Winning Strategies SEMINAR

Cross-Examination

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CROSS-EXAMINATION OF COOPERATING WITNESSES

WINNING STRATEGIES SEMINAR
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I. INTRODUCTION

- Federal system leaves few options for defendants, particularly when they are facing mandatory minimums of 10 years, 20 years, and life imprisonment
- The only way for someone with criminal history to get below this mandatory minimum is to cooperate with the government
- Reward for cooperation is 5K1.1 or Rule 35 motion, depending on district and prosecutor
- Difficult to refuse for someone with no options, and testimony is often a byproduct of their cooperation
- They often come with baggage, and cross-examination is the time to highlight it

II. BACKGROUND INVESTIGATION

- This is the most important aspect of getting an effective cross-examination of the witness
- Know your informant intimately
- Gather all criminal history information
- Review prior affidavits, plea agreements, judgments, etc.
- Pull incident reports for uncharged behavior
- Look to see if witness has cooperated in the past–if so, what did they get, did they testify, how effective were they as a witness
- Is the witness a drug user–what kind, how often, high during time in question
- What bars/clubs does the witness frequent–known for criminal activity, reputation, still engaged in criminal activity
- Family background
- Notable possessions–fancy cars, expensive house, jewelry
- Medical issues–bad eyesight, hard of hearing, learning disability, brain damage
- Environment/culture of your informant–neighborhood, friends, mores of the area
- Use an investigator when possible to cut back on maximize information obtained–law clerks and paralegals are also excellent

III. ORGANIZING YOUR CROSS-EXAMINATION

- Start with the criminal history
- Review the potential penalties
- Detail the deal
- If no deal, make them tell you what they are hoping for
- If no deal and prior cooperation, question regarding prior experience
- Make them appear more culpable than they appeared on direct by using the background information you have
- Anything going on in life...sick parent, new child...that would be incentive for embellishing story? If so, question about the different situations and wrap up how it relates in closing.

IV. MAXIMIZING THE EFFECT

- Know what you want from the witness before the trial
- Make sure your questions only elicit the information you need to make your argument–everything else is extra
- Get as much information as you can–let the judge stop you, don't limit yourself
- When you get what you want, STOP!
- Move slowly through the information–moving to quickly takes away from the message you are trying to deliver to the jury
- Remember to lead your witness through their testimony–yes, no answers are all you need...their explanations are rarely helpful
- Pay attention to your jury–are they engaged, bored, aggravated, curious

HELPFUL CASES

Del. v. VanArsdall, 475 U.S. 673 (1986): The bias of a witness is subject to exploration at trial and is relevant as discrediting the witness and affecting the weight of his testimony. The exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross examination. Whether the lower court's preclusion of a particular line of questioning is harmless hinges upon several factors such as the importance of the witness' testimony in the prosecution's case, whether the testimony is cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case.

Davis v. Alaska, 415 U.S. 308 (1973): The exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross examination. The constitutional right to cross examine is subject always to the broad discretion of a trial judge to preclude a defendant from asking not only whether the witness was biased but also to make a record from which to argue why the witness might have been biased.

United States v. Uramoto, 638 F.2d 84 (9th Cir. 1980): District court erred in preventing defendant from cross-examining the informant and a drug enforcement agent as to threats the informant had made against others. Had jury heard of the threats to others, it could have given considerably less weight to the informant's denial that he threatened defendant.

Kines v. Butterworth, 669 F.2d 6 (1st Cir. 1981): When the free choice of a potential witness to talk to defense counsel is constrained by the prosecution without justification, this constitutes improper interference with a defendant's right of access of the witness. Justification on the part of the prosecution to interfere with that right can be shown only by the clearest and most compelling considerations. *See also Dennis v. United States*, 384 U.S. 855, 973 (1966).

United States v. Hively, 547 F.Supp. 318 (3rd Cir. 1982): Special treatment is

accorded evidence which is probative of a motive to lie because if believed it colors every bit of testimony given by the witness. The opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to the test is an essential safeguard to a fair trial. The Supreme Court has held that the exposure of a witness' motivation in testifying is so significant that in a criminal case curtailment of effective cross-examination for bias may be a violation of the Sixth Amendment right of confrontation.

Carrillo v. Perkins, 723 F.2d 1165 (5th Cir. 1984): A defendant's right to cross examine a witness about any deals that may have been made or any understandings were effected. Rather, what counts is whether the witness may be shading his testimony in an effort to please the prosecution. A desire to cooperate may be formed beneath the conscious level, in a manner not apparent even to the witness, but such a subtle desire to assist the state nevertheless may cloud his perception.

United States v. Oliveros, 275 F.3d 1299 (11th Cir. 2001): Bias of a witness gives a subjective fact that is influenced by the witness' belief about the benefit the witness will receive if he or she testifies in a particular way and the value to that particular witness which is measured by what the witness thinks will happen if he does not receive said benefit. Hence, probing a witness' motivation, interest, bias, or expectation of benefit goes to the subconscious of the witness and not what the actual benefit is the witness will receive.

United States v. Fabricant, 240 Fed. Appx. 244 (9th Cir. 2007): Refusal to allow defendant to cross-examine government witness, an informant, as to what he had to gain from government by testifying against defendant was reversible error, in drug trafficking prosecution.

United States v. Mason, 993 F.2d 406 (4th Cir. 1993): Reversal of cocaine distribution convictions was required by improper cross-examination of defendant's character witnesses by asking hypothetical questions assuming defendant's guilt; the only direct evidence of distribution of cocaine base was testimony of informant who was paid on basis of number of buys he made, and law enforcement agent could discern no drug transaction on audio cassette that might have corroborated informant's testimony.

APPLICABLE RULES OF EVIDENCE

Rule 607: Who May Impeach

Rule 608: Evidence of Character and Conduct of Witness

Rule 609: Impeachment by Evidence of Conviction of Crime

Rule 611: Mode and Order of Interrogation and Presentation

Rule 612: Writing Used to Refresh Memory

Rule 613: Prior Statements of Witnesses

SAMPLE CROSS EXAMINATION

COURTESY OF KEVIN TATE
ASSISTANT FEDERAL DEFENDER
FEDERAL DEFENDERS OF WESTERN CAROLINA
CHARLOTTE, NC

1 Q And what did you and he discuss at that point?
2 A He said he had to call -- he said he had to call his
3 cousin and tell him there was some green.
4 Q Which is code for what?
5 A Some good marijuana.
6 Q Now, was that unusual for you that the money was with
7 somebody else and not right there at the scene?
8 A He said he had the money but it was in the car.
9 Q All right. So what happened next?
10 A He got on the phone, got off the phone, and said he was
11 going to the car to get the money.
12 Q So what were you expecting to happen?
13 A For him to go to the car and get the money.
14 Q And while you were waiting for that to happen, what did
15 you do?
16 A Pumped the gas.
17 Q What, in fact, happened?
18 A The police pulled up.
19 Q And where were you when they pulled up?
20 A Pumping gas.
21 Q What did they do with you?
22 A Put me in handcuffs.
23 Q Now, do you recall after you were arrested at some
24 point the police advising you of your rights?
25 A Uh-huh. Yes, sir.

1 Q And did you agree to make a statement after having been
2 advised of waiving your rights?
3 A No, sir.
4 Q You don't remember talking to them?
5 A I talked to them but I didn't agree to talk about other
6 things.
7 Q They asked you some questions which you, in fact,
8 answered. Is that correct?
9 A Yes, sir.
10 Q And what did they ask you about the marijuana?
11 A Whose was it.
12 Q And what did you tell them?
13 A Mine.
14 Q And what else did they ask you that you recall?
15 A They finally asked me about a gun.
16 Q What -- did you answer that question?
17 A Yes, sir.
18 Q What did you tell them?
19 A The gun must have been left in the car.
20 Q By who?
21 A By Keesha's friend or Keesha.
22 Q You mentioned -- why did you say that?
23 A Because I know -- because I took the blame for mine. I
24 just thought he was going to take the blame for what was
25 his.

1 MR. TATE: Objection. Move to strike.
2 THE COURT: Motion to strike allowed.
3 Q What do you mean take it for yours?
4 A I took the blame for my marijuana.
5 Q And why didn't you tell them about the gun, the police
6 about the gun?
7 A Because I thought he was going to tell them it was his
8 gun.
9 MR. O'MALLEY: May I have a second, please, Your
10 Honor?
11 THE COURT: You may.
12 MR. O'MALLEY: Thank you. No further questions.
13 THE COURT: Cross-examine.
14 MR. TATE: Thank you, Your Honor.
15 CROSS EXAMINATION
16 BY MR. TATE
17 Q Good morning, Mr. Reeves. My name is Kevin Tate. I
18 represent Antonio Crockett.
19 One of the things the government initially asked you
20 about was your criminal history, and I believe you told the
21 jury that you're at least a two-time felon, one for
22 possession of a firearm by a felon.
23 A Yes, sir.
24 Q You carry firearms all the time. Isn't that right?
25 A No, sir.

1 Q But you have at least been arrested and convicted of
2 carrying an illegal firearm. Is that correct?
3 A Yes, sir.
4 Q Additionally, I think you said you were convicted of a
5 felony of possession of stolen property?
6 A Yes, sir.
7 Q That's not the only felony convictions you have, is it?
8 A No, sir.
9 Q You didn't tell the jury on direct about your felony
10 conviction for possession with intent to sell marijuana. Is
11 that right?
12 A No, sir.
13 Q Were you convicted of that offense on June 4th of 2000?
14 A Yes, sir.
15 Q That's not one of the offenses you told the jury about,
16 was it?
17 A Maintaining a dwelling was the same -- it's all the
18 same charge.
19 Q There were several charges you were charged with.
20 A Yes, sir.
21 Q And you pled guilty.
22 A Yes, sir.
23 Q And so, in fact, in light of that prior drug
24 conviction, are you aware that the minimum sentences that
25 you face here could be double because you have a prior drug

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1 conviction?
2 A Yes, sir.
3 Q That's something your attorney spoke to you about?
4 A Yes, sir.
5 Q And you knew at some point that you were facing a lot
6 of time. Is that right?
7 A Yes, sir.
8 Q Now, you arranged for that marijuana deal with the
9 undercover. Is that right?
10 A Yes, sir.
11 Q Mr. Crockett didn't have anything to do with arranging
12 that deal, did he?
13 A No, sir.
14 Q He didn't talk to them on the phone?
15 A No, sir.
16 Q He didn't package the marijuana?
17 A No, sir.
18 Q He didn't buy it?
19 A No, sir.
20 Q None of his money was used to buy it?
21 A No, sir.
22 Q In fact, he wasn't going to receive any of the
23 proceeds, was he?
24 A No, sir.
25 Q Now, in addition to going to the gas station that

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1 night, are you familiar with something called Club 2000?
2 A Yes, sir.
3 Q Tell the jury what that is.
4 A That's a club off of Independence Boulevard.
5 Q Is that a club that you and Mr. Crockett would
6 frequent?
7 A Yes, sir.
8 Q And you were, in fact, going to that club later that
9 night. Is that right?
10 A I wasn't planning on going.
11 Q Do you recall whether or not you were going to the club
12 that night?
13 A I wasn't.
14 Q What day of the week was this?
15 A I think a Thursday night.
16 Q Isn't Thursday night a hot time for Club 2000? That
17 means it's crowded in the club.
18 A No, sir.
19 Q It's not?
20 A Huh-uh.
21 Q What nights would you go to Club 2000?
22 A On a Saturday.
23 Q Okay. Let me ask you this: You talked about
24 Mr. Crockett having a Mercedes Benz. What time frame was
25 that? What year was that?

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1 A I don't recall him having a Mercedes Benz.
2 Q Didn't you testify that he had a car with rims on it?
3 A A van.
4 Q A van. That was an old raggedy van, wasn't it?
5 A I'm not sure of the make of it, but it was a pretty
6 decent van.
7 Q He didn't have it in 2004, did he?
8 A No, sir.
9 Q In fact, he didn't have a car at all?
10 A What?
11 Q He didn't have anywhere to live.
12 A Yeah, he had somewhere to live.
13 Q Where?
14 A With me.
15 Q Well, he would stay there from time to time. Is that
16 right?
17 A In 2004 he was staying with me.
18 Q Let me ask you about 2004. One of the things you
19 talked about was how big this house was. Is that right?
20 A No, sir.
21 Q Didn't you have a three-bedroom house?
22 A Yes, sir.
23 Q That you were paying 1400 a month in rent for?
24 A Yes, sir.
25 Q And one of the things about you is on the streets you

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1 were what they describe as a baller. Is that right?
2 A Yes, sir.
3 Q Tell the jury what a baller is.
4 A A dope dealer.
5 Q It's a person that has the trappings of wealth. Is
6 that right?
7 A Yes, sir.
8 Q Among the things you had was a candy orange Fleetwood
9 Cadillac. Is that right?
10 A Yes, sir.
11 Q Explain to the jury what the term "candy" means.
12 A A paint job.
13 Q Is that an expensive paint job?
14 A Yes, sir.
15 Q How much does it cost about, that paint?
16 A Can be from 2,000 to 5,000.
17 Q Now, on direct when Mr. O'Malley was asking you about
18 the stereo system and the rims, and he asked you whether
19 there was anything else expensive about the vehicle you
20 didn't mention the candy paint, did you?
21 A No, sir.
22 Q And in addition, you had a lime green Chevy pickup
23 truck?
24 A Yes, sir.
25 Q That was a special after-factory paint on there?

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1 A Yes, sir.
2 Q In addition, you had a candy purple sedan DeVille
3 Cadillac?
4 A No, sir, I didn't have that at the time.
5 Q But that was one of the vehicles you had.
6 A Yes, sir.
7 Q You didn't mention that on direct examination. Is that
8 right?
9 A No, sir.
10 Q And again that sedan DeVille had candy paint on it as
11 well?
12 A Yes, sir.
13 Q Did you have a drop top Pontiac?
14 A Yes, sir.
15 Q On the streets, do they describe this as like a classic
16 vehicle?
17 A Yes, sir.
18 Q Mr. Crockett didn't have anything like that, did he?
19 A No, sir.
20 Q Did you have a round body Caprice?
21 A No, sir.
22 Q You never had a round body --
23 A I have had one before but I didn't have it at the time.
24 Q But that's one of the vehicles you had previously.
25 A Yes, sir.

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1 Q Now, your house, it had flat screens in your house,
2 flat screen TVs?
3 A No, I just had a big screen.
4 Q Big screen. You had some nice furniture?
5 A Decent furniture.
6 Q Mr. Crockett was impressed with your trappings, would
7 you agree?
8 A No, sir.
9 Q He liked to be around you. Is that right?
10 A Yes, sir.
11 Q When he was around you there was plenty of marijuana
12 for him to smoke because you were going to provide it?
13 A Yes, sir.
14 Q He didn't have to pay for anything because you were
15 going to pay for it?
16 A Yes, sir.
17 Q A lot of girls would be around your house all the time?
18 A Yes, sir.
19 Q In fact, Mr. Crockett would use one of the bedrooms at
20 your house with his female acquaintances. Is that right?
21 A Yes, sir.
22 Q Is that one of the reasons he would be at your house?
23 A No, sir.
24 Q Have you ever seen him sleeping on the couch at your
25 house?

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1 A Yes, sir.
2 Q Why, if he had a bedroom, why was he sleeping on the
3 couch?
4 A Fall asleep on the couch.
5 Q Now, I want to talk about this case here, May 20th of
6 2004. The drugs that were seized, I think you testified
7 those were your drugs.
8 A Yes, sir.
9 Q Mr. Crockett didn't have anything to do with those
10 drugs.
11 A No, sir.
12 Q And you had purchased them from someone named Angel.
13 Is that right?
14 A Yes, sir.
15 Q The vehicle belonged to your girlfriend?
16 A A friend girl of mine.
17 Q Did you understand at some point that a .40 caliber
18 firearm was discovered in the -- in the vehicle?
19 A I didn't know what kind of gun they found.
20 Q May I see government's exhibit -- the firearm. Let me
21 show you what's been admitted -- look on your monitor. I'm
22 going to put it up here. Can you see that firearm?
23 A Yes, sir.
24 Q This isn't the first time you have seen that firearm,
25 is it?

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1 A No, sir.
2 Q In fact, are you familiar with an establishment called
3 Top to Bottom?
4 A Yes, sir.
5 Q Tell the jury what Top to Bottom is.
6 A A rim shop.
7 Q And you know a fellow named Marciano (ph) that worked
8 there?
9 A Not by that name.
10 Q How do you know -- what name do you know him by?
11 A I really don't know who you're talking about.
12 Q You don't know anybody at Top to Bottom?
13 A I know the owner.
14 Q In fact, you purchased that firearm at Top to Bottom
15 Auto Shop, didn't you?
16 A No, sir.
17 Q You didn't purchase that firearm in 2003?
18 A No, sir.
19 Q And you understand that you're under oath?
20 A Yes, sir.
21 Q Now, one of the things you testified here today is that
22 Mr. Crockett always had a gun.
23 A Yes, sir.
24 Q On the evening of May 20th, 2004, you didn't see him in
25 possession of a firearm, did you?

1 A Not -- not at the time of the drug deal.
2 Q He didn't tell you he was coming to protect you, did
3 he?
4 A No, sir.
5 Q He didn't tell you, "I'm bringing a gun along on your
6 drug deal," did he?
7 A No, sir.
8 Q So it's nothing he said or did that would make you
9 think he was bringing a gun in connection with your drug
10 deal. Is that right?
11 A Yes, sir.
12 MR. TATE: The Court's indulgence.
13 Q In fact, Mr. Reeves, you were asked on the scene by a
14 police detective about that firearm. Is that right?
15 A Yes, sir.
16 Q And one of the reasons you told the police you didn't
17 know whose firearm it was was because you didn't see
18 Mr. Crockett with a gun. Is that right?
19 A Yes, sir.
20 Q You didn't think he had a gun, otherwise you would have
21 said, "I think it's Mr. Crockett's." Is that right?
22 A I knew he had a gun but I just didn't see the gun. I
23 can't say that it was his gun if I ain't seen the gun.
24 Q So you can't say here, you can't tell the jury that
25 Antonio Crockett, sitting here on trial, left that firearm

1 in that vehicle, can you?
2 A No, sir.
3 Q At the scene when Detective Melton -- at the time he
4 was a detective -- asked you about the firearm, you said,
5 "Somebody may have left it there." Is that right?
6 A Yes, sir.
7 Q You didn't say Antonio Crockett?
8 A No, sir.
9 Q Now, following your arrest that night, at some point
10 you found yourself in jail. Is that right?
11 A Yes, sir.
12 Q Confined to a jail. It's not a pleasant place.
13 A Yes, sir.
14 Q And you began to wonder to yourself as you sat in the
15 jail -- describe to the jury, if you will, your conditions
16 at the jail, what your living quarters are like.
17 A Poor.
18 Q Well, where do you sleep?
19 A On the floor.
20 Q And in how big of a space?
21 A Like a little four-by-four cell.
22 Q Four by four. Do you share that with someone else?
23 A No, sir.
24 Q And while you're in this cell sleeping on the floor,
25 did you ever say to yourself, "My God, how do I get out of

1 here?"
2 A No, sir.
3 Q Did you ever wonder if you would ever get out of jail?
4 A No, sir.
5 Q You thought you'd be in jail forever?
6 A No, I knew that I was getting out.
7 Q When did you think you were going to be getting out?
8 A When I posted bond.
9 Q Well, I'm -- you're talking about the time of your
10 arrest. Maybe my question wasn't right. But since that
11 time you're in jail now. Is that right?
12 A Uh-huh. Yes, sir.
13 Q And the conditions are similar. Is that right?
14 A No, sir. I got a bed now.
15 Q Okay.
16 A I was sleeping on the floor when I first got to the
17 pod. But once you get a room, you sleep on a bed.
18 Q How big is that room?
19 A Still a four by four.
20 Q It's a small room. Is there a window?
21 A Yes, sir.
22 Q Do you have a view of the outside?
23 A Yes, sir.
24 Q Now, while you were in jail awaiting trial, did you
25 ever say to yourself, "How do I get out of here? How long

1 am I going to be in jail?"
2 A Yes, sir.
3 Q And you began to think about ways to get yourself out
4 of jail. Is that right?
5 A No, sir.
6 Q Well, you thought that you would just -- reserved
7 yourself to the fact that you would be in jail?
8 A Do my time and then get out.
9 Q Did you know how much time it was going to be?
10 A No, sir.
11 Q But you knew it would be a lot?
12 A Yes, sir.
13 Q Because you have a prior felony drug offense.
14 A Yes, sir.
15 Q Let me show you what I'm going to have marked as
16 Defendant's Exhibit 4 and ask you if you recognize this.
17 MR. TATE: Madam Clerk, do you have stickers?
18 THE CLERK: I do.
19 Q Mr. Reeves, I'm showing you what's been marked as
20 Government's Exhibit 4 and ask you to look at that. What is
21 that?
22 A Something that I wrote.
23 Q When did you write that?
24 A I'm not sure of the exact day.
25 Q Who did you write it to?

1 A Gretchen Shappert.
2 Q Who is Gretchen Shappert?
3 A The district attorney.
4 Q Could you mean the United States Attorney?
5 A Yeah. The U. S. Attorney.
6 Q She supervises Mr. O'Malley and -- she's a person you
7 knew that was over here prosecuting your case?
8 A Yes, sir.
9 Q Look at your screen. Do you know the date and time
10 that you wrote this letter?
11 A No, sir.
12 Q Is that your handwriting?
13 A Yes, sir.
14 Q Can you see that? Can you read that at all,
15 Mr. Reeves?
16 A A little.
17 Q One of the things you're saying in this letter is that
18 you know all about the drug dealers in Charlotte. Is that
19 right?
20 A Yes, sir.
21 Q And you go on to name some individuals by monikers and
22 nicknames who were involved with you in drug trafficking.
23 Is that right?
24 A Not necessarily with me but drugs period.
25 Q Drugs and some of the people who dealt with you. Is

1 that right?
2 A Yes, sir.
3 Q And one of the things you say to Ms. Shappert is, "You
4 help me and I'll help you." Do you see that right there?
5 "You help me and I'll help you."
6 A Yes, sir.
7 Q Do you see that?
8 A Yeah.
9 Q What did you mean by that?
10 A If she helped me, I'd help her.
11 Q And by helping her means testifying against Antonio
12 Crockett. Is that right?
13 A No.
14 Q How were you going to help her?
15 A With drug dealers.
16 Q And part of your help would include testifying at
17 trials. Right?
18 A No, sir.
19 Q What did you think your help was going to involve?
20 A Not testifying.
21 Q Well, you're here today, aren't you?
22 A Yes, sir.
23 Q Are you here because you want to be here?
24 A Yes, sir.
25 Q You want to be here to help the government?

1 A Yes, sir.
2 Q Because you want help on your sentence.
3 A No, sir.
4 Q You don't want any help?
5 A I wasn't promised anything.
6 Q I understand you weren't promised --
7 A I would like it but I wasn't promised anything.
8 Q Yeah. And the reason you like it -- and you liked it
9 when you wrote this letter, when you said, "You help me and
10 I'll help you." Is that right?
11 A Yes, sir.
12 Q And you're helping today by testifying against Antonio
13 Crockett.
14 A Yes, sir.
15 Q After you wrote that letter, at some point a
16 Detective Fish interviewed you at the Mecklenburg County
17 Jail. Is that right?
18 A Yes, sir.
19 Q And your attorney was there; your attorney, Julia
20 Mimms, she was present?
21 A Yes, sir.
22 Q And one of the things Detective Fish was interviewing
23 you about was this letter that you had wrote wanting to help
24 the government. Is that right?
25 A Yes, sir.

1 Q And this interview took place on February 23rd of 2006?
2 A I'm not sure of the exact day.
3 Q You saw him about that time. Does it sound about
4 right, a couple of months ago?
5 A Yes, sir.
6 Q Actually maybe six weeks ago. And one of the things
7 Detective Fish told you was that you had to provide complete
8 and truthful information about everything you knew about
9 drug dealing. Is that right?
10 A Yes, sir.
11 Q And everybody you knew in the drug trade and what all
12 they did in the drug trade and your involvement with them.
13 Is that right?
14 A Yes, sir.
15 Q And were you honest with Detective Fish that day?
16 A Yes, sir.
17 Q During your interview on February 23rd, 2006, you
18 didn't identify Antonio Crockett as a drug dealer, did you?
19 A No, sir.
20 Q You didn't say that Antonio Crockett always carried a
21 gun on that day, did you?
22 A No, sir. I don't even recall him asking about Antonio
23 Crockett at the time.
24 Q In fact, Antonio Crockett was no drug dealer, was he?
25 A No, sir.

1 Q He was a hanger-on. Isn't that right?
2 A Yes, sir.
3 Q He's the guy that wants to hang around so he can reap
4 the fringe benefits of your trappings as a drug dealer. Is
5 that right?
6 A Yes, sir.
7 Q But yet today you're testifying he's a drug dealer and
8 that he always carried a gun. That's your testimony?
9 A No, sir.
10 Q It's not? That testimony was false?
11 A No. I was just saying that I have seen him with drugs
12 but it hasn't been lately.
13 Q You didn't see him with any drugs on May 20th, 2004?
14 A No, sir.
15 Q He never sold any of your marijuana for you, did he?
16 A No, sir.
17 Q In exchange for testifying here today the way that you
18 have, the government -- you're hoping to receive some
19 leniency on your sentence, but in addition, there are other
20 charges that can be brought against you that haven't been
21 brought. Isn't that right?
22 A I'm not aware of them.
23 Q Well, one of the things you mentioned was that between
24 a period of 1999 and 2003 you bought four pounds a month for
25 66 months from somebody named Darren. Is that right?

1 Bought about 248 pounds from Darren?
2 A No.
3 Q Do you recall during your interview with Detective Fish
4 saying you purchased four pounds a month for about five and
5 a half years from Darren?
6 A It was something like that.
7 Q And do you agree that four and a half -- four pounds a
8 month for 66 months is roughly 248 pounds?
9 A It wasn't like that every month. It was off and on.
10 Q But you're not charged with anything in connection with
11 your dealings with Darren, are you?
12 A No, sir.
13 Q The government hasn't charged you with that?
14 A No, sir.
15 Q How about your dealings with a guy out of California
16 named the Washington brothers, Mike and Eric Washington, do
17 you know them?
18 A Yes, sir.
19 Q Do you know a guy named Hollywood?
20 A Yes, sir.
21 Q You dealt with them in drugs as well, didn't you?
22 A I dealt with Darren through them.
23 Q In fact, you purchased about 780 pounds of marijuana
24 from them over the period you dealt with them. Isn't that
25 right?

1 A I don't know how much it would be.
2 Q Well, you were getting about ten pounds a week from
3 them. Is that right?
4 A Off and on.
5 Q And the government hasn't charged you with any offenses
6 in connection with that, have they?
7 A No, sir.
8 Q Because you're testifying here today?
9 A No, sir.
10 Q Now, with respect to Angel, you were buying about -- it
11 was actually Angel's drugs that you had in your car; the
12 drugs right here belonged to Angel?
13 A Yes, sir.
14 Q Isn't that right?
15 A Yes, sir.
16 Q And that's not the only time you dealt with Angel. You
17 purchased, in fact, about 124 pounds of marijuana from
18 Angel. Isn't that right?
19 A Not that much.
20 Q Well, were you purchasing three pounds a week for about
21 a year?
22 A Yes, sir.
23 Q Do you agree that comes to -- there's 56 (sic) weeks in
24 a year?
25 A Off and on.

1 Q Sometimes you'd get more than three pounds, though.
2 Isn't that right?
3 A Yeah.
4 Q On the average it was about three pounds a week. Would
5 you agree with that?
6 A Yeah. Give or take.
7 Q You haven't been charged in connection with any of
8 those offenses, have you?
9 A No, sir.
10 Q Because you're testifying here today?
11 A No, sir.
12 Q You had a lot of money, Mr. Reeves. Have you ever
13 filed a federal tax return?
14 A Yes, sir.
15 Q When?
16 A Like '98-99. It's been a long time.
17 Q It's been a long time. But in the years when you had
18 the candy orange Fleetwood, the lime green Chevy, the candy
19 purple sedan DeVille, the drop top Pontiac, the big screen
20 TVs, 1400 a month rent, you didn't claim any of that income
21 on your income tax, did you?
22 A No, sir.
23 Q Has the government told you they were going to charge
24 you with any offenses in connection with that?
25 A No, sir.

1 Q Mr. Reeves, this isn't the first time that you've
2 testified that the guns and drugs did not belong to Antonio
3 Crockett, is it?
4 A I'm not testifying. I'm saying that it's not his.
5 Q In fact, let me ask you about this: Do you recall
6 appearing in state court in Superior Court on I believe it
7 was about July 9th of 2004, on behalf of Antonio Crockett?
8 Do you recall coming to court?
9 A Yes, sir.
10 Q And you had spoken with your attorney and you had
11 spoken with Mr. Crockett's attorney at the time prior to
12 coming to court?
13 A Yes, sir.
14 Q And you told them that -- and you were prepared to
15 testify that Mr. Crockett -- that you were responsible for
16 both the guns and drugs. Is that right?
17 A No, sir.
18 Q Did you come to court?
19 A Yes, sir.
20 Q Did you hear his attorney making those representations?
21 A No, sir.
22 Q Let me show you --
23 MR. O'MALLEY: Judge, let me object and ask for a
24 sidebar.
25 THE COURT: No. Overruled.

1 Q Let me show you what I want to have marked as
2 Defendant's Exhibit 5.
3 MR. TATE: Is that correct, Madam Clerk?
4 MR. O'MALLEY: Your Honor, objection to both --
5 regarding privilege and also hearsay.
6 MR. TATE: It's Mr. Reeves's privilege. It's not
7 the government's.
8 THE COURT: Overruled. You can proceed.
9 Q Mr. Reeves, I want to show you what's been marked as
10 Defendant's Exhibit 5 and have you read what that says
11 there. (Hands document to the witness) What does it say on
12 the front cover?
13 A "State of North Carolina versus Antonio Crockett."
14 Q And does it say anything?
15 A Anything like what?
16 Q What does it say? What is this in reference to?
17 A Superior Court hearing.
18 Q And let me just turn it here. Were you present, do you
19 recall being present in the courtroom on that day?
20 A On a bond hearing.
21 Q Yes. Were you present?
22 A Yes, sir.
23 Q And this was in connection to his arrest in this case?
24 A Yes, sir.
25 Q Let me have you -- and you can just look at this to

1 yourself -- let me have you look at this. Can you read,
2 sir?
3 A Yes.
4 Q Let me have you read that top paragraph and see if that
5 refreshes your recollection about what was said in court
6 that day.
7 A (Witness complies.) This really ain't got nothing to
8 do with me.
9 Q I understand. It was shown to you for the purpose of
10 refreshing your recollection. Were you in court at that
11 bond hearing?
12 A Yeah, I was in court.
13 Q And did you hear his attorney -- did this refresh your
14 recollection that his attorney said --
15 MR. O'MALLEY: Judge, I object.
16 THE COURT: Overruled.
17 Q Were you present when his attorney represented to the
18 judge in that case that you were in court and that she had
19 spoken with your attorney and you were prepared to say the
20 guns and drugs were yours?
21 A No, sir.
22 Q You weren't there?
23 A I was there but I didn't hear her say that.
24 Q Do you agree it's reflected in this transcript?
25 A No, sir.

1 Q Do you need to look at it further?
2 A Yeah. Let me look at it again.
3 THE COURT: Tell you what, why don't you just read
4 it to the him so we can all hear it and see it.
5 MR. TATE: "Thank you, Your Honor. Your Honor, as
6 you've heard Mr. Crockett has quit a minimal history. He's
7 22 years old. His brother -- stand up, please -- his
8 brother is here, his girlfriend is here, and, Your Honor, as
9 a matter of fact, the codefendant is here. Now, I didn't
10 ask the codefendant to be here. I called and spoke with the
11 codefendant's attorney. He has told me he's come today
12 because he heard Mr. Crockett was having a bond hearing.
13 "The codefendant understands that anything he says
14 in this courtroom can be used against him, but I'll tell the
15 Court I've already spoken to his attorney and his attorney
16 confirmed that he made a full confession. He told the
17 police that this was all his. It was his deal, it was his
18 doing, and that Mr. Crockett had absolutely no knowledge of
19 it. He was just riding with him."
20 BY MR. TATE
21 Q Do you recall that happening in court?
22 A No, sir.
23 Q But you do recall being at his bond hearing?
24 A Yes, sir.
25 Q But that statement I read, that's consistent with what

1 you said here today, don't you agree?
2 A No, sir.
3 Q That isn't the first time -- when you were sentenced on
4 your prior drug conviction, Mr. Crockett (sic), in state
5 court, do you recall that? Do you recall your sentencing on
6 your prior drug conviction in state court?
7 A Mr. Reeves.
8 Q Mr. Reeves. I'm sorry. Do you recall that?
9 A Yes, sir.
10 Q And you had to appear in front of a judge for
11 sentencing?
12 A Yes, sir.
13 Q And before you were sentenced you had to raise your
14 hand and take an oath to tell the truth. Do you recall
15 that?
16 A Yes, sir.
17 Q And at that hearing you testified, you made statements
18 to the Court you were seeking probation. Do you recall
19 that?
20 A Yes, sir.
21 Q And one of the things you told the Court is that it was
22 a terrible mistake; that you would never sell drugs again.
23 Do you recall that?
24 A No, sir.
25 Q Do you recall telling the Court at all that you would

1 stop selling drugs?
2 A No, sir.
3 Q You said you were going to continue selling it?
4 A No, sir.
5 Q What did you say, if you recall?
6 A Nothing.
7 Q You didn't say nothing?
8 A No, sir.
9 Q You made no statements whatsoever?
10 A No, sir.
11 Q This six-pound rip off that you talked about where
12 Antonio Crockett was in the car with you, those are your
13 drugs. Right?
14 A Yes, sir.
15 Q They weren't his drugs.
16 A No, sir.
17 Q He didn't have anything to do with the purchase of
18 drugs?
19 A No, sir.
20 Q What was the time frame of that?
21 A I'm not sure, sir.
22 Q It wasn't in 2004, though, was it?
23 A I'm really not sure, but like the end of 2003.
24 Q It didn't have anything to do with the events of
25 May 20th, 2004, did it?

1 A No, sir.
2 MR. TATE: No further questions.
3 THE COURT: Redirect.
4 REDIRECT EXAMINATION
5 BY MR. O'MALLEY
6 Q One of the defense exhibits, this handwritten document
7 that counsel showed you.
8 THE COURT: I remind counsel the order of the
9 Court is that whoever's exhibit it is is responsible for
10 keeping it.
11 Q Government's Exhibit No. 4 or defense exhibit, excuse
12 me, No. 4 marked for identification that counsel referred to
13 in your cross-examination, were you able to read that on the
14 overhead or was it too light?
15 A It was kind of blurry.
16 Q Let me ask you -- I'm going to hand it to you and if
17 you could read it. It's probably easier than the overhead.
18 Read it to yourself, please, and then I'll have some
19 questions concerning this document.
20 A (Witness complies.)
21 Q Have you had you chance to read it to refresh your
22 recollection?
23 A Yes, sir.
24 Q Okay. That's your handwriting?
25 A Yes, sir.

1 Q Is that something you wrote?
2 A Yes, sir.
3 Q And who did you address it to?
4 A Gretchen Shappert.
5 Q Where did you get her name from?
6 A From a cellmate.
7 Q And who -- what did you understand her position to be?
8 A U. S. Attorney.
9 Q And why did you write the letter to her?
10 A Because I was locked up for a certain point in time and
11 my investigator haven't came and talked to me yet.
12 Q And was there anything in there where you discuss
13 Crockett?
14 A No, sir.
15 Q When you were asking, "You help me, I'll help you,"
16 were you offering to cooperate against Crockett?
17 A No, sir.
18 Q What type of people were you attempting to call to the
19 attention of the United States Attorney where you hoped to
20 get some consideration for cooperation?
21 A Drug dealers.
22 Q What kind of drug dealers?
23 A Marijuana dealers. Crack dealers.
24 Q What level dealers?
25 A Big-time drug dealers.

1 Q What's your detention of big-time drug dealers?
2 A Big-time drug dealers like pounds -- pounds or more.
3 Q And those are people that you knew or knew of from the
4 street?
5 A Yes, sir.
6 Q And when you said, "You help me, I'll help you," you
7 were helping to identify and working investigations
8 concerning those people?
9 A Yes, sir.
10 Q Now, Mr. Tate also asked you about some questions that
11 morning concerning a court event. Did the attorney who was
12 representing the defendant get him out on bond, was that
13 attorney representing you?
14 A No, sir.
15 Q Did that attorney talk to you?
16 A No, sir.
17 Q What was -- you were in court that day. What was that
18 attorney attempting to do with respect to Crockett's bond in
19 court?
20 A Reduce the bond.
21 Q For what purpose?
22 A To make bond.
23 Q Do you recall before you went to court that day and
24 after you got arrested in the early morning hours of
25 May 20th, 1984 (sic), did you ever make any calls from the

1 jail?
2 A I wasn't locked up in '84.
3 Q Excuse me?
4 A I said I wasn't locked up in '84.
5 Q Sorry. May 20th, 2004.
6 A Ask the question again.
7 Q This case. Did you make any calls before you went to
8 court that day?
9 A I'm not sure, sir.
10 Q Do you recall making telephone calls from the jail?
11 A Yes, sir.
12 Q Let me show you what's -- let me show you what's been
13 marked as Government's Exhibit No. 18. Have you had a
14 chance -- do you recognize Government's Exhibit No. 18?
15 MR. TATE: Your Honor, I'm just going to object
16 ahead of time. May we have a sidebar?
17 THE COURT: Yes.
18 (Sidebar conference reported as follows:)
19 MR. TATE: Your Honor, I believe testimony is
20 coming in the back door. In pretrial pleadings they said
21 they would only be used as prior inconsistent statement.
22 This statement they are attempting to introduce actually
23 would be inconsistent because the witness is testifying he
24 did not see him with a firearm, did not know him to have a
25 gun in 2004. They want to get this report in where he says

1 in response to somebody else's statement they say did Tony
2 have that gun? He says yeah. Okay. That would be
3 inconsistent with his testimony. So it's hearsay. We
4 object to asking about it.
5 THE COURT: Sustained.
6 (Sidebar concluded.)
7 BY MR. O'MALLEY
8 Q Do you remember Mr. Tate's line of questions to you
9 concerning the gun? Remember that line of questioning --
10 A Yes, sir.
11 Q -- on cross-examination. Do you remember saying that
12 you knew he had a gun?
13 A Yes, sir.
14 Q And why did you say that in your cross-examination
15 question?
16 A Because he always carried a gun.
17 Q And did you ever discuss that with anybody else?
18 A No, sir.
19 MR. O'MALLEY: Your Honor, once again we'd
20 resubmit this --
21 THE COURT: No. No.
22 MR. O'MALLEY: -- and refer to the motion in
23 limine we filed with, Your Honor.
24 THE COURT: Nope.
25 BY MR. O'MALLEY

1 Q All right. Mr. Tate was asking you about -- he said
2 you're known -- what is it, a baller on the street?
3 A Yes, sir.
4 Q What does that mean?
5 A Well-known drug dealer.
6 Q And were the cars, did they appear to be -- were they
7 the trappings of a baller on the street.
8 A Yes, sir.
9 Q Because of what?
10 A The rims and TVs and the paint.
11 Q And did you ride in those cars alone?
12 A I have before.
13 Q And when you were driving those cars, how often did you
14 drive those car alone? Let's talk about once the defendant
15 started living with you at the end of 2002 at the time of
16 this offense?
17 MR. TATE: Objection. It mischaracterizes his
18 testimony. He said from the end of 2002.
19 THE COURT: Overruled.
20 Q From the end of 2002 through the time of this offense
21 in 2004.
22 A Four, five days a week.
23 Q How often did you ride alone in these cars during that
24 time period once he was with you?
25 A A couple hours.

1 Q During the week how often did he ride with you in these
2 cars?
3 A Pretty much every day.
4 Q So when people looked in the car as a baller driving
5 the street with these vehicles with all the fancy paint and
6 everything counsel pointed out, who was sitting in the
7 right-hand passenger side of that vehicle?
8 A Crockett.
9 Q And why did you – the defense attorney characterized
10 it as a hanger-oner. Why did you permit him to be a, quote,
11 "hanger-on"?
12 A He was a friend and I felt safe round him.
13 Q Why did you feel safe around him?
14 A Because I always knew he carried a gun.
15 Q How was that helping you as a drug dealer, knew he was
16 a friend and always carrying a gun?
17 A Protection.
18 Q So did you need to ask him when you went out to do this
19 drug deal on May 19, May 20th, if he had a gun?
20 A No, sir.
21 Q Why didn't you need to ask him?
22 A Because I figured he always kept a gun so he had it
23 that night.
24 Q That night when you went there with the marijuana, did
25 he say, "Leave me alone. I'm staying in bed. I'm

1 sleeping"?
2 A No, sir.
3 Q What did he do?
4 A He got up.
5 Q Did he ever question one time your request of him to
6 accompany you?
7 A No, sir.
8 Q What about when he saw you loading marijuana in the
9 car, did he tell you he didn't want anything to do with it?
10 A No, sir.
11 Q Did he tell you he wasn't going to have a gun and
12 wasn't going to watch your back?
13 A No, sir.
14 Q When you got to the gas station and paid for the gas,
15 did he get up and buy himself a Coke or anything?
16 A No, sir.
17 THE COURT: We've gone over the Court's admonition
18 to quit leading this guy. And so, you know just because
19 he's had cross doesn't mean you get to cross again. Let's
20 stick with your basic regular old direct questions.
21 BY MR. O'MALLEY
22 Q What, if anything, did he do when you got out of the
23 car?
24 A Sat in the car.
25 Q And why was that?

1 MR. TATE: Objection. Calls for speculation.
2 THE COURT: Overruled. If he knows.
3 A To make sure that nothing happened.
4 Q Why weren't you willing to leave $7,200 worth of
5 marijuana in the car by itself when you went to pay for gas?
6 A Because I knew he was in the car and would protect it.
7 Q Who?
8 A Antonio Crockett.
9 THE COURT: Unresponsive. Ignore that answer,
10 members of the jury.
11 Q Why did you get out of the car when the buyer was there
12 to get the marijuana?
13 A To get some gas.
14 Q And why did you elect to get the gas and leave the
15 marijuana?
16 MR. TATE: Objection. Asked and answered.
17 Q Leave the presence of the marijuana?
18 THE COURT: Overruled.
19 A Because Crockett was in the car.
20 Q Now, did you ever carry that gun that night?
21 A No, sir.
22 Q Was that your gun?
23 A No, sir.
24 Q When you were driving the car, did you ever see it
25 where the police had found it?

1 A No, sir.
2 MR. O'MALLEY: May I have a second, Your Honor?
3 THE COURT: You may.
4 MR. O'MALLEY: I have no further questions.
5 MR. TATE: One question for Mr. Reeves.
6 RECROSS EXAMINATION
7 BY MR. TATE
8 Q At the scene, when you talked to the officer about the
9 firearm, you said that I think on your initial direct that
10 you believed that someone of Keesha's friends could have
11 left the gun in the car. Is that correct?
12 A Yes, sir.
13 Q And that still could be the case, don't you agree?
14 MR. O'MALLEY: Objection. Calls for speculation.
15 THE COURT: Overruled.
16 Q That still could be the case. Isn't that right?
17 A No, sir.
18 Q You just made that up to the police?
19 MR. O'MALLEY: Objection.
20 THE COURT: Overruled.
21 MR. TATE: Was it sustained?
22 THE COURT: No. It's overruled. You get to ask
23 leading questions on cross-examine.
24 Q Did you make that up when you told that to the police?
25 A No, sir.

1 Q You believed that to be a true statement at the time?
2 A Yes, sir.
3 Q That one of Keesha's friends whose car it was could
4 have left the gun in the car?
5 A Could have left the gun in the car, yes, sir.
6 MR. TATE: No further questions.
7 THE COURT: That's it. We'll excuse this witness.
8 Next witness.
9 MR. MEYERS: The government rests, Your Honor.
10 (End of excerpted testimony.)
11 - - - - -
12
UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF NORTH CAROLINA
14
15
16 CERTIFICATE OF REPORTER
17 I, JOY KELLY, RPR, certify that the foregoing is a
18 correct transcript of the excerpted testimony from the
19 record of proceedings in the above-entitled matter.
20
21
22
23 S/JOY KELLY
24 JOY KELLY, RPR, CRR Date _____
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25 Charlotte, North Carolina