

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff,)	2:17-cr-00585-GMS
)	
vs.)	Phoenix, Arizona
)	January 4, 2018
Thomas Mario Costanzo,)	9:06 a.m.
)	
Defendant.)	
)	

BEFORE: THE HONORABLE G. MURRAY SNOW, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

Official Court Reporter:
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Sandra Day O'Connor U.S. Courthouse, Suite 312
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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A P P E A R A N C E S

For the Government:

U.S. Attorneys Office
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For the Defendant Thomas Mario Costanzo:

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P R O C E E D I N G S

(Proceedings resume at 9:06 a.m.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is CR17-585, United States of America versus Thomas Mario Costanzo, on for motion hearing.

MS. ESCALANTE: Good morning, Your Honor.

Carolina Escalante, Gary Restaino, and Matthew Binford on behalf of the United States, and also present is Chad Martin, the case agent in the matter.

THE COURT: Good morning.

MS. WEIDNER: Good morning, Your Honor.

Maria Weidner present for Mr. Costanzo. He is present and in custody. Also Zachary Cain, cocounsel, and Linda Ondrovic, our paralegal.

THE COURT: I was informed that counsel would like to see me at sidebar, so let's go to sidebar.

(At sidebar on the record.)

THE COURT: You know, let me just tell you, Mr. Binford, that this microphone is not all it should be, so whoever is going to speak, I would ask you to move close to the microphone and identify yourself before you begin speaking so the record is clear.

Mr. Binford?

MR. BINFORD: Yes, Your Honor.

This is A.U.S.A. Matthew Binford.

1 The thing I wanted to bring to the Court's attention,
2 and I spoke to Ms. Weidner briefly about, is that I know she
3 has no control over this, and she told me that, but in previous
4 proceedings with this defendant, we had individuals in the
5 courtroom that were attempting to film or record the
6 proceedings. We got our district office security manager from
7 our office involved. We also had the marshals involved in
8 that.

9 When we were approaching the courthouse today, people
10 that we know are associated with the defendant had a video
11 camera, a camcorder, and were videotaping one of the undercover
12 agents, along with me and Ms. Escalante as we were walking
13 across the street to enter the courthouse. And so we were just
14 hoping the Court could possibly advise the parties that they
15 should not be recording, just a friendly reminder, because we
16 are concerned about our security and the security of the
17 agents.

18 THE COURT: Any objection to that, Ms. Weidner?

19 MS. WEIDNER: No, Your Honor. We, as I stated to
20 Mr. Binford, have zero control about what individuals who are
21 not my client do. My client's been in custody since April.
22 And, you know, I don't know these individuals. I don't have
23 communication with them.

24 THE COURT: Okay. I'm glad to do that.

25 If either party becomes aware that anybody in the

1 courtroom is recording the proceedings, I would appreciate it
2 if you would alert the Court because it is against the rules of
3 this Court, the local rules of the Court. And I will now
4 inform the parties that that's the case.

5 MR. BINFORD: Thank you, Judge.

6 MR. RESTAINO: One more, Judge.

7 We had -- this is Gary Restaino for the United States.

8 We had filed an ex parte --

9 THE COURT: Oh, yes. That's fine. I'm granting that.

10 MR. RESTAINO: You're granting it? Okay.

11 THE COURT: Uh-huh. And I grant the motion -- and
12 just so the defense knows -- and you can object if you want --
13 it was a Henthorn request, and I -- and usually on Henthorn
14 requests, I let the defendant know what the material is because
15 I just want your comment. I think this material is so far out
16 there that there's just no way it's relevant. And I don't even
17 mind disclosing it to you, but I'm not going to, in the spirit
18 of Henthorn. But I am going to grant the request. I think
19 the -- there is no particular value to you or to anybody else,
20 the disclosure of the material. So I'm granting that request.

21 MR. RESTAINO: Fine, thank you.

22 (End of discussion at sidebar.)

23 THE COURT: All right.

24 A couple of matters as to how I would like to proceed.

25 First, I do note that there are -- and we welcome the

1 public here, and you are welcomed here -- but I do note that
2 there are certain people that have cell phones out and
3 available, and I will tell you that it is against the local
4 rules of this District Court to record or videotape, audio
5 record, or take photos of any part of the proceeding that's
6 here. If I become aware that anybody is recording, you will be
7 removed and you will be referred to the United States Marshals
8 Service. We have two marshals here. I invite the marshals to
9 be aware of -- throughout the proceeding if you become aware of
10 anybody who may be recording it.

11 I have read all of the motions. I have, as I've just
12 indicated, granted motion 103. But I also think it will be
13 helpful to -- I've read everything. I've read the responses --
14 the motions, the responses, the replies. I think it will be
15 helpful and focus the evidentiary hearing if we go over some of
16 the motions first, and I intend to rule on some of them, or at
17 least indicate what my ruling will be, because I think although
18 the motions weren't necessarily filed in any sort of an order,
19 I do believe that they do have a cascading effect, one on
20 another.

21 And the first motion I would like to take up is the
22 motion to dismiss Count 8 of the indictment, which is docket
23 67. I don't know who for the government is going to be
24 speaking, but it does seem to me, for what it's worth, that the
25 motion is well-founded. I do not believe that Murillo can

1 change state law, and I think state law is quite clear that the
2 maximum penalty that Mr. Costanzo could receive under state law
3 for the possession of marijuana is one year, not one year and
4 one day; and hence, I do not believe that the United States
5 Government, at least based on the papers and the research I've
6 done as a result of the papers, has a basis to bring Count 8
7 against him.

8 I'm glad to hear from the government, if they wish to
9 be heard.

10 MR. RESTAINO: Your Honor, the -- as a preliminary
11 matter, we think that the defense argument that these states
12 should be clumped into either Washington-type states or
13 California-type states, depending on how determinative the
14 judge's discretion is bound, is a little bit too -- it's just a
15 little bit too vague a way to do it. And I say that because
16 Arizona law is different from the North Carolina law in the
17 Kerr cite that was cited in the reply by the defendant.

18 THE COURT: Well, Ring makes it pretty clear,
19 though -- at least I was on the Arizona Court of Appeals at the
20 time that the underlying case -- what are we thinking, what are
21 we talking here? -- Blakely was decided, and I think it was
22 pretty clear after Blakely that Arizona viewed itself as a
23 California-type state.

24 But even if it doesn't, even if you view it as a
25 separate state, you have Arizona statute that now designates

1 that the maximum sentence is the presumptive sentence, unless
2 you have some sort of aggravating factor that is found by a
3 jury or admitted by the defendant.

4 MR. RESTAINO: That's --

5 THE COURT: Isn't that the case?

6 MR. RESTAINO: That's, Your Honor, why we would
7 distinguish the North Carolina model from Arizona. It's the
8 number of columns. It's five columns versus three columns.
9 North Carolina is a mitigated, a presumptive, and an
10 aggravated. Arizona has that confusing word "maximum" in
11 there, which is more than presumptive and less than aggravated.
12 And if the maximum sentence is counted here, the maximum
13 sentence that someone like Mr. Costanzo could face, then it
14 would be more than a year and a day.

15 THE COURT: Well, I mean, it is kind of different
16 though than Murillo because the maximum count that somebody
17 like Mr. Costanzo could face, the maximum sentence that
18 somebody like Mr. Costanzo could face in Arizona is one year.

19 MR. RESTAINO: But I don't think that's right, Judge.
20 We don't disagree that he, under the circumstances of this
21 particular pleading, faced one year, but he had a prior felony.
22 And although his civil rights have been restored for that prior
23 felony, he was not. The judge easily could have found the
24 aggravating factor --

25 THE COURT: Was it even pled?

1 MR. RESTAINO: It was not, Judge.

2 THE COURT: So --

3 MR. RESTAINO: Again, we acknowledge that it wasn't
4 pled. But here, if you focus on the offense, the possible
5 offense, the possible amount in which an offense is punishable
6 rather than punished, then we think Murillo still stands for
7 the proposition that in Arizona he is a felon under both state
8 and federal law.

9 THE COURT: Even though the prior offense that we're
10 talking about, possession of marijuana, it would be
11 unconstitutional for the Court to have given him a sentence
12 more than one year. You're not denying that.

13 MR. RESTAINO: I'm a little bit --

14 THE COURT: The way it was pled and proven here, the
15 underlying offense, we're talking --

16 MR. RESTAINO: Sure.

17 THE COURT: -- it would have been unconstitutional for
18 the Court to have sentenced Mr. Costanzo to more than one year.

19 MR. RESTAINO: Yes. So though that is a factor that
20 the judge can find rather than the jury. It's not a Sixth
21 Amendment jury determination.

22 THE COURT: Well, be that as it may. I'm not
23 contesting that. And I'm not even contesting that Murillo
24 would be decided differently after Cunningham. But it seems to
25 me that Washington state's sentencing system is a guideline

1 system, and Arizona's is not.

2 MR. RESTAINO: Judge, I have one final point that I
3 would make on this, and that is that we know from the
4 sentencing documents, the judicially noticeable documents, that
5 he was prohibited from having a firearm. He wouldn't have been
6 prohibited from having a firearm if this were not a felony
7 offense. And we think that that's also a factor that the Court
8 should take into determination.

9 THE COURT: Well, even if it's a felony offense, the
10 maximum sentence is one year; right?

11 MR. RESTAINO: Under -- under this particular
12 pleading, the way that the Court is -- is looking at it.

13 We disagree, Judge. We believe that Murillo does
14 control and that the District Court cannot put aside the Ninth
15 Circuit ruling.

16 I don't really have any additional argument for that.
17 If anything else is illuminated on this through the testimony
18 today, I'd ask the Court to reserve its final position on that
19 until the end of the hearing.

20 THE COURT: Well, I may reserve it to the end of the
21 hearing, but I am clearly indicating that I'm not sure I have
22 to set aside Murillo. That's the way you characterized what
23 I'm doing, Mr. Restaino. I don't think it's setting aside
24 Murillo because, as I've indicated, I don't think Murillo
25 necessarily comes up with a different result today than it did

1 in 2005, even though you have Cunningham as an intervening
2 case.

3 MR. RESTAINO: But Kerr talks positively of Murillo --
4 Murillo as well. Again, still under Washington law.

5 We've got the Oregon case that we cited as well, which
6 is a District Court case where the district judge there found
7 he was bound by Murillo.

8 THE COURT: Well, that may well be, but I -- I'm not
9 sure that Oregon law is the same as Arizona law. So I will
10 reserve ruling until the end of the hearing today. But unless
11 you can come up with something new, I'm not sure -- I'm giving
12 you what my at least strong indication is, which is I'm likely
13 to dismiss Count 8. And if you have issues or factual hearings
14 that go to that, then I'd appreciate you highlight them during
15 the hearing today.

16 MR. RESTAINO: Yeah, I -- I wouldn't expect that we
17 have too much that goes to that, but we will certainly keep our
18 eyes open for you.

19 THE COURT: Certainly if I dismiss Count 8, then the
20 motion seeking relief from misjoinder or prejudicial joinder,
21 with is docket 58, is moot.

22 Would you agree with that?

23 MR. RESTAINO: Absolutely, Judge.

24 THE COURT: Do you agree with that, Ms. Weidner?

25 MS. WEIDNER: I would, Your Honor.

1 THE COURT: Do you wish to be heard on your motion to
2 dismiss Count 8 before we move on to other matters?

3 MS. WEIDNER: Your Honor, it appears that the position
4 of the Court is identical to the position of defense, as the
5 Court has stated; and therefore, I do not believe that
6 additional argument is necessary.

7 We agree that Arizona is a statutory framework like
8 California, like North Carolina, and unlike the guidelines
9 framework of Washington, which is what Murillo was talking
10 about.

11 THE COURT: All right.

12 So then we have the motion to disclose Grand Jury
13 instructions and transcripts.

14 Does the state intend to proceed on Counts 3 through 7
15 based solely on -- let's see, how did I -- how would I
16 characterize it?

17 Give me one moment. I need to find my notes.

18 Do you plan to prosecute based on the avoidance
19 charges pursuant to A3C, or are you just going to do A3B?

20 MR. RESTAINO: Your Honor, we would intend to prove
21 the case under either B or C. So we would plan on moving
22 forward certainly on C, as well.

23 THE COURT: All right. And so you've already
24 disclosed to the defendant Mr. Ellsworth's transcript in
25 which -- which is the indication of what federal regulations

1 you believe that the defendant desired to evade, and you won't
2 be exceeding those during trial? In other words, you won't be
3 asserting other regulations, statutes, or law that you didn't
4 disclose to the defendant already?

5 MR. RESTAINO: I wouldn't say that, Judge, nor do I
6 think that we're bound by that. We've disclosed the transcript
7 of the testimony --

8 THE COURT: Uh-huh.

9 MR. RESTAINO: -- that was presented to the Grand Jury
10 before the Grand Jury returned their true bill.

11 THE COURT: All right.

12 So what authority do you have, Ms. Weidner, that
13 suggests that the government has to set forth all of the
14 possible statutes and regulations before the Grand Jury that it
15 claims your client was trying to avoid to support the
16 indictment?

17 MS. WEIDNER: Your Honor, in the government's response
18 to the original motion for Grand Jury transcript, there was
19 information provided, but that information did not speak to the
20 specific request that was made by the defense in its joinder,
21 and that is the --

22 THE COURT: You want the specific regulations given to
23 the Grand Jury that you claim -- or that the government is
24 going to try to demonstrate your client was seeking to avoid.

25 MS. WEIDNER: Yes, Your Honor. What federal

1 transaction reporting requirement and the --

2 THE COURT: And so my question is, what authority do
3 you have that suggests that the government has to provide you
4 with -- provide you and/or the Grand Jury with specific
5 regulations? I mean, you -- you've received the transcript
6 where the testimony outlines FinCEN, or however you call it,
7 and some other regulations that have been generally referred
8 to.

9 MS. WEIDNER: Well, Your Honor, I think that this
10 goes, first of all, to the Federal Rule of Criminal Procedure
11 7C requiring that the indictment be plain, concise, and
12 definite. We're talking about a federal regulation that has
13 not been identified. That is not definite, that is not
14 concise, and that is definitely not plain.

15 We also have the Fifth Amendment issue of --

16 THE COURT: Well, I mean, that is a different motion;
17 right? You've been provided with the transcript in which
18 the -- to the extent these matters were disclosed to the Grand
19 Jury, they have now been identified to you. So if you want to
20 bring a 7C motion, you can bring a 7C motion. That's not the
21 motion that you've now brought.

22 MS. WEIDNER: Your Honor, the other issue is the issue
23 of Grand Jury presentment, and also the interest in ensuring
24 that there is not variance from what was presented to the Grand
25 Jury.

1 THE COURT: Do you have a case that says that there
2 can be no variance?

3 MS. WEIDNER: Well, Your Honor, United States v.
4 Cotton requires presentment, and here there's no evidence --

5 THE COURT: What is the citation on that?

6 MS. WEIDNER: 535 U.S. 625, 634, requiring that no
7 person shall be held to answer for capital or other infamous
8 crime unless on presentment or indictment of a Grand Jury.

9 THE COURT: Well, yeah, the crime has been specified;
10 correct?

11 MS. WEIDNER: Yes.

12 THE COURT: And you have been provided, unless I
13 misunderstand the government's response, you have been provided
14 through the transcripts that were provided by way of response
15 all of the regulations that were indicated to the Grand Jury
16 with whatever specificity they were identified; correct?

17 MS. WEIDNER: Yes, Your Honor.

18 THE COURT: And so now what I have is, it looks to me,
19 like a moot motion. I'm not telling you can't bring a 7C or
20 another motion, but the government has provided you with
21 everything it provided to the Grand Jury concerning the
22 regulations or the statutes that were violated by -- or that
23 they allege were violated by your client. So you now have that
24 basis. So the -- what do you need more from what happened in
25 front of the Grand Jury?

1 MS. WEIDNER: Well, I'm sorry, Your Honor. What I
2 understood the government provided was a portion of the
3 transcript. I am not privy --

4 THE COURT: Maybe I misunderstand.

5 Mr. Restaino?

6 MR. RESTAINO: Judge, we provided the transcript of
7 the testimony of Agent Ellsworth. What we did not provide, but
8 which we identified and characterized in our motion response,
9 was the colloquy, the legal colloquy, that goes back and forth
10 between a prosecutor and a Grand Jury prior to or after the
11 testimony. We didn't produce that.

12 THE COURT: What -- what's the problem with producing
13 that?

14 MR. RESTAINO: Well, Judge, there's -- there's not a
15 particularized need. It's a big bar to get the Grand Jury
16 colloquy, and a supervising Grand Jury judge could in the
17 future be dealing with tons and tons of these motions. So it's
18 really an efficiency thing.

19 It's not a big deal for us to disclose these. I don't
20 think this in this case is going to in any way hurt our
21 process, but it's just a matter of policy that we don't
22 disclose the colloquy absent an order of the Court, and we
23 really would ask the Court not to order it unless there were
24 particularized need consistent with the case law.

25 THE COURT: Well, I'll tell you what my concern is.

1 My concern is the Wolf case. I didn't read the Wolf case, but
2 I did see it in the motions on this case, which suggest that
3 FinCEN is a civil regulation that's incapable of giving rise to
4 criminal liability. And that is what causes me concern. That
5 may not say that. That may have been an over-citation by
6 previous counsel who has withdrawn, or who -- the charges have
7 been dismissed against Mr. Steinmetz, and it was Mr. Steinmetz'
8 counsel who originally brought this motion in which the
9 government now joins. They are the ones who cited the Wolf
10 case. But they cited the Wolf case for the proposition that
11 Financial Crimes Enforcement Network regulations were
12 insufficient to produce criminal liability. That may be an
13 inaccurate statement of law, but you did not join it, nor did
14 you question it in your reply.

15 And that is what gives me concern that -- I don't -- I
16 don't want to see this defendant on trial if you don't have
17 some sort of criminal -- if you don't have some sort of
18 regulation that you're alleging that he sought to avoid that
19 can give rise to criminal liability. That's what causes me the
20 concern with this motion.

21 Do you understand what I'm saying, even if I'm
22 misunderstanding things?

23 MR. RESTAINO: I understand what you're saying, Judge.
24 I -- I don't think that that is -- first of all, the colloquy,
25 as we identified, it doesn't have any regulations in it. So in

1 that sense, maybe it's the easiest thing to provide it. I
2 again, don't think that there's particularized need. I think
3 this is a jury instruction question when we get down to the
4 road as to what we can do and what the government can rely on
5 to prove that element.

6 THE COURT: Well, I will tell you, Mr. Restaino, that
7 it is not my intention to open the floodgates to the defense
8 every time they want Grand Jury testimony. But I have the
9 concern that I just have indicated that you didn't respond to.
10 So I don't think there's any problem with giving the colloquy
11 to the extent that all you were doing was providing the Grand
12 Jury with the statutes on which you were relying. And then if
13 the defense wants to make a motion on that, they can make a
14 motion on that and I'll determine whether or not the charges
15 ought to be dismissed. But...

16 MR. RESTAINO: If I could just make one more point on
17 that, Your Honor, and then I think if you're going to rule on
18 that one now, we'd be happy to produce that colloquy now to the
19 extent that it helps the defense during this hearing.

20 THE COURT: Thank you.

21 MR. RESTAINO: The one thing I want to say is, we do
22 have still residual argument here about the money transmitting
23 counts that are no longer part of this indictment. And so --

24 THE COURT: What is that residual argument? I suppose
25 that goes to the motion for refund the defense has also

1 brought.

2 MR. RESTAINO: I think that it does. And at this
3 point, the -- the money laundering sting statute has predated
4 money transmitting businesses, and it certainly has predated
5 bitcoins. And so to the extent that there is residual concern
6 about FinCEN -- and at the right time, if we have to
7 reinvigorate the argument here, we can do that. But at this
8 point, that's really a moot point, we think, and it has to do
9 with whether -- stand-alone. The money laundering charges
10 support the actions the government is taking, and there is
11 nothing all that unusual about the money laundering charges.
12 Sure, it's got bitcoin, but it's not as though the money
13 laundering charges are some new-fangled provision of the United
14 States Code. I would just rest with that.

15 THE COURT: Well, I get that, but I don't know how
16 that relates to the instant motion in terms of showing the
17 colloquy to the defendants in this, under the facts of this
18 particular case.

19 MR. RESTAINO: Because of the Wolf case and whether or
20 not FinCEN regulations are civil or criminal in nature. That's
21 the type of thing that really is going to resonate more toward
22 Counts 1 and 2 which have been dismissed, rather than existing
23 Counts 3 through 7.

24 THE COURT: And I recognize that is a possibility.
25 But the government did not join that point in its response.

1 And so I'm sitting here with an argument made on one side that
2 has not been joined by the government, and we need to move
3 forward with this case.

4 And so out of the -- in the interests of complete
5 disclosure and providing whatever information needs to be
6 provided to the defense, I would ask that you provide the
7 defense with colloquy.

8 MR. RESTAINO: If the record can reflect, we are doing
9 that now, Your Honor. I would ask that this be produced in
10 conjunction with the existing protective order.

11 THE COURT: That is -- that motion is granted.

12 COURTROOM DEPUTY: What was the number of that motion?

13 THE COURT: I'm sorry?

14 COURTROOM DEPUTY: What was the number of that motion?

15 THE COURT: I'm sorry. You want the number on that
16 motion?

17 COURTROOM DEPUTY: Yes, Judge.

18 THE COURT: That was docket 54.

19 COURTROOM DEPUTY: Thank you, Judge.

20 THE COURT: And it was joined in by the -- it was
21 actually brought by the codefendant and joined in by the
22 remaining defendant.

23 COURTROOM DEPUTY: Thank you.

24 THE COURT: All right.

25 So then we move to docket 63. Is that going to be a

1 subject of the evidentiary hearing? That's the shocking and
2 outrageous motion to dismiss Counts 3 through 7.

3 MR. BINFORD: Your Honor, there is some information
4 that would be presented in Oscar Martin's testimony that will
5 be helpful, I think, in resolving that motion, unless the Court
6 thinks that it can deny the motion based on the record before
7 it, which I think it can do.

8 THE COURT: Well, I will say that I -- since you've
9 asked me to hold off on dismissing Count 8 until after I've
10 heard all the testimony, if you think there's testimony that
11 cuts there, I will hold off on ruling on docket 63.

12 But I will tell you, Ms. Weidner, that I didn't see
13 much in the motion that rose to the level -- I mean, I
14 understand that it was the government -- from your perspective,
15 that it was the government that introduced the fraudulent
16 notion that it was involving -- that the bitcoin it was
17 purchasing was involved in drug sales. I understand that. And
18 I think that's about as close as you get to making allegations
19 that are so shocking and so outrageous as to violate the
20 universal sense of justice.

21 But given what I understood to be by your own motion
22 the nature of the market for unregulated bitcoin, I do not find
23 it to be so shocking and so outrageous as to violate the
24 universal sense of justice. But I will wait until I've heard
25 the evidence before I rule on that motion.

1 If you want to be heard now, you can be heard now.

2 MS. WEIDNER: Your Honor, I think that there's
3 actually going to be testimony, most likely, and I expect in
4 cross-examination, information that goes to both the motion to
5 suppress, document 65, and the motion to dismiss for outrageous
6 government conduct, document 63.

7 THE COURT: All right. As it pertains to docket 65, I
8 expect that that is the subject of the evidentiary hearing, to
9 the extent we're going to have one today. But I will say that
10 I am most interested -- I reviewed the affidavit, I reviewed
11 the arguments, I reviewed the motions made by counsel. I will
12 tell the government I don't see much in the affidavit -- maybe
13 you're going to argue to the contrary, you did in your
14 motion -- but I'm not very persuaded by the argument that there
15 was any probable cause to believe that drugs might be found in
16 Mr. Costanzo's home.

17 However, I don't view any of the rest of the arguments
18 made by the defendant as having much merit as it pertains to
19 the bitcoin operation. Seems to me like there was probable
20 cause there.

21 If, in fact, I am going to dismiss Count 8 at any
22 rate, it doesn't seem to me that the defense, Ms. Weidner, has
23 identified with any particularity anything that was found in
24 the -- in the search that would not have been found based on
25 probable cause as it pertains to Counts 3 through 7, as opposed

1 to Count 8. And I would appreciate your highlighting anything
2 that you think cuts to that.

3 MS. WEIDNER: Your Honor, actually, I think the Court
4 is exactly right. I think the dismissal of Count 8 will
5 basically treat a lot of our concerns as to the search warrant.
6 And our greatest concern with the search warrant is not the
7 assertion that probable cause was not established for the
8 financial crimes as set forth in the affidavit, but that the
9 improper inclusion of the Title 21 offense in the search
10 warrant itself, even though it was pretty substantively absent
11 from the affidavit, resulted in an improper expansion of the
12 search motion. But as far as items that would not be
13 admissible, I think the greatest concern is -- is the
14 ammunition that was uncovered, and the dismissal of Count 8
15 would obviate that concern.

16 THE COURT: All right. So you know what at least I'm
17 interested in as it pertains to that motion. Both sides know.

18 Docket 95, which is -- did you want to be heard on
19 that, Mr. Restaino?

20 MR. RESTAINO: On what, Judge?

21 THE COURT: On my observations about docket 65.

22 MR. RESTAINO: That -- that's the Franks motion?

23 THE COURT: Yes.

24 MR. RESTAINO: Judge, the only thing I was thinking in
25 consulting with my colleagues is it's not clear that we need an

1 evidentiary hearing, if that is the only issue that's in play,
2 whether Count 8 is dismissed. The only thing that I can tell
3 you is that from our standpoint, the -- the department would
4 have the right to appeal the dismissal of Count 8. And so we
5 really can't say whether or not that comes back in at this
6 point. But I wonder if the Court has some guidance,
7 particularly for Ms. Escalante and Ms. Weidner if they're
8 examining the witness, as to the topics so that we can more
9 efficiently go through the hearing.

10 THE COURT: Well, I've just indicated --

11 MR. RESTAINO: Okay.

12 THE COURT: I think I've indicated what my concern is,
13 and maybe -- and I'm certainly not trying to prevent the
14 government from appealing my dismissal of Count 8, if that's
15 what I do. And I don't know, though, and Ms. Weidner -- maybe
16 we should allow Ms. Weidner to consult with the defendant and
17 Mr. Cain to determine if there is a reason for the Franks
18 hearing to go forward, if I'm inclined to dismiss Count 8
19 anyway.

20 MS. WEIDNER: Your Honor, in the event that the
21 government were to appeal a potential finding -- or order of
22 this Court to dismiss Count 8, we could reassert the Franks
23 motion issue, but we do not have additional bases that -- under
24 which we would be seeking a Franks hearing in the absence of
25 Count 8.

1 THE COURT: All right.

2 So that brings up docket 95, which is the motion to
3 restore Mr. Costanzo's bitcoins.

4 Now, I must admit that the motions were hastily
5 written and hastily responded to, which don't give me a very
6 clear response of what's going on here. But it seems to me
7 like Mr. Costanzo's asking to have returned to him bitcoins he
8 sold to the government for a particular price point as part of
9 the government's undercover operation. That's one subset of
10 bitcoin.

11 It strikes me that another subset of bitcoin that
12 Mr. Costanzo might be seeking the return of is bitcoin that was
13 in his possession that is not attributable to any purchases by
14 the government in this operation. And I am not clear whether
15 or not that amount of bitcoin is at issue in the defendant's
16 motion, and/or whether the government seized any bitcoins that
17 exceed those that were -- in other words, if there was actually
18 any bitcoin in Mr. Costanzo's possession that were seized by
19 the government, that the government holds, that cannot be tied
20 to any counts that remain in the complaint. So I would
21 appreciate that clarification.

22 MR. RESTAINO: Would you like me to start, Your Honor?

23 THE COURT: Well, it's Ms. Weidner's motion. That's
24 why I was looking to Ms. Weidner.

25 MS. WEIDNER: Sorry, Your Honor. I was having a

1 coughing fit.

2 With regard to the -- the bitcoin that's involved in
3 this case, there were a number of undercover agent meetings
4 between individuals posing as people interested in trading
5 bitcoin and Mr. Costanzo.

6 When interactions were completed, Mr. Costanzo
7 transferred the bitcoin from his possession to their possession
8 by way of the Internet, essentially, from his account to
9 someone else's, to the undercover agents'. Those are obviously
10 already in the government's possession. They were bought and
11 paid for.

12 Then there is the bitcoin that was seized. That
13 bitcoin was not sold to the government; and as a result, there
14 is no indication that it was illegal proceeds or that it was --
15 it was -- or that it was forfeitable. And given the value of
16 that asset, especially the value of that asset since it was
17 seized, we have, I think, a really interesting issue, which is,
18 is Mr. Costanzo indigent, should Mr. Costanzo have a reasonable
19 bond so that he could be released on conditions? He was
20 penniless when he was originally apprehended. That would no
21 longer be the case. And is the government permitted when it is
22 seeking to prosecute an individual like Mr. Costanzo, to simply
23 take everything from them so that they are unable to post bond,
24 unable to hire counsel? And I think that that's an untenable
25 approach from -- from a -- from a policy perspective. I mean,

1 it -- it simply -- it simply makes no sense. And that -- the
2 fact that the government dismissed the unlicensed money
3 transmitting charges opens up that whole question. And -- and
4 I think that Mr. Costanzo should have his assets returned to
5 him, and the government should be allowed to confiscate no more
6 than that which was expended in the money laundering sting
7 investigation.

8 MR. RESTAINO: Your Honor, the -- the simple answer to
9 your question is no. There is no other bitcoin that was seized
10 from Mr. Costanzo or subject to forfeiture in this case, other
11 than the 80-ish bitcoins that were the subject of Count 7 in
12 the indictment. The evidence would show that those bitcoins
13 were actually exchanged, actually went from Costanzo's
14 electronic wallet to the undercover wallet before he was
15 arrested.

16 THE COURT: So all of the bitcoin, the defendant is
17 seeking to have returned to him, is bitcoin that was purchased
18 by the government?

19 MR. RESTAINO: That is correct, Your Honor.

20 THE COURT: Do you dispute that, Ms. Weidner?

21 MS. WEIDNER: Your Honor, I guess what is confusing is
22 that in this final count -- and the transaction and -- perhaps,
23 government counsel can illuminate this a little -- but it
24 appeared to me that the transaction was incomplete, that it was
25 not complete, that the money was not counted. The law

1 enforcement basically busted into Starbucks --

2 THE COURT: Let me ask you a more direct question,
3 which may help me.

4 MS. WEIDNER: Yes, sir.

5 THE COURT: Does the government have any bitcoin that
6 was not part of its purchases from Mr. Costanzo in the
7 undercover operations that are at issue in Counts 3 through 7?

8 MS. WEIDNER: Let me just have a moment, Your Honor.

9 (Pause in proceedings.)

10 MS. WEIDNER: Actually, no, Your Honor.

11 THE COURT: Okay. Thank you.

12 Motion is denied. Docket number 95 is denied.

13 All right. So it seems to me that we are at a point
14 here where -- if the government wants to put on any evidence
15 that relates to this Court's contemplations in dismissing Count
16 8, that's the evidence we ought to put on. If you don't want
17 to put on any evidence and want me to rule on that, it seems to
18 me like if I dismiss Count 8, we don't have any need to have a
19 Franks hearing, at least not until such time as the Ninth
20 Circuit may or may not reverse my decision to dismiss Count 8.

21 MR. RESTAINO: I think that's true, Judge. And to be
22 clear, I'm not advocating that the government will or won't
23 appeal. That's a decision that our folks in D.C. would make.

24 We have no factual evidence to present after I've
25 consulted with my colleagues, and I didn't think that we would.

1 It's a largely legal matter on Count 8. So we would -- we have
2 nothing to present. We would decline to present anything.

3 I just have one question for the Court. To the extent
4 there were an appeal and there were successful appeal and Count
5 8 were restored, does the Court have an objection to then doing
6 that evidentiary hearing later? We wouldn't want to be
7 prejudiced from that.

8 THE COURT: I understand that. And I don't think I
9 would have any objection.

10 Does the defense have any objection?

11 Do you understand what Mr. Restaino's question is,
12 Ms. Weidner?

13 MS. WEIDNER: I do, Your Honor. You're -- I guess the
14 concern that the defense would have in that regard is that --
15 we have a firm trial date right now in March.

16 THE COURT: And I suspect that we will go through the
17 firm trial date before this issue is ever heard by the Ninth
18 Circuit.

19 MS. WEIDNER: Which means that as long as this doesn't
20 interfere with Mr. Costanzo's trial, then we wouldn't have a
21 problem. I don't want to continue or delay his -- his right to
22 a speedy trial, as speedy trial as possible, any further.

23 THE COURT: We do have a firm trial date; correct?

24 MR. RESTAINO: We do, Your Honor. And by no means am
25 I asking the Court to take that off its calendar. It may well

1 be that this issue gets resolved very neatly by the department
2 exercising its right not to appeal this adverse decision. I
3 simply want to preserve the department's ability.

4 THE COURT: I get that.

5 All right. With that in mind then, I am going to
6 dismiss Count 8 of the indictment against Mr. Costanzo. So
7 docket 67 filed by the defense is granted.

8 Docket 54, motion to disclose Grand Jury instructions
9 and transcripts, has been granted, and the government has
10 provided all such information at this point to the defendant.

11 Is that correct?

12 MR. RESTAINO: That is correct, Your Honor.

13 MS. WEIDNER: Yes, Your Honor. I confirm that.

14 THE COURT: The motion seeking relief from misjoinder
15 or prejudicial joinder is denied as moot in light of the
16 dismissal of Count 8.

17 The motion to dismiss Counts 3, 4, 5, 6, and 7 of the
18 first superseding indictment for outrageous government conduct,
19 which is docket 63, is denied, unless the defense wants to put
20 on some sort of case of which I'm not aware, and evidence.

21 Do you -- does the defense wish to put on any such
22 evidence?

23 MS. WEIDNER: Your Honor, we have no additional cases
24 to present.

25 I would point the Court to -- if I could just have

1 some time for argument for just a moment?

2 THE COURT: You may. But before we hear that
3 argument, the motion to suppress evidence from the April 20th,
4 2017, search, which is docket 65, is also denied without
5 prejudice to you renewing the motion should the United States
6 of America seek and obtain a reversal of my dismissal on Count
7 8, at which time that motion would again become relevant
8 because the question would be, if there was a basis on which I
9 could determine that they would not have appropriately
10 discovered any ammunition in Mr. Costanzo's home pursuant to
11 their search.

12 Is that what we've all agreed upon?

13 MS. WEIDNER: I believe so, Your Honor.

14 MR. RESTAINO: Yes, Your Honor.

15 THE COURT: All right.

16 So I don't think I have any pending motions. Docket
17 82 and 102, which pertain to what I would call procedural
18 motions, are granted.

19 And that leaves, Ms. Weidner, your docket 63, which is
20 the motion to dismiss Counts 3, 4, 5, 6, and 7 of the first
21 superseding indictment for outrageous government conduct.

22 MS. WEIDNER: Your Honor, the concern here is that the
23 government essentially launched on a fishing expedition with no
24 particularized or individualized suspicion.

25 THE COURT: Well, they did know -- maybe I

1 misunderstood, and I hope you don't mind if I interrupt you.

2 MS. WEIDNER: No, that's okay.

3 THE COURT: Because I just want to make sure I get --
4 I understand every little thing as we go along.

5 But it looked to me like the government had looked at
6 the bitcoin market. They had concerns about the bitcoin
7 market. And they determined that the premier bitcoin trader in
8 the Phoenix area was an alias that I don't think you contest is
9 used by your client.

10 MS. WEIDNER: That is correct, Your Honor.

11 THE COURT: So if all of that is true, how is it that
12 the government went on a fishing expedition to the extent that
13 they targeted your client for their undercover activity?

14 MS. WEIDNER: Well, Your Honor, I don't think it was a
15 fishing expedition in regards to targeting Mr. Costanzo for
16 suspicion of unlicensed money transmitting. And in fact, this
17 is an investigative technique that has been used across the
18 country. Cases that were cited in the defense motion to
19 dismiss for outrageous government conduct list just some of
20 those, like Mansy and Klein.

21 Now, the issue is that in this case, unlike the Lord
22 case, which was a case that started with local bitcoin dot com,
23 like this case, but then included a money laundering and drug
24 trafficking component because the targets were doing just that.
25 The government instead, without any further investigation or

1 indication, moved to add money laundering based on the
2 specified unlawful activity of drug trafficking into the mix
3 here. There was no reason --

4 THE COURT: And they did it by saying they were
5 involved in drug trafficking themselves?

6 MS. WEIDNER: Just by -- yes, just by mentioning it.
7 There was no investigation in government disclosures --

8 THE COURT: I get that. But here is my concern. Why
9 is it that it's so outrageous for the government to do that in
10 their sting operation when they have reasonable suspicion that
11 that's exactly what this kind of a market supports?

12 MS. WEIDNER: Well, Your Honor, that is simply
13 incorrect on the part of the government. I think that this has
14 been borne out --

15 THE COURT: Well, you -- you are not proposing to
16 present to me here that Mr. Costanzo has never engaged in
17 bitcoin operations, other than those with the government, which
18 may have involved illicit underlying activity.

19 MS. WEIDNER: No, Your Honor. In fact, there are --
20 and -- and Mr. Costanzo's local bitcoins dot com profile, he
21 provided that he had numerous clients and was involved in
22 numerous transactions. The government's investigation noted
23 that Mr. Costanzo was a busy man, moving all over the valley,
24 conducting interactions. Yet the government did not
25 investigate those interactions or those clients, and the

1 government built no foundation for the assumption that
2 Mr. Costanzo's peer-to-peer transactions were money laundering.
3 And that is the problem. I think that has been borne out,
4 definitely in 2017, that bitcoin is legitimate. Bitcoin is a
5 legitimate store of value, and that people are interested in
6 investing in and trading in and speculating on. And that
7 doesn't mean that you are, per se, involved in some kind of
8 nefarious activity.

9 I think that what makes this outrageous, what makes
10 this shocking, is this notion of the government being this
11 creepy, lurking entity that is looking to entrap its citizens.
12 And I think that the absence of a legitimate basis for
13 utilizing this tactic is -- is one of the -- the clear
14 indicators. This isn't like a child trafficking situation
15 where there is imminent and ongoing harm, or even a stash house
16 situation where there are the potentialities of -- of injury or
17 death to the public or law enforcement. This is just basically
18 setting traps for unsuspecting citizens. It's -- it's a very
19 distasteful way for our government to proceed.

20 The other thing that I think, though, is of particular
21 interest, and this was included in the reply, in mid December,
22 a panel of District Court judges sat in Chicago to consider the
23 stash house sting operations of -- of the ATF. One of the
24 things that they discussed in that was the ATF's supposed
25 playbook that the agency had developed so as to avoid

1 allegations of entrapment of defendants. For instance, ATF's
2 stash house playbook involved only targeting suspects who were
3 experienced robbers; at least making sure that participants, at
4 least two of them, had a violent background; and making sure
5 the participants were criminally active when the investigation
6 was launched.

7 Now, in the affidavit and -- in support of the search
8 warrant and in government disclosures, there's zero indication
9 that anything like an ATF playbook, anything like the kind of
10 at least profile that the ATF would create to identify its
11 sting targets was utilized by the DEA or the IRS before in
12 targeting Mr. Costanzo.

13 I think that this is a distasteful and despicable way
14 for our government to comport itself. And for that reason, the
15 government needs to get the message that this is not how we
16 treat our citizens. This is not the role of government. This
17 isn't -- we're not -- we're not in Cold War Russia, we're not
18 sneaking around, informing on people and setting traps for
19 people. And that is the concern.

20 I have nothing further.

21 THE COURT: Mr. Restaino -- or is it --

22 MR. BINFORD: I will take this one, Your Honor.

23 THE COURT: All right.

24 MR. BINFORD: While there may be some current concerns
25 about the legitimacy of bitcoin and whether or not it's a valid

1 investment or things like that, the United States Government
2 has long gone after legitimate businesses that allow people to
3 launder funds from illegal activity, especially drug
4 trafficking. I laid it out in our response. There were car
5 dealerships, there were real estate managers that were involved
6 in money laundering stings. The fact that legitimate
7 businesses can be used to launder funds is -- is out there.

8 So whether or not you think bitcoin is legitimate or
9 not, these virtual currencies are legitimate or not is not at
10 issue. Even if you think they are legitimate, even if they do
11 serve some purposes -- and, you know, obviously it's popular
12 nowadays -- it can be used to launder money, and that was a
13 concern of the United States Government going back to at least
14 2011 and probably earlier.

15 I laid out some of the public records in our response
16 that talked about some of the concerns that some of our elected
17 officials, senators, had, the concerns that the Department of
18 Treasury had. There were hearings in Congress about virtual
19 currencies being used to lauder funds, and there were academic
20 articles written about this. This wasn't some wild
21 speculation. This was a problem. And the government sought
22 ways to combat it.

23 And if you stick to the six-factor test set forth in
24 Black by the Ninth Circuit recently from the case that came out
25 of this district with the ATF, you look at those factors and

1 apply them to this case, the government wins.

2 Now, I know there was some questions about whether
3 Mr. Costanzo had engaged in business like this with someone who
4 wasn't a government agent, and we've disclosed reports to the
5 defense, we were ready to present testimony today -- and we can
6 still do that, if you want -- but we have evidence that
7 Mr. Costanzo was engaged in transactions with people that were
8 operating on the Darknet, and that he was involved in
9 converting drug money that they had into bitcoin. We've
10 disclosed that information to the defense. We have examples of
11 that.

12 So although the government wasn't aware of those
13 individuals at the time they started this investigation, we've
14 subsequently come to learn that it wasn't -- he wasn't just
15 doing this with government agents. He was doing with this
16 everyone.

17 If you look at those six factors set forth in Black,
18 the first factor is known criminal characteristics.
19 Peer-to-peer virtual currency exchangers were known to launder
20 proceeds, were known to be involved in the laundering of drug
21 money specifically. And the Gurolla case from 2003 I cited in
22 our response talks about targeting Mexican banks. And while
23 the government didn't have individualized suspicion of
24 individual banks, they did have suspicion that Mexican banks
25 were laundering proceeds and they went after that group of

1 entities.

2 Here the IRS began an investigation of a group of
3 people, peer-to-peer virtual currency exchangers. Like the
4 Court said, he was the top-rated person. He was a large
5 profile exchanger here in Arizona.

6 The IRS agent met with him for the first time in March
7 of 2015. During that first meeting, nothing was mentioned
8 about drugs. During that meeting, Mr. Costanzo expressed his
9 dislike for the federal government, his dislike for local law
10 enforcement. He talked about bitcoin and said it's
11 untraceable. He said: I don't keep no records at all. This
12 can lower your visibility. He said things to make the
13 government believe that he was more than likely involved in
14 money laundering.

15 So during the next meeting, they purported that the
16 money was -- he was -- the undercover purported that the money
17 he was bringing was drug proceeds. And instead of saying no,
18 stop, I can't do the deal, Mr. Costanzo took the money, said
19 shhh, don't say that out loud. He said: I can get -- later on
20 in subsequent deals, he said: I can get you whatever you need.
21 We just have to keep it on the low.

22 During the course of investigation, Mr. Costanzo
23 suggested using Telegram, an encrypted messaging app. The
24 evidence that we've reviewed showed that he has used that
25 encrypted messaging app with other people. So that kind of

1 goes on to the nature of the government's participation.

2 I'll jump ahead to the fifth factor.

3 And the government never provided Mr. Costanzo with
4 anything other than purported drug proceeds. They didn't give
5 him a virtual currency wallet, they didn't give him a TREZOR
6 device, they didn't give him money bands, a money counter, they
7 didn't drive him to the meeting. They met him at a public
8 place, gave him cash. He -- he made it happen.

9 Going back to factor number 3, that's the government's
10 role in creating this crime, yes, we introduced purported drug
11 proceeds, but that was based on the first meeting with him
12 where he seemed receptive to this, you know, illegal use of the
13 currency system. As I mentioned, we've since learned that
14 Mr. Costanzo has engaged in this type of activity with other
15 people that were not government agents, and that he knew that
16 they were obtaining drugs from the Darknet. Mr. Costanzo
17 himself asked for some of these drugs from the Darknet.

18 The fourth factor, the government's encouragement, the
19 defense claims that we encouraged or coerced Mr. Costanzo into
20 conducting these activities, but I think it's pretty clear in
21 the transcripts, pretty clear in the recordings, that he
22 engaged in this activity on his own. He was never coerced. He
23 talked at points about making half a million dollars in the
24 last year. He said that he was semiretired. There was no
25 evidence that he was low on money or that he was having a tough

1 time, at least not in the statements that he made to the
2 undercover agents. He was going around, promoting this thing.
3 He didn't -- as far as we can tell, he didn't have any other
4 job at this time where he was recording income to the
5 Department of Economic Security.

6 And then the last factor, number 6, is the nature of
7 the crime being pursued and the necessity for the actions.

8 Money laundering is a -- is a secret activity. I
9 think there's a reason that we have a money laundering sting
10 statute. It's so that agents can go in and crack these
11 criminal organizations, these people that are laundering drug
12 proceeds or proceeds from other SUAs.

13 In this case, we're talking about people that are
14 using a virtual currency that a lot of people think is
15 untraceable. Mr. Costanzo said it himself: It's untraceable.
16 I keep no records.

17 So this isn't a case where the government could send
18 Grand Jury subpoenas to Mr. Costanzo's banks. He doesn't have
19 any. They had to go in. They had to meet with him in order to
20 find out whether or not he was engaged in this criminal
21 activity. This is someone who is using an encrypted app,
22 someone who isn't keeping financial documents. Really, the
23 only way to get this information is by meeting with him,
24 sending an undercover agent in because there's nothing to
25 subpoena. That's no other investigative technique. And as I

1 pointed out in our response, the defense hasn't suggested any
2 other investigative technique that would have worked here that
3 could have identified the activity Mr. Costanzo was engaged in.

4 So I think if you look at those six factors, you apply
5 the most recent case law from this Circuit, it's very clear
6 that there was no outrageous government conduct. There was
7 nothing even close to it. This is a typical sting case. It
8 involves some newer technology, but it's something that
9 government agents have been doing for decades.

10 So we ask that you deny the motion.

11 THE COURT: Any final words, Ms. Weidner?

12 MS. WEIDNER: Your Honor, if I could have just a
13 moment.

14 (Pause in proceedings.)

15 MS. WEIDNER: Your Honor, I have nothing further.

16 THE COURT: All right.

17 For reasons I've already stated in part but will
18 repeat, docket 63, which is the defense motion to dismiss in
19 light of outrageous government conduct, is denied. In this
20 case, Mr. Costanzo was known to be a substantial operator in
21 the bitcoin exchanges. The government agents did identify that
22 the exchanges were being used to facilitate at least some
23 illegal activity in the Phoenix area, although they didn't
24 directly tie that to Mr. Costanzo prior to engaging in the
25 scene.

1 To the extent that they did identify the drugs as
2 being -- or the money as being drug proceeds, I don't think
3 that under the circumstances of this case, and under the
4 circumstances of investigation into the bitcoin exchanges, that
5 that is outrageous and violates fundamental fairness.

6 And so, having considered the six factors and having
7 considered the arguments submitted in the motions, the motion
8 is denied.

9 I do not think we now have any currently pending
10 motions.

11 Am I incorrect?

12 MR. BINFORD: That's correct, Your Honor.

13 MS. WEIDNER: Agreed, Your Honor. That's correct.

14 THE COURT: All right. So we have a trial date set.

15 We -- do we have a date set for a final pretrial
16 conference?

17 COURTROOM DEPUTY: Yes, Judge.

18 MR. BINFORD: I think that was set by the Court, Your
19 Honor.

20 THE COURT: All right. So I suppose the only other
21 thing we might want to discuss -- I can't remember whether it
22 was -- I think it was the government in its reply on the motion
23 to restore the bitcoin to Mr. Costanzo indicated that they'd be
24 willing to liquidate the bitcoin, if the defense wanted to do
25 that, and hold it in trust determining whether or not you're

1 going to get some sort of restitution order or award?

2 MS. WEIDNER: Your Honor, it would be -- the defense
3 would prefer for the bitcoin not to be liquidated at this
4 point. Not to be sold.

5 MR. RESTAINO: That probably makes it easier for us.
6 We wouldn't do anything without the Court's permission anyway.
7 I think unless we were to get a push from the other claimant to
8 a portion of that bitcoin, we likely would not proceed with the
9 somewhat cumbersome process of liquidation, unless the Court
10 wants us to go down that path.

11 THE COURT: No, I don't -- it makes no difference to
12 me.

13 MR. RESTAINO: We agree that these are important
14 policy considerations that Ms. Weidner raises on some of these
15 issues. Just ultimately at this point leaving it where it is
16 is fine with us, as well, in that wallet.

17 THE COURT: All right. Then I will see you at the
18 final pretrial conference.

19 (Proceedings in recess at 10:05 a.m.)
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C E R T I F I C A T E

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2
3 I, CHARLOTTE A. POWERS, do hereby certify that I am
4 duly appointed and qualified to act as Official Court Reporter
5 for the United States District Court for the District of
6 Arizona.

7 I FURTHER CERTIFY that the foregoing pages constitute
8 a full, true, and accurate transcript of all of that portion of
9 the proceedings contained herein, had in the above-entitled
10 cause on the date specified therein, and that said transcript
11 was prepared under my direction and control.

12 DATED at Phoenix, Arizona, this 5th day of January,
13 2018.

14
15 s/Charlotte A. Powers
16 Charlotte A. Powers, RMR, FCRR
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