there a statute that says if you're  
14 an IRS examiner, and you're doing a civil examination, that  
15 whatever you find can't be used criminally?

16 **MR. DAY:** But, your Honor, we're talking about the  
17 Fourth Amendment. That's a statutory provision. And if --  
18 it's the government's view that the language that I've cited to  
19 the Court is merely related to IRS decisions, IRS cases. I  
20 will cite others from the former Fifth, which do not involve  
21 IRS investigations.

22 But, no, I disagree with the Court. If the Court  
23 believes that the language in *U.S. vs. Jaimez* is linked only  
24 and solely to IRS investigations, I believe that's incorrect.  
25 There are two IRS cases -- that's *U.S. vs. Tweel* and

1    *SEC vs. ESM* -- that were IRS investigations and utilized the  
2    language that I forwarded to the Court.

3           However, there are additional cases, which were not  
4    IRS cases, that utilize that exact same language. And that's  
5    *U.S. vs. Tweel*, which I -- excuse me -- I'm sorry --  
6    *U.S. vs. Alexander*, where it was a postal inspector  
7    investigation. That was not an IRS investigation. And in that  
8    particular case, they believed that the defendant, who was an  
9    employee with the post office, was involved in the theft of  
10   mail. What they did is they told him that they were looking  
11   for stolen jewelry. They got him to open up his wallet, and  
12   inside the wallet they saw the marked bills that they had  
13   placed in there. That was not an IRS case.

14           **THE COURT:** No, it was a postal inspector case where  
15   the Fifth Circuit said that the arrest was illegal, that the  
16   postal inspectors didn't have the authority to arrest somebody.  
17   I don't know that the consent issue is necessarily anything  
18   other than dicta in *Alexander*.

19           **MR. DAY:** Well, I disagree, your Honor. I think  
20   that's the holding of the Fifth Circuit. They were adopting  
21   that particular provision, which I forwarded to the Court, and  
22   that is that consent which is gained through trickery,  
23   misrepresentation, fraud, and dishonesty is not valid consent.

24           So if that's the Court's reading of the case, it's  
25   your reading that's the most important, but I would disagree

1 with that. I don't think that's the correct reading of  
2 *U.S. vs. Alexander*.

3 *Graves vs. Beto* is not a postal inspector case, your  
4 Honor. It's not an IRS case. In fact, what happened there is  
5 an individual, who was a rape suspect, was approached by  
6 officers, who told him that they wanted to take his blood. And  
7 they wanted to take his blood, and they told him, to see if he  
8 would be guilty of public intoxication. In fact, they wanted  
9 to take his blood to see if they could link him up with the  
10 rape. And in *Graves vs. Beto*, the former Fifth Circuit,  
11 binding precedent here upon this Court, that particular Court  
12 said that that consent that he gave was invalid. And the  
13 reason that it was invalid is because he was duped, he was  
14 deceived, he was tricked. It was misrepresented to him by the  
15 agents that all they were looking for was blood to show that he  
16 was -- that supported public intoxication. And probably,  
17 therefore, in his mind, he's gonna be arrested. That's --

18 **THE COURT:** Didn't the district judge in that case  
19 question the police chief and say, Have you ever asked for a  
20 blood test for public intoxication in the past? And the police  
21 chief had to admit that he never had done that before. And the  
22 district judge granted the motion to suppress, and the Fifth  
23 Circuit affirmed it, right?

24 **MR. DAY:** Correct. That certainly does not diminish  
25 at all the holding in that particular case that Mr. Graves or

1 Mr. Beto -- I'm not sure exactly who it is -- was deceived. He  
2 was deceived. That was the --

3 **THE COURT:** I just wonder if the Fifth Circuit ruling  
4 would have been the same if the district judge had found that  
5 the actions were reasonable and that the motion should have  
6 been denied.

7 **MR. DAY:** Well, your Honor, perhaps what I need to  
8 forward at this point, and perhaps the Court hasn't considered,  
9 it is the intentionality behind this particular -- the action  
10 of law enforcement. And I know that the subjective intent of a  
11 law enforcement agent is ordinarily not a consideration. It is  
12 here. When you're talking about the government having the  
13 burden of proving voluntary and knowledgeable consent, the  
14 intentionality behind the police, behind the officers'  
15 misrepresentation is certainly appropriate.

16 If, in fact, it was a mistake -- if it, in fact, was  
17 an innocuous misrepresentation, and certainly there are cases  
18 where they were, where it was really not the kind of  
19 misrepresentation that would vitiate or cause someone to  
20 consent, if it was not that time, then it could have been  
21 de minimus. But, certainly, when you're told that we need to  
22 get your blood, because we need to determine whether or not you  
23 might be guilty of public intoxication, which I think every  
24 reasonable individual --

25 **THE COURT:** What if the police chief would have said,

1 You know, Judge, sometimes we do take blood samples to be able  
2 to prove a case beyond a reasonable doubt, even though it's a  
3 misdemeanor, public intoxication, and if the judge would have  
4 said, Well, you know, the main reason was really for the rape  
5 investigation, and you were really duping him, but there was  
6 kind of a secondary reason for that public intoxication, and  
7 I'm gonna be clairvoyant and see that the United States Supreme  
8 Court in *Whren vs. United States* is gonna say in the future  
9 that pretext isn't always a basis to grant a motion to  
10 suppress, would the Fifth Circuit ruling have been the same  
11 under that hypothetical?

12 **MR. DAY:** It would have been the same in my view, your  
13 Honor. The *Whren* scenario is a very different scenario than  
14 what we have here. What we are talking -- we're not talking  
15 about the subjective intent of a police officer to stop a  
16 vehicle. We are talking specifically about gaining consent to  
17 enter an individual's home.

18 **THE COURT:** I thought you just said we were talking  
19 about the intent of the officer in trying to get consent into  
20 the home, that the intent was not to do what he told the  
21 occupant, but for some ulterior motive. How is that different  
22 from *Whren*, where the police officer is a drug enforcement  
23 officer, has suspicion that someone's involved in trafficking  
24 in drugs, and follows them until they don't use their turn  
25 signal, or cross the middle line, or commit some minor traffic

1 infraction that he can pull him over for, even though that's  
2 not his real reason?

3 **MR. DAY:** Because the determination in that scenario  
4 is purely factual. And in this scenario, it's not. And that's  
5 the difference. The intentionality, the reason for the -- once  
6 you invoke fraud or misrepresentation or deceit or trickery,  
7 the game changes. This case law applies to that. *Whren* does  
8 not apply.

9 **THE COURT:** I think there's *Whren* cases where the  
10 argument from the defense was that the officer's lying, that he  
11 wasn't pulling him over for the traffic infraction, that the  
12 real reason was the drug investigation, and that he's just  
13 using that as a pretext, that he's being dishonest when he says  
14 that.

15 **MR. DAY:** Well, I think what *Whren* is saying is: Was  
16 there a traffic infraction? And if there was a traffic  
17 infraction, then the officer's subjective intent as to whether  
18 or not he pulled him over for that traffic infraction is  
19 irrelevant. That's completely different. We are apples and  
20 oranges between that scenario and here, where we have trickery  
21 causing an individual to be able to -- or causing an individual  
22 to give up consent. It goes to the knowing, intelligent, and  
23 voluntary waiver of the consent. That's what these particular  
24 cases talk about. That's -- each and every one of these speaks  
25 of that particular issue.

1           **THE COURT:** How about the U.S. Supreme Court case from  
2 the '60s that said that an undercover police officer using a  
3 ruse to go back into a house and seize evidence or make an  
4 arrest involving a drug transaction is not the type of ruse  
5 that would destroy the admissibility of the evidence?

6           **MR. DAY:** Because in that scenario, your Honor, that  
7 police officer is not using the authority of his office to get  
8 in the house. And that's exactly what happened here. The --  
9 an undercover officer --

10          **THE COURT:** If that were the case, then the police  
11 officers that go there pretending to be people from the gas  
12 department and telling the person there's a bomb in the house  
13 or there's a gas leak, and we got to check this out, or there's  
14 an emergency -- if that were the case, then those individuals  
15 should have the cases -- the evidence suppressed in their  
16 cases, because the police officer wasn't going there as a  
17 police officer. He was pretending to be something that he  
18 wasn't.

19          **MR. DAY:** Well, you asked me a question, your Honor,  
20 about the situation where an undercover agent is conducting a  
21 drug deal, and he gets in the house and does a deal, I guess  
22 inside the house, as being the buyer or the seller of heroin.  
23 That factual scenario has absolutely nothing, zero, to do with  
24 what we have here. Because what we're talking about is the  
25 police having the -- of the police utilizing consent to enter



1 into a home. It's the police officers and the use of their  
2 identification and their authority to get in the home. That's  
3 the difference. That's what the Supreme Court has said. We  
4 draw the line at the door. At the fourth -- at the core of the  
5 Fourth Amendment is for individuals to be free from  
6 governmental intrusion into their particular home. And when a  
7 police officer knocks on the door and says, We're here to  
8 investigate a burglary, and this is my crime scene expert, and  
9 we're gonna come in, and we're gonna dust for fingerprints,  
10 okay, that is very, very different from an undercover officer  
11 knocking on the door and say, I'm Pablo, is Julio here, I'm  
12 here to buy the dope. Those two scenarios are completely  
13 contrary to one another. They are the antithesis of one  
14 another.

15 **THE COURT:** I don't know. I think there's some  
16 similarity, particularly if Pablo says, I'm here to buy the  
17 dope, and Julio then says, Are you a police officer, and he  
18 says, No, I'm not a police officer, and he gets admitted in  
19 there, buys the dope, and arrests Julio.

20 **MR. DAY:** It's -- I don't know how to give an answer  
21 other than to say that law enforcement who goes undercover,  
22 that are investigating what they believe to be a crime  
23 involving drugs or some other scenario -- and generally, in  
24 those situations, you've already had an informant that's been  
25 negotiating with the drug dealer, who then gives that

1 information to the undercover officer. And then he goes  
2 undercover. And what he does is, he is allowed into the home,  
3 Pablo speaking to Julio, under the guise of conducting a drug  
4 transaction, not as a police officer entering the home. And  
5 that's the complete antithesis to what we have here.

6 **THE COURT:** That case is *Lewis vs. United States*.  
7 It's a 1966 case.

8 Let me ask you a question. What if  
9 Detective Iwaskewycz --

10 **MR. DAY:** I, Detective "I" is what I used, your Honor.  
11 Maybe you can do better.

12 **THE COURT:** Iwaskewycz.

13 **MR. DAY:** Okay.

14 **THE COURT:** What if he had gone there by himself? He  
15 didn't go there with a Secret Service agent, he went there by  
16 himself and said, I'm a Lauderhill detective, and I'm here  
17 following up on the burglary, and the real reason was to get  
18 evidence of identity theft or access device fraud, because he's  
19 been a member of the task force for four-and-a-half years?  
20 Would that have made a difference if he just went there by  
21 himself, and there wasn't the lie about the crime scene  
22 technician?

23 **MR. DAY:** I believe, your Honor -- let me answer that  
24 in two parts. I believe that that still would have been a  
25 ruse, because it would have been a misrepresentation of the

1 true purpose of that investigation. And I'll talk about that  
2 when I talk about the *Delancy* case, the Eleventh Circuit  
3 speaking on that issue.

4 But I will tell you this, your Honor, that that  
5 factual scenario is far less condemning than the actions of the  
6 officers in this particular case, and I'll explain why.

7 This particular ruse, your Honor, that the agents used  
8 was not simply a burglary ruse. If it was, then I would  
9 concede the government would have a better argument. I still  
10 think that the motion should be granted. But the ruse in this  
11 particular case, your Honor, was: I'm detective so and so from  
12 the Lauderhill Police Department. This is my partner. He is a  
13 crime scene technician. We'd like to come in and dust for  
14 fingerprints.

15 And the reason that that is so compelling is the  
16 information in this particular case, as Agent Lanfersiek  
17 candidly admitted on the stand, they knew that all of the  
18 information, all of the evidence was in the master bedroom.  
19 When they got together in their operational plan, they knew  
20 that. And, according to Agent Lanfersiek, they concocted a  
21 plan. They concocted a ruse to get into the master bedroom.  
22 That's where they had to go. Just saying that you were there  
23 on a burglary investigation, that just gets you inside the  
24 door. That doesn't do them any good whatsoever.

25 They know that the goods are in the master bedroom.

1 So what did they do? They devised a ruse -- Agent Lanfersiek  
2 conceded this -- they devised a ruse whereby he is going to  
3 fake as if he's dusting for fingerprints. He gets in the  
4 house. That's how -- why Chenequa Austin lets him into the  
5 house. And then what does he do? "We want to track the route  
6 that the burglar took." They knew the route that the burglar  
7 took, because the burglar told them the route that he took.  
8 And the burglar told them that all the goods are in the master  
9 bedroom. That's where they need to get. That's where they  
10 wanted to get. That's what Agent Lanfersiek testified to.

11 So what did they do? Well -- to give us the route?  
12 Well, they first went to the back of the house, the sliding  
13 glass door, and he took out -- and he faked, pretended,  
14 continuing the fraud, continuing the ruse, continuing the  
15 deception, to convince her that he was actually validly dusting  
16 for fingerprints, which he wasn't. He's not a crime scene  
17 technician. He testified, I didn't have any black powder; I  
18 wasn't taking fingerprints.

19 And then what did he say after that? "Where else did  
20 he go?" He knew where the burglar went, because the burglar  
21 told them, and he had that information -- in the master  
22 bedroom. And that's what she said.

23 Well, he went into the master bedroom.

24 Oh, let's go in there.

25 He goes in there. He begins fake dusting.

1           Where in the master bedroom?

2           This is all Agent Lanfersiek's testimony, your Honor,  
3 from Friday. This is not my argument. This is his testimony  
4 before you.

5           Take us into the master bedroom. Into the master  
6 bedroom Chenequa went.

7           Where did he go in the master bedroom?

8           Well, over here on the nightstand.

9           Well, where in the nightstand?

10          Well, in the drawer.

11          Okay. Open that up.

12          And I can't remember whether she opened it up or he  
13 opened it. And he fakes again, as he is dusting for  
14 fingerprints, continuing the deception, continuing the fraud,  
15 not doing a burglary investigation. He said that. He's not  
16 doing a burglary investigation in the master bedroom. He's not  
17 doing a burglary investigation in the closet in the master  
18 bedroom. He's not doing a burglary investigation in the  
19 nightstand, either on the left or the right-hand side of that  
20 bedroom. He said that. He's not doing a burglary  
21 investigation. He wasn't there for a burglary investigation at  
22 all.

23          He was there, as he said, to conduct a ruse to  
24 investigate credit card fraud, to suppress an access device  
25 manufacturing plant that was in the master bedroom, and they

1 knew it was in the master bedroom.

2           **THE COURT:** What effect does the testimony that  
3 Ms. Austin volunteered to the agents upon their arriving there  
4 that they had a videotape of one of the crimes -- what effect  
5 does that have on the Court's deciding whether or not the  
6 consent was coerced or overcome by the police officers' actions  
7 as opposed to Ms. Austin wanting to cooperate with an  
8 investigation?

9           **MR. DAY:** It's of no moment, absolutely of no moment  
10 whatsoever. It's completely irrelevant.

11           Because the ruse, your Honor -- and I cannot state  
12 this as emphatically as I probably am able to. But the  
13 critical component is: What was the ruse? It was not just a  
14 burglary investigation. It was not. It was a burglary  
15 investigation with a crime scene technician that needed to dust  
16 for fingerprints.

17           That's why her saying, Well, look, we've got  
18 burglary -- we've got a video of the burglary, and they go to  
19 the living room, which was not the master bedroom. That didn't  
20 get them into the master bedroom.

21           And Detective I is there in the living room with  
22 Spivey, and they're trying to pull this thing up, while  
23 Agent Lanfersiek is carrying out the ruse. The ruse was not a  
24 burglary investigation. The ruse was a credit card  
25 investigation to try to get evidence and suppress a credit card

1 manufacturing plant.

2 That's why the South Florida Organized Fraud Task  
3 Force is involved. That's why the Secret Service is involved.  
4 The agent conceded that, that he pulled in detective --  
5 Agent Lanfersiek, because this was going to be a federal  
6 indictment.

7 So the answer to the Court is that that was of no  
8 moment. That's of no relevance whatsoever. Because it had  
9 nothing to do with what they wanted to do. They wanted to get  
10 into the master bedroom. They wanted to get into Chenequa  
11 Austin's master bedroom. And the burglary in and of itself  
12 gets them nowhere. All it does is get them inside the front  
13 door.

14 So what did they have to do? They had to come up with  
15 a plan. That's what Agent Lanfersiek said. They came up with  
16 a plan to get to the master bedroom. And that was the dusting  
17 of the fingerprints, fake dusting of the fingerprints. That  
18 was a lie. That was a misrepresentation. That was fraud.  
19 That was trickery. And he continued that trickery from the  
20 time that he got in the house, right on to the sliding glass  
21 doors, right into the master bedroom, into the nightstand on  
22 the left, into the nightstand on the right, and into the closet  
23 in the back.

24 Because if you recall, after he had done the two --  
25 his fake swiping of the two nightstands, he says, Well, where

1 else did the burglar go?

2 Well, went into the closet.

3 Okay. We need to dust in there.

4 And into the closet -- well, close to the closet.

5 **THE COURT:** Let me ask you. If I agree with you that  
6 the Eleventh Circuit adopts a bright-line test that any ruse  
7 invalidates a consent, why wouldn't Spivey's later signing the  
8 written waiver of search warrant attenuate any taint and allow  
9 the evidence to come in?

10 **MR. DAY:** Two reasons, your Honor. First of all, that  
11 taint is -- excuse me -- his consent is tainted by the  
12 illegality of the entrance into the house. That's what I cited  
13 in my case -- in my response in *Brown vs. Illinois*.

14 Twofold response.

15 Number one, his consent is tainted by the illegality  
16 of the entrance. There's a direct causal link between those  
17 two.

18 Secondly, your Honor, secondly, I don't believe that  
19 the attenuation analysis even applies here because of the  
20 *Delancy* case. The *Delancy* case, your Honor, indicated:

21 "If the police entry had been made" -- and this  
22 is on page 1312 of *Delancy*, and that is  
23 502 F.3d 1297 -- "if the police entry had been made  
24 for the purpose of gaining consent to conduct a  
25 full-scale search, we would be bound to find



1           that (*sic*) the consent tainted.  Indeed, when the  
2           police act with the express purpose of exploiting an  
3           illegal action, the causation is so obvious that no  
4           real attenuation analysis is even necessary."

5           **THE COURT:**  But we didn't have any testimony that the  
6           agents got together ahead of time and said, Let's go in there  
7           and see if we can use a ruse, get consent illegally to get  
8           inside the apartment, and that's -- and then once we're in  
9           there, and we see everything, then they're gonna have to sign a  
10          written waiver after that.

11          There was no similar situation to the confession  
12          situation, where a police officer deliberately doesn't read the  
13          *Miranda* rights, and then after the guy confesses, reads the  
14          *Miranda* rights again -- for the first time and gets a  
15          confession.  And the U.S. Supreme Court has said that the  
16          reading of the *Miranda* rights can attenuate the first failure  
17          to do so and allow the second confession in, if it wasn't a  
18          secret or, you know, planned by the police officers to lull the  
19          person into confessing without the benefit of the *Miranda*  
20          rights, and then once he's confessed, the cat's out of the bag,  
21          then read him his rights and use that against him.

22          **MR. DAY:**  Well, there's a lot there in what you've  
23          said to me.  What I would respond, which is factually similar  
24          to what we have here, is *Brown vs. Illinois*, where the reading  
25          of the *Miranda* rights did not break the taint of the illegal --

1 of the illegality in that particular case.

2           **THE COURT:** But hasn't written waivers of consent,  
3 written waivers of search warrants broken the taint in the  
4 past? Somebody gets illegally arrested, and then they sign a  
5 written waiver of consent, and the courts have allowed that  
6 evidence in?

7           **MR. DAY:** It's one factor to be considered, pursuant  
8 to *U.S. vs. Santa*, cited in my response, and *U.S. vs. Delancy*.  
9 There are three factors to consider in the attenuation of the  
10 taint analysis. First is the temporal proximity of the  
11 illegality to whatever the consent is -- a waiver. And in the  
12 *Brown vs. Illinois* case, it was two hours. We are less than  
13 that. We are an hour to 45 minutes from the illegal entry, the  
14 fraudulent entry, to the waiver of the consent form.

15           Second factor to be considered is any intervening  
16 events or acts. And in the *Delancy* case, your Honor, the  
17 Eleventh Circuit said that the reading of a consent form is an  
18 important factor. And that is one of the factors to be  
19 considered in the attenuation of the taint analysis. But it's  
20 only one factor.

21           The third factor is the flagrancy of the police  
22 misconduct.

23           So, in answer to the Court's question, if the Court is  
24 proposing to me that there's a bright-line rule, according to  
25 either Supreme Court or Eleventh Circuit precedent, that if you

1 read someone their --

2           **THE COURT:** No, I don't think there's a bright-line  
3 rule. I don't think just getting someone to sign a written  
4 waiver is going to automatically allow any previously illegally  
5 seized evidence to be admissible. I agree with you that it's  
6 just one factor.

7           **MR. DAY:** Okay. Because that's  
8 *Schneckloth vs. Bustamonte*. And all of the case law is it's  
9 totality of the circumstances. And so that would not be --

10           **THE COURT:** So if it's totality of the circumstances,  
11 then why should I believe that the Eleventh Circuit isn't  
12 following *Bustamonte*, isn't looking at the totality of the  
13 circumstances, and is just saying that one factor or ruse  
14 destroys a consent?

15           **MR. DAY:** Because that's what the Eleventh Circuit has  
16 said, your Honor. And that particular case law has not been  
17 countermanded by the Supreme Court specifically and is still  
18 good law and is still binding in this --

19           **THE COURT:** Have any of those cases gone up to the  
20 Supreme Court? Has anybody taken cert. on any of them?

21           **MR. DAY:** Your Honor, on that I do not know. But I  
22 will continue on with the Court's question regarding the  
23 attenuation.

24           The first factor, I already spoke to, that's temporal  
25 proximity. We are well within -- we're half of the temporal

1 proximity --

2 **THE COURT:** I mean isn't there a case where 45 minutes  
3 was enough to attenuate, *United States vs. Pineda-Buenaventura*,  
4 622 F.3d 761, a Seventh Circuit opinion from 2010?

5 **MR. DAY:** Well, certainly, your Honor, as we have  
6 spoken about, one factor -- it's a combination of factors. And  
7 I don't doubt that what you're reading to me is accurate. But  
8 we are not talking --

9 **THE COURT:** I think it says 45 minutes. I've got an  
10 arrow on it, and I don't know if the arrow means that it was  
11 suppressed or whether it was not suppressed. So I'll have to  
12 look at my arrow.

13 **MR. DAY:** I understand that, your Honor.

14 But what I will say to the Court is that there is  
15 Supreme Court case, *Brown vs. Illinois*, where two hours was  
16 held not to be an extended period of time such that that factor  
17 was held against *Brown vs. Illinois*. So I believe that that  
18 factor falls in the favor of Ms. Austin.

19 The second factor is whether there are any intervening  
20 acts that occur to break the chain of the taint. As I said,  
21 the reading of a consent form can be a factor. It is a factor  
22 for the Court to consider, but, again, not in a bright-line  
23 sense.

24 But, importantly, in the *Delancy* case, two things that  
25 the Eleventh Circuit said. First of all, the consent form in

1 that particular case, as I indicated in my reply, is very  
2 different than the consent form that we have here. The consent  
3 form in that particular case told the individual that you have  
4 a right to consult with a lawyer. Our consent form did not  
5 have that. The consent form in the *Delancy* case talked about  
6 the fact that any evidence that's derived as a result of this  
7 can be admitted against you at that trial. That is likewise  
8 not in our particular consent form. And I've addressed the  
9 differences between the consent form in our case and the  
10 consent form in the *Delancy* case.

11 The defendant in *Delancy* had much more knowledge as to  
12 his rights, much more information given to him with which he  
13 could then make a valid determination whether to sign that form  
14 or not. That is different than what we have in the consent  
15 form in our particular case.

16 Importantly, your Honor, importantly, the Eleventh  
17 Circuit added additional factors that the Court should consider  
18 in determining whether this attenuation analysis falls for the  
19 government or the defense. And they laid out additional  
20 factors. They observed those. They're operational in -- for  
21 us.

22 And the Eleventh Circuit in *Delancy*, Judge Marcus  
23 writing, said, after taking note of the three *Brown* factors,  
24 the Court observed that these are not means to be exclusive and  
25 recognize additional factors.

1           One, "whether the seizure brought about police  
2 observation of the particular object which they sought consent  
3 to search." Absolutely. Absolutely. The illegal ruse, the  
4 use by Agent Lanfersiek of the fake dusting got them exactly  
5 where they wanted to go. So that factor falls in favor of  
6 Ms. Austin.

7           Secondly, "whether the consent was volunteered rather  
8 than requested by the detaining officers." There was no  
9 evidence here that Mr. Spivey volunteered consent. As a matter  
10 of fact, it was the exact opposite, that he was asked for  
11 consent. That factor falls in Ms. Austin's favor.

12           Next, "whether the arrestee was made fully aware of  
13 the fact that he could decline to consent and thus prevent an  
14 immediate search of the car or residence." That was done.  
15 That factor falls in favor of the government.

16           "Whether there has been a significant intervening  
17 event, such as the presentation of the arrestee to a judicial  
18 officer." That was not done in this particular case. That  
19 factor falls to Ms. Austin.

20           And then, finally, "whether the police purpose was to  
21 obtain consent (*sic*)." And that's exactly what the purpose was  
22 here. Agent Lanfersiek told us on Friday they got together, we  
23 knew that the evidence was in the master bedroom, we had to  
24 come up with a plan to get to the master bedroom, the plan was  
25 to create a burglary with me as the crime scene expert dusting

1 for prints so I could dust my way into the master bedroom. And  
2 that's exactly what happened here. And that leads, your  
3 Honor -- so that factor, as well, falls in Ms. Austin's favor.

4 One factor for the government, four factors for  
5 Ms. Austin, on just that factor alone, on number two, the  
6 intervening events.

7 Third, the third factor in *Brown vs. Illinois*, adopted  
8 by *U.S. vs. Santa*, adopted by *U.S. vs. Delancy*, is the  
9 flagrancy of the police misconduct. In this particular case,  
10 your Honor, it is flagrant. As I've indicated to the Court,  
11 your Honor, this search, telling Ms. Austin that you were there  
12 to investigate a burglary, telling someone, lying to her, that  
13 this man is a crime scene expert, and he wants to come in, and  
14 he wants to dust for fingerprints as he takes the route, tracks  
15 the route that the burglar went, that violates public policy.  
16 I cited that to the Court, your Honor.

17 The Eleventh Circuit, through the former Fifth  
18 Circuit, in *SEC vs. ESM*, said:

19 "We believe that a person has the right to expect  
20 that the government, when acting in its own name, will  
21 behave honorably (*sic*). When a government agent  
22 presents himself to a private individual and seeks  
23 that individual's cooperation based on his status as a  
24 government agent" -- distinguishing that from the  
25 undercover police officer -- "that individual should

1       be able to rely on the agent's representation. We  
2       think it clearly improper for a government agent to  
3       obtain -- to gain access to records which would  
4       otherwise be unavailable to him by invoking the  
5       private individual's trust in government (*sic*), only  
6       to betray that trust."

7               That's exactly what we had here, your Honor. We have  
8       someone who's the victim of a crime. Yes, she's a perpetrator  
9       of a crime, but she's also a victim of a crime. And her status  
10      as the victim of a crime is used to find evidence against her  
11      to arrest her and indict her. That is against public policy.

12             The idea that police officers, when they knock on the  
13      door, and they tell John Q. Public that they're there to  
14      investigate a burglary, and that is their real purpose and  
15      their intent, the public policy is that be the truth. And  
16      that's not what we got here. We got a lie. And that violates  
17      public policy.

18             It also violates widely held expectations. That's --  
19      I cited that to the Court as well. Widely held social  
20      expectations, wherein the *U.S. vs. Parson* case. In  
21      *Parsons (sic)*, the agent lied about their purpose and claimed  
22      to be on alternative government business.

23             "Lies such as this, if condoned, would obliterate  
24      citizens' widely shared social expectations that they  
25      may place some modicum of trust in the words of



1 government officials acting as such. Society expects  
2 that law enforcement officers who present themselves  
3 and show badges will be honest and forthright with the  
4 community that they serve. The catastrophic  
5 consequences for a society which loses trust in its  
6 constables may be conjured without even the exercise  
7 of any creative effort."

8 Many times, your Honor, when I've come in here, and I  
9 have asked for variances below the guidelines that the Court  
10 thought was too lenient, many times what you have responded is,  
11 Mr. Day, that particular sentence does not promote respect for  
12 the law.

13 The actions in this particular case, lying to  
14 Ms. Austin to get inside the house, does not promote respect  
15 for the law. It promotes disrespect for the law. It  
16 denigrates the trust that the law enforcement community needs  
17 to have with citizens when they confront them in their home.  
18 And so in this particular case, the flagrancy of the misconduct  
19 is extreme. It's lying, it's deceit, it's misrepresentation,  
20 it's trickery. And that factor, again, falls very favorably in  
21 Ms. Austin's column.

22 Lastly, your Honor, on the attenuation analysis -- I  
23 was gonna speak about this at the end, but the Court had a  
24 question, and I thought that this part of the *Delancy* case  
25 spoke to, but the Eleventh Circuit ruled -- first of all, in

1 the *Delancy* case, factually, no official misconduct. And  
2 Judge Marcus here, writing for the Eleventh, said this is a  
3 very important factor in why we are going to allow this  
4 particular search.

5 We have the exact opposite here. We have a sham. We  
6 have flagrant misconduct. And, importantly, as to  
7 Agent Lanfersiek's statement as to what the plan was about,  
8 what the intent was about, what was the goal? The goal was to  
9 come up with a ruse, to come up with a plan to gain entrance to  
10 the home to get consent to search and get to the back bedroom  
11 where they knew the credit card fraud was. That's what the  
12 agent testified to on Friday. And this is what the Eleventh  
13 Circuit said with regard to that. I've already cited it to the  
14 Court, but it bears repeating, because I think it commands  
15 suppression of the evidence here.

16 "If the police entry had been made for the  
17 purpose of gaining consent to conduct a full-scale  
18 search, we would be bound to find the consent tainted.  
19 Indeed, when the police act with the express purpose  
20 of exploiting an illegal action, the causation is so  
21 obvious that no real attenuation analysis is even  
22 necessary."

23 And why that is so important, your Honor, is because  
24 it relates to the fundamental holding of *Wong Sun*, which is  
25 really what all this attenuation analysis is about. In *Wong*

1 Sun -- and I think this is pretty much to a quote -- the  
2 question is: Has the objected evidence been come at through  
3 the exploitation of the illegality? That's almost word for  
4 word. That's exactly what we have here.

5 The police entered illegally, based on a ruse, lying  
6 that they were there to conduct a burglary (*sic*), but not just  
7 conduct a burglary, to dust for fingerprints. They exploited  
8 the dusting for fingerprints. The trickery and the  
9 misrepresentation that they then used to get into the master  
10 bedroom where the evidence was.

11 They did the exact thing that *Wong Sun* so focused on.  
12 The objected evidence, the evidence we're objecting to was come  
13 at through the exploitation of the illegality.

14 What's the illegality? It's a ruse -- we're here to  
15 dust for fingerprints, I'm a crime scene expert. They  
16 exploited that to get to the back bedroom. And that's what's  
17 critical here.

18 And that's what the government did not speak to. None  
19 of these cases they spoke to at all, the binding Eleventh  
20 Circuit opinions and even the other circuit opinions.

21 But the government continues to say the ruse was  
22 valid, because agent -- excuse me -- Detective I, he was  
23 investigating a burglary. He had part of that, or he had part  
24 of that investigation.

25 That's not the ruse. The ruse is not just a burglary

1 investigation. The burglary -- the ruse is not only  
2 Detective I saying he's there for a burglary investigation;  
3 it's him introducing his partner as a crime scene expert, which  
4 was a lie, which was designed to get to the back bedroom. It's  
5 exactly what *Wong Sun* is talking about.

6 The evidence was obtained through the exploitation of  
7 the illegality. And that's what the Eleventh Circuit was  
8 talking about in *Delancy*. If that was the goal, if that was  
9 the intent, then what the Eleventh Circuit is saying, your  
10 Honor, is you don't need to do attenuation analysis, because  
11 the evidence is directly tied to the illegality. The  
12 illegality is directly tied to the evidence. We don't even  
13 need to do attenuation analysis, Judge Marcus said here in  
14 *Delancy*. We don't need to do it, because it's a direct product  
15 of the illegality. And that's what we have here.

16 So I will say to the Court -- you asked about the  
17 attenuation analysis, I will say, first and foremost, I do not  
18 believe that attenuation analysis applies here.

19 Secondly, if the Court wants to engage in attenuation  
20 analysis, the factors of *Brown vs. Illinois*, the additional  
21 factors from *U.S. vs. Delancy*, they fall in favor of  
22 Ms. Austin. The motion should be granted based on that and  
23 that alone.

24 And that, your Honor, is supported by the testimony of  
25 Agent Lanfersiek. The Court should grant this motion based on

1 his testimony and his testimony alone. Okay? He wasn't doing  
2 a burglary investigation in the master bedroom.

3 Detective I was -- if you want to give credence to the  
4 fact that he was somewhat involved in a burglary investigation,  
5 where is he doing that? He's doing that in the living room  
6 with Spivey, pulling up video. That didn't get anybody to the  
7 master bedroom.

8 Detective I is not conducting a burglary investigation  
9 in the master bedroom. He's not conducting a burglary  
10 investigation in the nightstand on the left of the bed or in  
11 the nightstand on the right of the bed. And he's not  
12 conducting a burglary investigation in the closet. That's  
13 being done by Agent Lanfersiek, who said, No, I'm not  
14 conducting a burglary investigation, I'm looking for fraud, I'm  
15 a Secret Service agent, I'm with the South Florida Organized  
16 Fraud Task Force.

17 The illegality, the ruse, the misrepresentation, the  
18 fraud, the deceit is directly related, directly related. There  
19 is a direct chain between that ruse and the evidence. No  
20 attenuation analysis is necessary. If the Court wants to  
21 engage in attenuation analysis, it is not attenuated. This  
22 taint exists. There's nothing that should break this  
23 particular chain.

24 I will tell the Court -- your Honor, I want to give  
25 you this, the definition of "ruse." The government conceded

1 it's a ruse. I think the definition needs to be on the record.  
2 Webster's definition defines ruse as a wily subterfuge.  
3 Webster also defines wily subterfuge as an artifice or  
4 stratagem designed to conceal or deceive. And that's exactly  
5 what happened here.

6 And this particular deception on behalf of the agents  
7 was flagrant. It violated public policy, it violated shared  
8 social expectations, and it should not be countenanced by the  
9 Court. There was purposefulness. And that's what the *Delancy*  
10 case was talking about. There was purposefulness to the  
11 officers' testimony here. They had eight or ten of them  
12 together, in their offices, the South Florida Organized Fraud  
13 Task Force, for one purpose, okay, and that's to go and that's  
14 to investigate, get inside Chenequa Austin's house to get in  
15 that back bedroom to get the evidence that they know that they  
16 had.

17 I will wrap up, your Honor, by stating that in  
18 addition to that, the statement that she gave is a direct  
19 product of the illegal evidence what that was obtained by  
20 Agent Lanfersiek. That was confronted -- or she was confronted  
21 with that evidence, as has been admitted to by Detective I.  
22 First thing he did, went in, he told her, Look, we've been at  
23 your house four to five hours -- which is true. We have a team  
24 of agents there. This is federal. We've got hundreds of  
25 cards. We've got stolen credit cards. We've got an embossing

1 machine. We've got a reader/writer that you hook up to the  
2 computer. There's Mollies. There's a gun. We have the goods.

3 Certainly, they used the fruit -- the illegal fruit of  
4 their search to gain a statement from her. *Brown vs. Illinois*  
5 would apply there. And the Court should suppress that  
6 statement, along with all of the evidence that was retrieved  
7 from the home as the result of agents tricking, deceiving, and  
8 gaining entry into the home -- that line that the Supreme Court  
9 said is a bright line -- by fraud and deceit and with a  
10 purpose, an intent to get to the back bedroom and get the  
11 evidence. And the Court should grant this motion to suppress.

12 **THE COURT:** Mr. Smith.

13 **MR. SMITH:** Thank you. If I may just have one moment.

14 *(Discussion had off the record between counsel)*

15 **MR. SMITH:** Judge, in an attempt to maybe perhaps not  
16 snatch defeat from the jaws of victory, I'm gonna rely on the  
17 argument and the presentation of co-counsel. We worked on the  
18 motion together. We prepared the case, done the research.  
19 And, quite frankly, I think the presentation of Mr. Tim Day --  
20 I would rely on that.

21 **MR. KOBRINSKI:** And just to be clear, I do think that,  
22 to the extent that the Court thinks that the statement that  
23 Ms. Austin was confronted with evidence, likewise Mr. Spivey  
24 was, so that would apply to Mr. Spivey's statement. Just that  
25 portion is slightly distinct. But I agree that that applies.

1           **THE COURT:** Mr. Kobrinski.

2           **MR. KOBRINSKI:** Yes, your Honor. Thank you.

3           I mean I think your Honor highlighted what the key  
4 difference is in assessing the legality of this search when you  
5 began the questioning regarding bright-line rules. There are  
6 no bright-line rules in this -- with regard to assessing of  
7 ruse. That was eschewed (*sic*) in *U.S. vs. Robinette (sic)*,  
8 which was cited in *U.S. v. Montes-Rey (sic)*. The idea that the  
9 Fourth Amendment generally does not use bright-line rules was  
10 also specifically found -- held in the *Bustamonte* case.

11           And so the idea that the holdings of the Fifth Circuit  
12 in *Alexander*, which I think your Honor correctly cited to what  
13 the distinction was, that there are a number of other factors,  
14 which are also noted in *LaFave*, that distinguish *Alexander* from  
15 the typical ruse case also applies here.

16           *Beto* was the only case that was referred to directly  
17 here that was outside of the administrative context. In *Beto*,  
18 one of the representations -- *Graves vs. Beto* -- that was  
19 made -- and your Honor I think rightly pointed to another  
20 distinction, that there was no possible *Whren* analysis in the  
21 *Beto* case.

22           But another distinction is the fact that the -- not --  
23 it's not that the officer simply said the blood would be used  
24 for the public intoxication case; it's that they said it would  
25 exclusively be used in the public intoxication case.



1           That simply was not done here. And the ruse that was  
2           concocted to approach Spivey and Austin's residence, there was  
3           never any promise or any sort of representation that they would  
4           turn a blind eye to evidence of crimes that they encountered.

5           And so that's a distinction between the *Beto* case.  
6           There is no bright line. That's clear just based on the *Jaimez*  
7           case that was cited in the -- and that's a Sixth Circuit case,  
8           but it was cited that its representation that trickery or  
9           deceit somehow is a bright line improper (*sic*). And that's  
10          not -- that wasn't the holding in that case.

11          **THE COURT:** How about *United States vs. Phillips*, the  
12          Ninth Circuit opinion where the occupants believed that the  
13          officers were investigating a burglary?

14          **MR. KOBRINSKI:** And so I took some notes. I'm not --  
15          *Phillips* itself isn't jumping out at me. If I could just take  
16          a moment.

17          Your Honor, the reason I referred to the *Montes-Reyes*  
18          in my -- while I'm looking for the specific answer to your  
19          question -- the reason I refer to *Montes-Reyes* is because I do  
20          think there's a useful framework there that helps with the  
21          assessment of the cases.

22          **THE COURT:** It's not useful if the Fifth Circuit rule,  
23          as adopted by the Eleventh Circuit in *Bonner vs. City of*  
24          *Pritchard*, is a bright-line test.

25          **MR. KOBRINSKI:** Sure.

1           **THE COURT:** If the bright-line test is, if there's a  
2 ruse involved, the consent's tainted, then it doesn't matter  
3 what a judge in New York City thinks.

4           **MR. KOBRINSKI:** Correct, or a judge in the Ninth  
5 Circuit, for that matter. I would agree that if that was the  
6 holding, likely, like your Honor colloquied with Mr. Day, it  
7 probably would have gone up to the Supreme Court at that point.  
8 That is not the holding. That's not the state of the Eleventh  
9 Circuit precedence.

10           With regard to the *Phillips* case in particular, it's  
11 likely that it was a coercion case. The issue is whether it  
12 was -- the burglary was appropriate? If your Honor will give  
13 me more facts, I could address that particular case.

14           **THE COURT:** I think it was cited in Mr. Day's  
15 memorandum.

16           **MR. DAY:** It was, your Honor.

17           **MR. KOBRINSKI:** Yes, your Honor, but so was  
18 *U.S. v. Copeland*, standing for the proposition that a gas leak  
19 case was improper, because -- and, in fact, *U.S. v. Copeland*  
20 upheld the ruse that was employed there, like the *Monzon-Luna*.  
21 So I think Mr. Day's memorandum relies a lot on headnotes  
22 without actually reading the cases. The gas leak in  
23 *U.S. v. Copeland*, the only gas leak was in a footnote regarding  
24 the *Jefferson* case. *Copeland* has nothing to do with the gas  
25 leak. So the fact that it's in the motion doesn't mean that

1 it's actually accurate, your Honor.

2           Regardless, though -- and I don't have the facts of  
3 *Phillip (sic)* at hand directly -- the cases generally fall into  
4 categories. And I think that's where *Montes-Reyes* does become  
5 helpful. I know it's a judge in New York, and it's a district  
6 court judge at that, but I think Judge Cote was thoughtful when  
7 she's citing the *Robinette* case, and also when she said in  
8 her -- before laying out her framework, that both sides just  
9 try to cite cases and say this one is more like that case. But  
10 the touchstone of the analysis has to be at its core, what is  
11 reasonable under the totality of the circumstances? What does  
12 the Fourth Amendment find to be reasonable? And that's how  
13 you -- how your Honor should approach all Fourth Amendment  
14 questions here.

15           And the question is -- I think where Mr. Day ended in  
16 the attenuation analysis actually belongs in the front part as  
17 well with the ruse -- the flagrancy. Was this a flagrant ruse?  
18 Was this the type of ruse that would overbear the will of  
19 Ms. Austin, who allowed the officers to enter? And Mr. Spivey,  
20 who was there and never asked them to leave? Just as  
21 Ms. Austin never asked them to leave.

22           And the answer of this case is this is not flagrant,  
23 this is not extreme misrepresentation. I cited in my response  
24 the idea that this might fall more along the framework of the  
25 third category of cases. It's either there, an idea of an

1 undercover capacity within the scope, or it's in the second  
2 category of cases, except instead of being extreme  
3 misrepresentation, it's minimal misrepresentation. And that's  
4 where *Monzon-Luna* and *Pollaro* -- and there are also other cases  
5 that I didn't cite, because just like *Montes-Reyes* said, you  
6 don't have to cite every single case; it's the totality of your  
7 factual circumstances.

8           That's what was done here. This wasn't flagrant  
9 misrepresentation. It was a low-key approach. They didn't say  
10 that their case wouldn't be taken if they didn't let them in.  
11 They didn't threaten them. Their firearms were never pulled.  
12 They never yelled at them. Essentially, within a mere  
13 30 seconds or so of introducing themselves, Ms. Austin invited  
14 them right in the house. There wasn't any selling of this or  
15 casting it as emergent. It was nearly a month after the first  
16 burglary -- over a month after the first burglary and nearly a  
17 month from the second burglary. And they had already given  
18 statements to uniformed officers. They just hadn't had a  
19 detective who came and followed up.

20           And as you heard from Detective Iwaskewycz -- and I  
21 think this is the part where it's a difficult conceptual  
22 analysis in this case -- it was actually necessary follow-up.  
23 And that's why *Whren* possibly does come into play, where there  
24 is no subjective intent in the ruse. And that's -- I didn't  
25 find a case, and neither did Mr. Day cite a case, where there

1 was a genuine on-point follow-up investigative purpose that the  
2 officers were pursuing.

3           Instead, what I found were cases like the *Pollaro* case  
4 or the *Monzon-Luna*, where they cast themselves as responding  
5 to, in one case, a national security investigation. And the  
6 Court said, Yeah, even if that was a national security  
7 investigation, and the subjective perception of  
8 Mrs. Monzon-Luna was such that she thought she was helping  
9 national security, that didn't overbear her will.

10           Now, how do we know here that Mr. Spivey and  
11 Ms. Austin's wills were not overborne? All the different  
12 factors I've already addressed, and I won't go through them  
13 again. But there's another key issue. And that was in  
14 Ms. Spivey -- Austin's post-*Miranda* statement, where she  
15 specifically said -- when asked about the gun, she asked how  
16 the progress with the interview of Mr. Spivey was going, and  
17 she was told that he's lying about the gun, asked if there's  
18 anything they need to know about the gun. For about ten  
19 seconds, she contemplates lying to the police. And you have  
20 the video, if you want to review it. She's like, I'm thinking  
21 if I should just take the rap for this. And after about ten  
22 seconds, she decides not to and explains that was the gun that  
23 was used in an attempted murder case. That was the gun she  
24 knew about, she was considering lying about. And for about  
25 those ten seconds, while she's forming her story, she decides

1 to say that Mr. Spivey used that gun, and that that was why he  
2 didn't file police reports when he used it in other instances.  
3 That's why he was considering having the barrel changed out of  
4 that firearm, because he knew it would link back.

5 And so the idea that there's a public policy concern  
6 that would be animated in this case is frankly laughable.  
7 They're not filing a police report when they're using that  
8 firearm. They know exactly how the system works.

9 And there's public policy concerns every time an  
10 officer responds to a victim of a crime, and in their plain  
11 view, they see other crimes going on. Of course you want to  
12 engender goodwill with the victims of the crimes, and that's a  
13 competing concern. It's a competing balance whether that  
14 person has unrelated immigration issues or whether that person  
15 has other crimes that they committed. Of course it's a public  
16 policy concern. But these officers and agents here never cast  
17 their burglary response as such that they were not -- they were  
18 gonna turn a blind eye to anything else that they saw.

19 And so I think that the idea that this is public  
20 policy at its -- or violates social expectations, I think is  
21 incorrect, frankly, your Honor. I think that's why Mr. LaFave,  
22 when he's talking about this precise type of operation, and  
23 he's referring to cases like *Alexander*, says that:

24 "Nor can it be said" -- and this is a quote --  
25 "that this particular type of deception,

1 misrepresentation of the crime under investigation by  
2 one known to be a police officer, is as threatening to  
3 the general public's feelings of security and privacy  
4 as certain other misrepresentations, such as an  
5 officer posing as a meter reader."

6 And I think that's the point, your Honor. And  
7 ultimately in the balance, when you're making the assessment of  
8 the flagrancy and the totality of the circumstances, you have  
9 to look at the facts of this particular operation as they lie.

10 You heard the testimonies of Officer Lanfersiek -- I'm  
11 sorry -- Agent Lanfersiek and Officer Iwaskewycz. It wasn't  
12 cast as an emergent response. It was -- and we agree it's a  
13 ruse. Agent Lanfersiek wouldn't have been there otherwise.

14 But Detective Iwaskewycz had necessary follow-up to  
15 do. And this analysis would not be going on, to answer your  
16 Honor's question that was posed to Mr. Day, if it was just  
17 Detective Iwaskewycz who was there, because he had dual  
18 jurisdiction.

19 But because it's Agent Lanfersiek, you have to look at  
20 the totality of the circumstances and the subjective  
21 intentions. And the fact is that what was cast to them, their  
22 will was not overborne. They knew that they didn't have to  
23 make those reports. Both of them had extensive experience with  
24 law enforcement.

25 And Mr. Spivey, through the course of the whole

1 evening, continued on, and you could tell that it was a  
2 calculated decision that he made. He tried to pull a fast one,  
3 essentially. He thought that the consent, for whatever reason,  
4 might cast aspersions aside. The police might be more willing  
5 to buy his story that it belongs to the landlord. And so  
6 that's why he continued to go with that.

7 And when he's at the interview room, he continued to  
8 try to be cooperative, and he was also trying to cast the  
9 agents into misdirection. That was what he decided to do, and  
10 that's what the evidence bears out in this case.

11 Now, I put in the section regarding the attenuation in  
12 *Delancy* just in the event that the Court didn't -- because, as  
13 LaFave I think notes, a lot of this is gonna depend on the  
14 judicial officer's perception of deceit operations with law  
15 enforcement officers. The fact is, there is no bright-line  
16 rule that prohibits them, but obviously some -- weighing public  
17 policy considerations is very difficult to assess. It's gonna  
18 be a judge-by-judge inquiry.

19 But to the extent that your Honor disfavors the ruse  
20 operation, which our argument is it was fully valid, to the  
21 extent that's the Court's view of them, there was the  
22 separation of Ms. Austin. She was removed from the house  
23 approximately 15 to 30 minutes later. Mr. Spivey, the ruse is  
24 up, is given that form. It's an intervening event.

25 The *Delancy* case needs to be read carefully.



1 Mr. Day's saying that no attenuation is necessary, because that  
2 was the officers' precise purpose of getting into the house.  
3 That's because in *Delancy*, the case was -- the issue in the  
4 case was an improper protective sweep, where the officers  
5 entered the house after they had already arrested the suspect  
6 outside of the house. So there, of course, if that was what  
7 the improper purpose was, then no attenuation analysis would be  
8 necessary. That's on the facts of *Delancy*.

9 And I think your Honor was referring to *U.S. v. Welch*,  
10 which is another of the *Delancy* line cases, which is the  
11 general holding. And the *Welch* case is cited at 683 F.3d 1304,  
12 it's Eleventh Circuit, 2012, which is also an analysis like  
13 *Delancy*, where the request for the consent to search was  
14 preceded by an improper protective sweep. In *Delancy*, they  
15 took that as -- for granted. They didn't actually make that  
16 finding, but they said let's just assume it was improper.

17 But in *Welch*, they actually held that it was improper,  
18 and that unlike in *Delancy*, the police encouraged the defendant  
19 to consent to a warrantless search by suggesting that if he did  
20 not consent, they would obtain a search warrant, and that would  
21 take some time. And the Court held that the ensuing consent  
22 was valid and was not the product of an illegal protective  
23 sweep.

24 Now, for one thing, there are other factors in  
25 *Delancy*, and also in *Brown*, that Mr. Day suggested were in

1 favor of Ms. Austin. I'd suggest the clearest one that's not  
2 in favor is the idea of an intervening circumstance. He  
3 treated the consent form as an intervening -- as part of the  
4 prior factor, whether the defendant was advised of the right to  
5 refuse consent.

6 And here, the consent form advised him of that right.  
7 It also advised him of other rights, including the right to  
8 require that the agents obtain a search warrant, and advised  
9 that the police officers are authorized to take custody of any  
10 evidence of illegal activity found on these premises. Now,  
11 that's an intervening circumstance, like *Delancy* says.

12 Another factor is that it's -- that Mr. Day argued was  
13 in favor solely of Ms. Austin is the idea that it's precisely  
14 this property which was sought to take into custody, and that's  
15 simply not the case. There was a firearm that the agents were  
16 not aware of when they requested and obtained this waiver of  
17 consent that Mr. Spivey clearly was aware of. That's one  
18 thing.

19 Another thing was that reader/writer that's in the  
20 oven, which goes to the idea of whether their will was  
21 overborne. Clearly, it wasn't. They just had to hide the  
22 property. Once they hid the property, they answered the door.  
23 And so what did they hide? The most important things -- the  
24 reader/writer and the attempted murder weapon. Those two  
25 things were hidden, and they were only found during the

1 subsequent search. That shows that their will wasn't  
2 overborne, and it also shows that the fruits of the search or  
3 the product of the search isn't all items that had already been  
4 encountered during the course of it.

5 And so, ultimately, I think if you look at the  
6 different factors and whether the -- whether there's a  
7 sufficient attenuation, there clearly was. And then after that  
8 consent form was signed, 30 minutes after the ruse is up,  
9 Ms. Spivey -- Ms. Austin's out of the house, Mr. Spivey is  
10 still in the house, he's told that it's Secret Service in  
11 addition to the Lauderhill. He's told that there's access  
12 device fraud. He blames it on the landlord, conveniently, just  
13 like Ms. Austin did.

14 The cell phones are found. And 30 minutes later, he  
15 gives consent, again with a different form, because it's the  
16 electronic media form. And that -- this form, which your Honor  
17 has in evidence and indicated he previously reviewed, has an  
18 additional recitation of rights. And Mr. Spivey agreed to it  
19 again. Because this was all part of his effort to try to throw  
20 the police off, to suggest he had nothing to hide.

21 And, ultimately, once the thorough analysis was done,  
22 that tact wasn't borne out, so now they try a different tact.  
23 And this different tact should, frankly, be rejected at every  
24 turn.

25 The initial operation was proper police behavior --

1 conduct, and even if it wasn't, the consent to search that  
2 Mr. Spivey entered was knowing and voluntary, which it was our  
3 burden by preponderance to show. It was our burden, also, by  
4 preponderance to show that the initial entry into the house was  
5 proper based on the totality of the circumstances, which  
6 includes the deceptive police practice, the ruse. But that  
7 doesn't mean -- there is no bright-line rule on that.

8 And then, likewise, this last consent to search, the  
9 electronic media -- and there's a lot of evidence that was  
10 found on the electronic media as well -- was done separately,  
11 attenuated from the prior two incidents.

12 But at each turn, what the officers and agents did was  
13 within the bounds of good police behavior. And it's something  
14 that this Court should not use the exclusionary rule for a  
15 dramatic result that would have very negative consequences for  
16 society, if granted.

17 For those reasons, we'd ask that the Court deny the  
18 motion to suppress.

19 **THE COURT:** Anything else, Mr. Day?

20 **MR. DAY:** Yes, your Honor. Can I respond?

21 **THE COURT:** Sure.

22 **MR. DAY:** Your Honor, I have reviewed, while the  
23 government was speaking, the Eleventh Circuit cases that I  
24 cited to the Court, *U.S. vs. Tweel*, *U.S. vs. Alexander*,  
25 *SEC vs. ESM*, which did involve administrative searches, I see

1 no statement in any of those limiting those holdings to  
2 administrative searches. Nothing. Scoured the opinions.  
3 There is nothing in there that states that. And, therefore,  
4 they're not.

5 The government indicated, and perhaps they misspoke  
6 when they said that *Jaimez* was a Sixth Circuit opinion. *Jaimez*  
7 is an Eleventh Circuit opinion at 571 Fed.Appx. at 935, wherein  
8 the Court -- and I will quote -- said the following:

9 "We have found that consent induced by deceit,  
10 trickery, or misrepresentation can render consent  
11 involuntary."

12 They cite to *Tweel*, which is an IRS case. But then  
13 they cite to *Farley*, which was not an administrative case. And  
14 so I think that the attempt to limit --

15 **THE COURT:** But that one word "can," why -- if it's a  
16 bright-line test, why wouldn't they say "can"?

17 **MR. DAY:** Because the line of former Fifth Circuit  
18 case law that they're referring to doesn't say "can." It says  
19 that it does, in the cases that I talked about -- in *Tweel*, in  
20 *Alexander*, in *Graves vs. Beto*. In that (*sic*) former Fifth  
21 Circuit opinions, they do not say "can." They -- so the  
22 Eleventh Circuit is adopting that opinion, they are using the  
23 word "can," but they are referencing former Fifth Circuit  
24 opinions, which are creating a bright-line test, which I am  
25 asking this Court to honor.

1           So I will respond and say that *Jaimez* is an Eleventh  
2 Circuit opinion; it's not a Sixth Circuit opinion, as the  
3 government indicated.

4           I think it is very telling that the opinion that the  
5 government is apparently forwarding as their best case is the  
6 *Montes-Reyes* case, which is a district court opinion from  
7 New York.

8           I've heard the Court say before you're interested in  
9 what other district court judges say, you're more interested in  
10 what other circuits say, but you're most interested in what the  
11 Eleventh Circuit has said. And, of course, that is the  
12 protocol. And I believe we know what the Eleventh Circuit  
13 says. And I believe we know what the other circuits say as  
14 well. I didn't even get through that part of my argument, and  
15 I won't belabor the point.

16           Other circuits, on similar factual scenarios, have  
17 granted these motions, finding that consent was involuntary.  
18 Very quickly, *U.S. vs. Harrison*, the agent told the occupant it  
19 was -- they were there to look for drugs and bombs;  
20 *U.S. vs. Hardin*, there to fix a water leak; *Copeland*, a gas  
21 leak. And that was the holding in the opinion. It was the  
22 agents told the individuals and gained consent that way.

23           *Butler vs. Compton*, there it was a maintenance man.  
24 They said they were the maintenance man. That's  
25 distinguishable from the factual scenario here.

1           *U.S. vs. Bosser (sic)*, the ATF agent said that he was  
2 just there with the state investigator who was gonna come  
3 through. And, in fact, he wasn't. He was there investigating  
4 firearms as an AFT investigator. Certainly, that's factually  
5 similar to what we have here.

6           *U.S. vs. Phillips*, the government didn't speak to  
7 that. It's a Ninth Circuit opinion. It's not a district court  
8 of opinion from New York (*sic*). And in *U.S. vs. Phillips*, it  
9 was a -- they told the individual they are investigating a  
10 burglary, the occupant, they got inside, they arrested him.

11           *U.S. vs. Watzman*, there it was a phony burglary  
12 investigation. It was from two years before. And in  
13 *U.S. vs. Watzman*, they used that to get --

14           **THE COURT:** Well, but in *Watzman*, the government  
15 didn't contest the illegality of the evidence.

16           **MR. DAY:** That's correct, they didn't. And the --  
17 what happened there was a phony burglary investigation that  
18 they used as a ruse to get inside the house.

19           And so, your Honor, the government cites a district  
20 court opinion from New York and avoids directly confronting  
21 Eleventh Circuit case law and other circuit case law.

22           My continuing response to this -- to the government's  
23 argument is that what they did here was reasonable. The  
24 Eleventh -- the touchtone of the Fourth Amendment is  
25 reasonableness.

1           It's also important for the Court to recall there's no  
2 search warrant here. No knock and talk here.

3           Now, I don't think there was probable cause for a  
4 search warrant. They knew that there wasn't probable cause for  
5 a search warrant. Agent Lanfersiek was very candid when he  
6 said -- I said to him, You didn't ask Ms. Austin for consent.  
7 And I think the reason that they didn't ask Ms. Austin for  
8 consent is because of what Detective I said in the statement,  
9 and that is that she was upset and told them to F-U and get out  
10 and that she didn't want to talk with them. So they knew they  
11 weren't gonna get consent from her. And that's why they  
12 removed her, took her away, and then they went back to Spivey.

13           These are not reasonable actions. These are  
14 calculated investigatory purposeful actions on behalf of a task  
15 force. And Agent Lanfersiek, I said to him, So if you had  
16 asked Ms. Austin for consent, and she said no, you would have  
17 been done.

18           And he said, Oh, no, oh, no, we were gonna -- we would  
19 hold them there and get a search warrant.

20           This was all planned out, Judge.

21           Did you speak about that in the meeting that you had a  
22 half hour beforehand, the planning session?

23           Yes.

24           Okay. That was part of this ruse. They knew exactly  
25 what they were gonna do. You're not gonna get eight to ten law



1 enforcement officers for a half hour and come up with an  
2 operational plan where you don't think the whole thing out.  
3 And they had the whole thing thought out.

4 And it was very telling as well. And the government  
5 says that, Well, they found -- they hid the reader/writer, so  
6 that shows their will wasn't overborne. Exact opposite. It's  
7 the exact opposite. The reason --

8 **THE COURT:** Doesn't that go to one of the factors, and  
9 that is whether or not the defendant thought any incriminating  
10 evidence was gonna be found?

11 **MR. DAY:** No. What it goes to, your Honor, is that  
12 this ruse had to deceive them and did deceive them. Because if  
13 the agents had said -- done a knock and talk and said,  
14 Ms. Austin, we have evidence that you were involved in credit  
15 card fraud, and we'd like to talk to you about it, they would  
16 have gotten a closed door. That's what agent -- or Detective I  
17 said when he was -- walked up and saw her come out and then go  
18 back. She (*sic*) said she was defensive, she was alarmed.

19 So they knew that they had to engage in this ruse.  
20 They knew that to be able to get the evidence that they wanted  
21 to get, they had to trick her. They had to deceive her. They  
22 had to lie to her. That's the purposefulness. That's the  
23 flagrancy of the misconduct that the case law is talking about.

24 And I will wrap it up here pretty soon, your Honor, by  
25 saying this. The government misreads *Delancy*. In *Delancy*,

1 which is the case that I'm relying upon -- they're relying upon  
2 *Montes-Reyes*, a district court opinion from New York. I'm  
3 relying on *Delancy*. And this is what the Court in *Delancy*  
4 said:

5 "The final factor is the purpose and flagrancy of  
6 the police -- of the official conduct. This factor is  
7 also the most straightforward, and here, the most  
8 important one. If the police entry had been made for  
9 the purpose of gaining consent to conduct a full-scale  
10 search, we would be bound to find the consent tainted.  
11 Indeed, when the police act with the express purpose  
12 of exploiting an illegal action, the causation is so  
13 obvious that no real attenuation analysis is even  
14 necessary."

15 Citing to *Florida vs. Royer*, Supreme Court opinion,  
16 where "finding evidence seized after an illegal arrest tainted  
17 and omitting the attenuation analysis entirely when the seizure  
18 was part of the officers' attempt to gain the defendant's  
19 consent to search his luggage," that's exactly what we have  
20 here. That's what Agent Lanfersiek said. That was the plan  
21 that was hatched at the operational meeting, that they were  
22 gonna use this ruse, that there was a burglary, they were gonna  
23 dust for prints, so they could get to the master bedroom, so  
24 they could search for the credit card fraud, which was the  
25 whole reason that these eight to ten officers got together.

1           Continuing on with Delancy, that the government  
2 misreads:

3           "Here, however, the district court squarely  
4 rejected Delancy's claim that the police effort was  
5 really a subterfuge concocted to give the authorities  
6 a colorable reason to find and question, if necessary,  
7 or appropriate to search Mr. Delancy or his place of  
8 residence, when, in fact, the real reason was to find  
9 and search for evidence of his criminal activity when  
10 authorities had no probable cause for the issuance of  
11 a search warrant."

12           That's exactly what we have here. In *Delancy*, it was  
13 a protective sweep. The information that they had was that the  
14 man was involved in homicides. And the Eleventh Circuit said  
15 that quick protective sweep, that was okay. That was not a  
16 sham, that was not a ruse, that was not concocted to get into  
17 the house so they could search. And that's exactly what we  
18 have here.

19           So the lack of the factual scenario and the reasoning  
20 from that is -- in the Eleventh Circuit, in *Delancy*, is exactly  
21 the factual scenario that we have here that compels the  
22 suppression of this particular evidence. And the Court then  
23 goes on and continues and says:

24           "The district court believed that the -- believed  
25 the officers that they only sought to interview

1 Delancy." Just interview him. "More importantly, it  
2 accepted the officer's testimony that their only  
3 purpose in entering the home was to ensure their own  
4 safety, not to conduct a thoroughgoing search.  
5 Although we have assumed *arguendo* that the entry  
6 itself was unlawful, the district court's findings  
7 make clear that the police did not enter for an  
8 unlawful purpose."

9 There was no sham. There was no fraud. There was no  
10 trickery. That was not the intentionality. That was not the  
11 reason in the *Delancy* case that they went to that particular  
12 residence. The guy was involved in homicides. They went in  
13 there, did a quick protective sweep to protect themselves.  
14 Here, a plan was hatched a half an hour before they ever went  
15 to that house. And that plan involved a ruse. And it was not  
16 just a burglary, not just the ruse of a burglary; it was the  
17 ruse of a burglary plus a crime scene technician that's going  
18 to dust for fingerprints, who on the witness stand said that  
19 the reason that they came up with that, and the reason that  
20 they utilize that ruse is that would track the route that the  
21 burglar took, that would get him into the master bedroom, that  
22 would allow him to be able to search the master bedroom, which  
23 was the reason for this operation.

24 Based on that, your Honor, based on *Delancy*, based on  
25 the cases that I've cited to the Court, I ask the Court to

1 grant the motion.

2 **THE COURT:** Anything further, Mr. Smith?

3 **MR. SMITH:** No, your Honor.

4 **THE COURT:** All right. I'm gonna defer ruling. I'll  
5 try to get an order out as soon as I can. I guess we have a  
6 calendar call on Friday. We'll see everybody back on Friday.  
7 And we'll be in recess.

8 **ROOM CLERK:** All rise.

9 *(The Judge exited the courtroom)*

10 *(Proceedings concluded at 2:55 p.m.)*

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INDEX OF WITNESSES

<b>GOVERNMENT'S WITNESS</b>	<b>PAGE</b>
<b>Alex Iwaskewycz</b>	
Direct by Mr. Kobrinski	127
Cross by Mr. Day	172
Cross by Mr. Smith	215
Redirect by Mr. Kobrinski	239

- - - - -

INDEX OF EXHIBITS

<b>GOVERNMENT'S EXHIBITS:</b>	<b>MARKED</b>	<b>RECEIVED</b>
1	131	133
<b>DEFENDANTS' EXHIBITS:</b>	<b>MARKED</b>	<b>RECEIVED</b>
1	184	

- - - - -

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/Francine C. Salopek	12-15-15
Francine C. Salopek, RMR-CRR Official Court Reporter	Date