

Baldurist

I AM A FEDERAL INMATE #52684-080 HOUSED
UNDER STATE PLACEMENT IN MARION, OH AT M.C.I.
I WAS SENTENCE TO A LIFE SENTENCE. THERE IS
NO PAROLE IN FEDERAL SYSTEM ANYMORE. I WAS
SENTENCE IN FEDERAL COURT IN WACO, TX.

My indictment WAS CONSPIRACY FOR ATLEAST
15 KILOS OF COCAINE. I PLEADED GUILTY TO INFO IN
my DISCOVERY THAT SAID A C.I. DELIVERED COCAINE
8 TO 10 TIMES OVERT A 2 1/2 YEAR TIME FRAME. I PLEADED
ON DEC 4th. ON DEC 5th SOME AGENTS GO DEBRIEF
THE C.I. AGAIN. NOW THE C.I. SAYS HE MADE 100 TO
140 TRIPS TO DELIVER COCAINE. THE TOTAL CAME
TO 1860 KILOS NOW. THE C.I. HAD OVERT 20 INCONSISTANCES
IN HIS TESTIMONY. THE JUDGE ALLOWED IT, THE PROSECUTOR
KNEW HE WAS LYING, MY LAWYER MADE SO MANY
MISTAKES ON MY CASE. THE FOLLOWING APPLY
AND YOU CAN SEE ONCE YOU READ MY CASE,
1. PROSECUTORIAL MISCONDUCT
2. INEFFECTIVE COUNSEL
3. FALSE CONFESSIONS
4. JUDGE UNFIT TO PRESIDE ON CASE.

P.S. LET ME KNOW IF YOU NEED MORE
INFO.

TRINI ESPINOZA
#628-862
M.C.I.
P.O. BOX 57

MARION, OH 43301

Condemned fed inmate claims ex-judge was 'unfit' for trial

Attorneys want client's 2000 death sentence vacated

By TOMMY WITHERSPOON

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A federal death row inmate is asking that his death sentence be set aside because he alleges former U.S. District Judge Walter S. Smith Jr. was "not functional" because of his drinking and "unfit" to preside over his trial and subsequent appeal process.

Attorneys for Brandon Bernard, who has been on federal death row for 17 years, say in a 32-page motion filed Thursday that "exceptional circumstances" require that Bernard's death sentence be reviewed and vacated.



Smith Jr.

Bernard, who was 19 at the time, and Christopher Vialva, who was 20, were convicted in Waco's federal court in June 2000 and sentenced to death in the murders of Todd and Stacie Bagley, of Ottumwa, Iowa.

Bernard was sentenced to death only in Stacie Bagley's death, while Vialva was sentenced to death in the murder of both the Bagleys, who were church youth ministers in Iowa.

The motion asks U.S. District Judge Lee Yeakel to vacate the death sentence or to order a hearing "so that evidence may be presented concerning former Judge Smith's unfitness, and how it affected all his decisions respecting Mr. Bernard."

Smith, who ended his 32-year tenure as Waco's federal judge with his retirement in September 2016, did not return a phone message left with him Friday through a former staff member.

The Judicial Council of the 5th U.S. Circuit Court of Appeals formally reprimanded Smith in 2015 after finding he made "inappropriate and unwanted physical and nonphysical advances" toward a female courthouse staff member in his court chambers in 1998 and lied to investigators about the incident. While the council issued sanctions, including requiring counseling, it said the incident did not warrant impeachment.

In a sworn statement given to investigators, the former clerk said Smith smelled of alcohol and had the appearance of someone who had been drinking.

Smith, former chief judge of the Western

JUDGE

From Page 1A

District of Texas, also was suspended for one year from hearing any new criminal or civil cases filed after Dec. 3, 2015.

The judicial council renewed its investigation into Smith after complaints surfaced that at least two more women had been mistreated by Smith in his chambers. His retirement ended the investigation.

The motion was filed on Bernard's behalf by Robert C. Owen of the Northwestern Pritzker School of Law in Chicago, Illinois, and John R. Carpenter, an assistant federal public defender from Tacoma, Washington.

The motion states that Smith had a "reputation for drinking" during the time of Bernard's trial, was reported to be "not functional" due to his drinking, and therefore, was "unfit" to preside over his trial.

"Former Judge Smith's lack of functionality in a proceeding where Mr. Bernard's life hung in the balance is an additional 'extraordinary circumstance' that gives this court jurisdiction to hear this motion," the motion states.

The motion also claims that Smith allowed Bernard's application for writ of habeas corpus to "languish" in his court for more than seven years before he finally acted on it and then misapplied the law.

The former clerk who was groped by Smith testified that Smith's law clerk called her during this "time frame, complaining that Smith was 'not functioning,' was 'falling apart' and was unable even to get himself to the courthouse, adding that his condition

had forced him to cancel court obligations," the motion alleges.

"Given the Judicial Council's findings and the other allegations of serious impropriety, Walter's Smith's hurried departure from the bench is no surprise," the motion states. "But this story cannot end with Smith's eviction from the courthouse. This court has a vital role to play in repairing the damage for which Smith was responsible..."

Bernard, Vialva and four Killeen teenagers were charged in the June 1999 carjacking of the Bagleys outside a Killeen convenience store. Two of the teens testified against Bernard and Vialva that they plotted to kidnap the couple and drove them around in the trunk of their car while trying to use their ATM cards.

Trial testimony showed that Stacie Bagley read the Bible to her captors as she and her husband pleaded for their lives. Vialva shot them both and set the car on fire while Stacie Bagley was still alive, according to trial testimony.

Former Texas attorney Ty Clevenger, who filed the federal complaint against Smith with the Judicial Council, also filed a complaint against former U.S. District Judge Harry Hudspeth, the chief judge at the time Smith groped the court clerk.

The clerk testified in her statement that she informed Hudspeth about the abuse and he asked her what she wanted him to do about it and took no action.

Hudspeth also has since retired.

"The issues raised by Brandon Bernard go far beyond him or his co-defendants," Clevenger said Friday. "When judges cover up for one another, the impact can be enormous. You have to wonder how many other criminal defendants and civil parties were affected by Judge Smith's alcohol problems."

APPEAL

From Page 1A

Smith's conduct "was in contravention of existing standards of behavior for federal judges," it concluded that his actions do not warrant a recommendation of impeachment.

The order of the Judicial Council also said Smith does not understand the gravity of such inappropriate behavior and the serious effect that it has on the operations of the courts.

"The Judicial Council also finds that Judge Smith allowed false factual assertions to be made in response to the complaint, which, together with the atoneness of his admissions, contributed greatly to the duration and cost of the investigation," the order, signed by 5th Circuit Chief Judge Carl E. Stewart, said.

The council also directed Smith to complete at his expense a sensitivity training course "about appropriate professional interaction." The council appointed U.S. District Judge Ed Kinkeade, of Dallas, to serve as liaison between Smith and the Judicial Council and to make recommendations Kinkeade deems appropriate.

Clevenger's appeal asks how many felonies a judge needs to commit before the Judicial Council is willing to recommend impeachment.

"If a courthouse security officer had forcibly groped (the clerk), he would have been fired summarily and probably arrested," the letter said. "He certainly would not have gotten away with a reprimand, sensitivity training and a reduced workload at full pay. ... Does anyone seriously think that sensitivity training will be able to fix that kind of problem in an unrepentant 75-year-old man?"

Chief U.S. District Judge Fred Biery, of San Antonio, issued an order last month that directs all new cases filed in Waco's federal court as of Dec. 3 to be assigned to a visiting judge socket.

Biery's order transfers many of Smith's normal duties to U.S. Magistrate Jeffrey C. Manske, including pretrial proceedings and requests for injunctive relief. Visiting judges will be brought in to handle matters over which Manske has no jurisdiction.

Clevenger supplemented his complaint against Smith in October to allege that Smith and Waco attorney Greg White violated conflict-of-interest standards by failing to disclose that White represents Smith in the judicial sexual misconduct investigation to attorneys opposing White in a civil case presided over by Smith.

The investigation council also found that Smith did not follow appropriate procedures regarding his subsequent recusal from the case involving White.

Initial complaint

Clevenger's initial complaint against Smith also included allegations that Senior U.S. District Judge Harry Lee Hudspeth, of Austin, who was chief judge of the Western District of Texas at the time, was told about the allegations against Smith and "failed to take appropriate action."

Clevenger said the 5th Circuit notified him recently that the query involving Hudspeth remains open.

The former clerk wrote a letter to Smith in 1998, telling the judge that his "proposition to me completely caught me off-guard."

"It frightened me and has caused me much grief and emotional anguish," she wrote. "It was very inappropriate, and I did nothing to provoke it."

According to the woman's testimony in a sworn

deposition, on the day she said she was assaulted, she saw Smith at the third-floor water fountain in the Waco federal courthouse and he invited her to visit him in his chambers. She said it was 8:30 a.m. and he had a "pretty strong smell" of liquor on his breath.

The woman said she was puzzled by his request because they rarely spoke and rarely saw each other at work. She said she went back to her desk and her phone rang. She said it was Smith asking where she was because he had told her to come see him.

When she went to the judge's office, Smith closed the door behind her, put his arms around her and kissed her, she testified.

"I just froze. I couldn't move. And he said, 'Let me make love to you.' And I, and I, I just freaked out," she said in the deposition.

She said Smith tried to touch her inappropriately, but she pulled away and told him she had to get back to work.

The woman testified that after the incident, Smith sent her flowers at work and continued to make advances.

She told her supervisor, who reported the alleged incident to Hudspeth, who at that time was presiding judge over the federal district that includes Waco.

She testified that Hudspeth called her at home but seemed dismissive about her charges.

"He asked me, 'What do you want me to do about it?'" she testified.

A New York attorney who filed a sexual misconduct complaint against U.S. District Judge Walter S. Smith Jr. is appealing the judge's reprimand, saying Smith's punishment is "far too lenient" and he deserves to be impeached.

**Former Dallas lawyer
appeals reprimand
of federal official**
By TOMMY WITHERSPOON
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Ty Clevenger, formerly of Dallas, filed his appeal Monday with the Judicial Conference Committee on Judicial Conduct and Disability of the Office of United States Courts in Washington, D.C.

He is appealing a December decision by the Judicial Council of the 5th U.S. District Court of Appeals that formally reprimanded



Clevenger

Smith after finding he made "inappropriate and unwanted physical advances" toward a court employee in his court chambers in downtown Waco in 1998.

The court also stripped Smith from hearing any new criminal or civil cases filed after Dec. 3 for one year.

"I am appealing the decision because I think no one should be above the law, even if you are a federal judge," Clevenger said Monday. "He deserves to be impeached."

Smith, 75, has been a federal judge since 1984. He has denied comment throughout the 14-month process that included the complaint being filed, the 5th Circuit investigation and the court's decision last month. The Tribune-Herald was unable to reach the judge Monday.

In his two-page letter of appeal, Clevenger said Smith's conduct, as determined by the court's investigation, could have been classified as a felony.

"I'm sure most felons wish they could receive such lenient treatment," Clevenger wrote. "It seems the Fifth Circuit has created a new category of crime—the de minimis felony—for those cases where the perpetrator is a federal judge."

While the Judicial Council of the New Orleans-based federal appellate court found that



Smith

See APPEAL, Page 3A

Attorney calls for judge's impeachment

Teen in '99 case to be resentenced

By TOMMY WITHERSPOON
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A federal judge has dismissed claims from two federal death row inmates who questioned the fitness of former U.S. District Judge Walter S. Smith Jr. to preside over their 2000 trial in Waco. The judge also scheduled a re-sentencing hearing for one of the pair's co-defendants who is serving a life term.

U.S. District Judge Lee Yeakel threw out a motion from Brandon Bernard and Christopher Vialva to vacate, set aside or correct their death penalties on allegations that Smith was "not functional" because of drinking and "unfit" to preside over their trials.

Bernard, who was 19 at the time, and Vialva, who was 20, were convicted in Waco's federal court in June 2000 and sentenced to death in the murders of Todd and Stacie Bagley, of Ottumwa, Iowa.

Bernard was sentenced to death only in Stacie Bagley's death, while Vialva was sentenced to death in the

See CASE, Page 8A

JAN 31, 2018

8A WACO TRIBUNE-HERALD

CASE

From Page 1A

murder of both the Bagleys, who were church youth ministers in Iowa.

Bernard, Vialva and four Killeen teenagers were charged in the June 1999 carjacking of the Bagleys outside a Killeen convenience store. Two of the teens testified against Bernard and Vialva that they plotted to kidnap the couple and drove them around in the trunk of their car while trying to use their ATM cards.

Trial testimony showed that Stacie Bagley read the Bible to her captors as she and her husband pleaded for their lives. Vialva shot them both and set the car on fire while Stacie Bagley was still alive, according to trial testimony.

Yeakel scheduled a sentencing hearing to start Feb. 5 in Austin for Tony Sparks, one of the four co-defendants in the case who went to trial with Bernard and Vialva and who was given a mandatory life sentence.

In 2012, the U.S. Supreme Court ruled that federal juvenile offenders could not be subjected to mandatory life terms. Four years later, the court made its ruling retroactive to those already serving time, paving the way for the new sentencing hearing for Sparks.

Yeakel has set aside three days for the hearing, court officials said.

Sparks, who was 16 at the time and certified to stand trial as an adult, pleaded guilty to aiding and abetting carjacking resulting in death. A 15-year-old who was also certified to stand trial as an adult was sentenced to 5 years, and two 17-year-olds were sentenced to 20 years each.

Sparks' attorney, David Sergi, of San Marcos, said Sparks is a German citizen and he will ask the judge to give him "an appropriate" sentence so he can serve his time and move back to Germany, where his father is in the military.

He said Sparks is serving his sentence in a maximum-security prison in Colorado known as "supermax."

"This is one of those really unusual cases where going to supermax helped save his life," Sergi said. "He needed to get away from all the noise going on in prison so he could focus on himself."

Sparks earned his GED in prison and has taken courses in psychology and the Peloponnesian war, Sergi said.

The 32-page motion from Bernard and Vialva asked Yeakel to vacate the death sentences or to order a hearing "so that evidence may be presented concerning former Judge Smith's unfitness, and how it affected all his decisions respecting" Bernard and Vialva.

Smith retired under a cloud in September 2016, ending his 32-year tenure as Waco's federal judge. He was stripped of hearing new cases for a year and required to go to counseling after the Judicial Council of the 5th U.S. Circuit Court of Appeals found he made "inappropriate and unwanted physical and nonphysical advances" toward a female courthouse staff member in his court chambers in 1998 and lied to investigators about the incident.

In a sworn statement given to investigators, a former clerk said Smith smelled of alcohol and had the appearance of someone who had been drinking.

The judicial council renewed its investigation into Smith after complaints surfaced that at least two more women had been subjected to Smith's unwanted advances in his chambers. His retirement ended the investigation.

Judge punished for sex offense

Smith reprimanded for
1998 incident, stripped of
all cases for 1 year

By **TOMMY WITHERSPOON**
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The 5th U.S. Circuit Court of Appeals has formally reprimanded U.S. District Judge Walter S. Smith Jr. after finding he made "inappropriate and unwanted physical and non-physical sexual advances" toward a court employee in his chambers in 1998.



As part of the court's order, **Smith** has been stripped for a year from hearing any new criminal and civil cases filed on or after Dec. 3.

In spite of finding that Smith's conduct "was in contravention of existing standards of behavior for federal judges," the Judicial Council of the New Orleans-based federal appellate court concluded that his actions do not warrant a recommendation of impeachment.

See JUDGE, Page 2A

JUDGE

From Page 1A

Smith, 75, who has been a federal district judge since 1984, declined comment Friday through his judicial assistant. In conjunction with the reprimand order, Chief U.S. District Judge Fred Biery, of San Antonio, issued an order Friday that directs all new cases filed in Waco's federal court as of Dec. 3, to be assigned to a visiting judge docket.

Biery's order transfers many of Smith's normal duties to U.S. Magistrate Jeffrey C. Manske, including pretrial proceedings and requests for injunctive relief. Visiting judges will be brought in to handle matters over which Manske has no jurisdiction, Biery said.

Manske did not return a phone message Friday.

Investigation

Smith has been under investigation for at least a year by the 5th U.S. Circuit Court of Appeals after former Dallas attorney Ty Clevenger's complaint that Smith made improper sexual advances toward a former courthouse employee in his chambers.

His complaint included a sworn deposition from the woman detailing the alleged groping encounter and a certified letter she wrote the judge describing the adverse effects the incident had on her.

Clevenger supplemented his complaint against Smith in October to allege that Smith and Waco attorney Greg White violated conflict-of-interest standards by failing to disclose that White represents Smith in the judicial sexu-

al misconduct investigation to attorneys opposing White in a case presided over by Smith.

The investigation council also found that Smith did not follow appropriate procedures regarding his subsequent recusal from the case involving White.

Clevenger called the reprimand against Smith "a joke" and said he will continue to seek Smith's impeachment with the U.S. House of Representatives.

"The Judicial Council found that Judge Smith committed a felony and all he got was a reprimand. He gets to keep his job and now he has a smaller workload. The reprimand is further proof that federal judges cannot or will not police their own," Clevenger said Friday. "Congress needs to quit punting the ball and start reclaiming its constitutional role in judicial oversight."

The order of the Judicial Council also said that Smith "does not understand the gravity of such inappropriate behavior and the serious effect that it has on the operations of the courts."

"The Judicial Council also finds that Judge Smith allowed false factual assertions to be made in response to the complaint, which, together with the lateness of his admissions, contributed greatly to the duration and cost of the investigation," the order, signed by 5th Circuit Chief Judge Carl E. Stewart, says.

The Judicial Council also directed Smith to complete at his expense a sensitivity training course "about appropriate professional interaction." The council appointed U.S. District Judge Ed Kinkeade

of Dallas to serve as liaison between Smith and the Judicial Council and to make recommendations as Kinkeade deems appropriate.

While the council deemed Smith's actions did not warrant impeachment, the order says it has imposed unspecified "severe sanctions" otherwise available to it under the Rules of Judicial Conduct and judicial disability proceedings.

Clevenger's initial complaint against Smith also included allegations that Senior U.S. District Judge Harry Lee Hudspeth, of Austin, who was chief judge of the Western District of Texas at the time, was told about the allegations against Smith and "failed to take appropriate action."

There was no public mention of Hudspeth in the Judicial Council's order.

Clerk's letter

The former clerk wrote a letter to Smith in 1998, telling the judge that his "proposition to me completely caught me off-guard."

"It frightened me and has caused me much grief and emotional anguish," she wrote. "It was very inappropriate, and I did nothing to provoke it."

According to the woman's testimony, on the day she says she was assaulted, she ran into Smith at the third-floor water fountain in the Waco federal courthouse and he invited her to visit him in his chambers. She said it was 8:30 a.m. and he had a "pretty strong smell" of liquor on his breath.

The woman said she was puzzled by his request because they had barely spo-

ken and rarely saw each other at work.

She said she went back to her desk and her phone rang. She said it was Smith asking where she was because he had told her to come see him.

When she went to the judge's office, Smith closed the door behind her, put his arms around her and kissed her, she testified.

"I just froze. I couldn't move. And he said, 'Let me make love to you.' And I, and I, I just freaked out," she said in the deposition.

She said Smith tried to touch her inappropriately, but she pulled away and told him she had to get back to work.

The woman testified that after the incident, Smith sent her flowers at work and continued to make advances.

She told her supervisor, who reported the alleged incident to Hudspeth, who at that time was presiding judge over the federal district that includes Waco.

She testified that Hudspeth called her at home but seemed dismissive about her charges.

"He asked me, 'What do you want me to do about it?'" she testified.

Besides his supplemental complaint against Smith, Clevenger said he also filed a State Bar of Texas grievance against White on allegations he failed to disclose his attorney-client privilege with Smith to opposing parties in a federal lawsuit pending in Smith's court.

In response to Clevenger's allegations, Keith Langley, an attorney on the opposite side of White in a case pending in Smith's court, filed a motion in October asking Smith to recuse himself.

"IFIC has recently

learned that counsel for six parties in this case, Greg White, represents the Honorable Walter S. Smith Jr. in a concurrently pending proceeding," the recusal motion states. "Greg White is and has been counsel of record for six litigants in this case for at least 11 months, and has signed and filed all of the pleadings, discovery, motions, responses and replies of the six parties he represents."

Court records indicate Smith filed a sealed order in the case in October. Another notice indicated the case has been reassigned to a judge in Austin.

Lawyer responds

In October, White downplayed his role in the civil case, a dispute among contractors, subcontractors and bonding companies over who will pay for cost overruns in an extensive remodeling project at the Carl R. Darnall Army Medical Center at Fort Hood.

White, who also is an adjunct professor at Baylor Law School, said then that he merely is serving as "local counsel" in the case and that the lead attorneys are from Atlanta.

White declined comment on the Judicial Council order Friday.

Clevenger's dispute with Smith began six years ago, when Clevenger filed a racketeering lawsuit against an elected official and an attorney from Robertson County. The suit alleged the men and others conspired to improperly

acquire the rights to royalties from landowners with oil and gas interests.

Smith dismissed the lawsuit and sanctioned Clevenger \$25,000 for filing what the judge ruled a frivolous lawsuit. The Robertson County attorney filed a grievance against Clevenger with the State Bar of Texas, and it was while defending himself against the bar grievance that Clevenger subpoenaed the former federal deputy clerk and took her sworn deposition.

"I sat across the table face to face from her and she swore under oath to tell the truth," Clevenger has said. "I believe everything she said. He wrecked her life and ended her career."

"She said in the deposition how hard it is for a woman without a four-year degree to find a good career, and she needed that job. I think he needs to answer for it. I don't care if it was 17 years ago. That was 17 years on the bench when he shouldn't have been on the bench."

Clevenger, who has since moved to New York, said Friday that a U.S. District Court in Washington, D.C., filed charges this week seeking to have him disbarred.

He said he thinks the disbarment proceedings are directly related to his website, DirtyRottenJudges.com, in which he openly criticizes judges, including one in Washington, D.C.

"It is retaliation for the website, plain and simple," Clevenger said.

Getting it right

A story on Page 1B of Friday's Tribune-Herald incorrectly stated Paul Landers' motorcycle group affiliation. Landers said he is a founder, former president and member of the Escondidos motorcycle group.

POLICE REPORT

Ex McGregor officer indicted in invasive recording case

By KRISTIN HOPPA

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A former Texas Department of Public Safety narcotics officer and former McGregor police investigator sur-



Coy

rendered Wednesday after being named in a sealed indictment, alleging he took an invasive visual recording of a woman in 2015.

Jose "Joe" Coy, 59, of China Spring, was named in the state jail felony indictment as the suspect who had the "intent to invade the privacy" of a woman by recording a video or electronic image of the woman without her knowledge in October 2015, the indictment states.

The indictment was unsealed after Coy was booked into McLennan County Jail late Tuesday morning.

He was released after posting a \$10,000 bond, jail records state.

Coy was a narcotics officer with DPS for more than 27 years when he retired in July 2011. He later began working with the McGregor Police Department in March 2012 before he began serving as a McGregor police officer full time in November 2012 as a detective and lieutenant.

Coy resigned on April 20, 2016, from McGregor Police Department, ending his law enforcement career, according to city records.

Former McGregor Police Chief Steve Foster accepted Coy's retirement letter in April 2016. Foster later retired from the department and Chief James Burson was appointed to lead the department in March 2017.

McGregor City Manager Kevin Evans declined comment when reached by the Tribune-Herald via email Thursday.

Waco attorneys Russ Hunt and Michelle Tuegel, who represent Coy, said they are awaiting information from the McLennan County District Attorney's Office.

"We have the indictment at this point, but we have requested discovery from the DA's office, all the police reports, witness statements and we look forward to reviewing that information," the attorneys said. "At this point in the process, he has only been accused."

S.P.T. Gabriel Hernandez

S.P.T.-SENTENCE PROCEEDING TRANSCRIPTS
S.W.A.-SEARCH WARRANT AFFIDAVIT
P.S.R.-PRESENTENCE REPORT
D.H.T.-DETENTION HEARINGS TRANSCRIPTS
C.T.J.T.-GRAND JURY TRANSCRIPTS
C.I.-CONFIDENTIAL IN FORMANT

(S.P.T., p.31, (25))

Q. What about Carolina Cortez vehicle?

(S.P.T., p.32, (1))

A. 8 keys of cocaine.

(S.W.A., cn. W06-152M, p.6 (11))

Resulted in the seizure of 9 kilograms.

(S.P.T., p.32 (2-5))

Q. All right, now do you know where you were traveling? Where you and Ms. Cortez were traveling to?

(S.P.T., p.32 (4))

A. yes, sir.

(S.P.T., p.32 (5))

Q. Where?

(S.P.T., p.32, (6))

A. One vehicle to Waco and one vehicle to Ft. Worth.

(S.W.A., cn. W06-152M, p.6, (13))

Gabriel Hernandez stated Carlina Cortez would receive instructions on where to travel and who to meet in Waco, TX.

Hernandez claimed he would off-load the shipment of cocaine in Austin, TX.

(S.P.T., p. 32, (15-16))

Q. All right, you were going to Ft. Worth, then?

(S.P.T., p.32 (16))

A. yes, sir.

(S.W.A. cn. W06-152M, p.6 (13))

Hernandez claimed he would off-load the shipment of cocaine in Austin, TX.

(S.P.T., p.38, (12-16))

Q. How many kilos of cocaine normally did you bring when you made these deliveries to that house?

A. From 8 to 18 keys.

(S.W.A., cn. W06-152M, p.7, (17))

Hernandez estimated that the average shipment of cocaine delivered to Espinoza was between 10 to 16 kilograms of cocaine

(S.P.T., p.38 (21-23))

Q. So the most you ever brought at one time was 18 kilos?

A. The most, yes sir.

(S.P.T., p.67, (20-23))

Q. How many kilos?

A. 20 total

Q. Did you bring them all at one time?

A. Yes, Sir.

(S.P.T., p.40, (16-18))

Q. What type of quantities of cash would you carry back to Mexico?

A. From 80 to 100,000 thousand.

(S.W.A., cn. W06-152M, p.7, (18))

Hernandez claimed he transported currency for Espinoza on at least 8 occasions and the average shipment transported was approximately \$200,000.00thousand.

(P.S.R., Espinoza, paragraph 33)

Hernandez stated 80,000 thousand and never more than \$130,000.00 thousand.

(S.P.T., p.41-42, (22-25)(1-2))

Q. All total how many trips to Waco did you make to either deliver cocaine or pick up money? Total amount of times from the time from Nov. of 2007 till the time up to your arrest, how many trips did you actual make to Waco?

A. Maybe like 90 to 100 loads of cocaine. From that time on, and like 150 times I picked up money.

(S.W.A., cn. W06-152M, p.7 (17-18))

Hernandez stated that over a 2½ year time frame, Hernandez made 8 to 10 trips to Waco, TX to deliver cocaine. Hernandez claimed that he transported currency for Espinoza on at least 8 occasions.

(P.S.R., Para 32, Espinoza P.S.R.)

Hernandez said from November 2003 and January 2006, he transported cocaine to Waco between 100 to 140 times.

NOTE: Hernandez recalls 130 trips from memory?

(P.S.R., Espinoza, para 33)

Hernandez said he picked up money 50 times.

(D.H.T., p.16, (4))

A. Agent Coy says 40 trips at detention hearing.

(S.P.T., p.47)

Hernandez said he made at least 80 trips in Dallas, Waco, Austin, and San Antonio, TX.

NOTE: Dallas, San Antonio, Austin is like 4 to 6 times larger than Waco. Which city got majority of the trips. Or is it 20 trips per city?

(S.P.T., p.43, (22-25))

Q. Do you have any other prior felony convictions, Mr. Hernandez? Have you ever been to prison?

A. Yes.

Q. How many times?

(S.P.T., p.44 (1-4))

A. One time

Q. Okay, so this is your second felony conviction, is that correct?

A. Yes, sir.

NOTE: What is his first conviction for? How much time did he get and how long was he incarcerated for it? I believe he was locked up during part of the time he said he was delivering to Waco. Magdaleno Martinez said they were, locked up together in 1999, in the Federal system. When did he get out on his first conviction.

(S.P.T., p.45, (16-25))

Q. Okay, and at that point in time in June of 2006---Excuse me it was July 12, of 2006 you informed Detective Repp and this Agent Acuna that you'd only traveled to Waco 8 to 10 times in that 27 month period; is that correct? Do you recall telling them that, Mr. Hernandez?

A. Coming to Waco 8 to 10 times?

Q. Yes.

A. I don't recall that, sir.

Q. You don't recall it?

A. No.

(S.W.A., cn. W06-152M, p.7, (17))

On July 12th, 2006 Ice Agent Ed Acuna and police officer D. Repp debriefed Hernandez, Hernandez stated that over a two and a half year time frame, Hernandez made 8 to 10 trips to Waco, TX to deliver multi-kilograms of cocaine to Espinoza.

(S.P.T., p.46 (13-24))

Q. Well, they asked you that and you stated to them that it was over a two and half year period of time?

A. From 2003?

Q. Yes.

A. Yes.

Q. From November of 2003, to when you got arrested in 2006, you indicated to them over that 2½ year period of time that you made 8 to 10 separate trips to Waco, TX; is that correct?

A. No, that was for the lady that was caught on my---that one that was on my case, she's the one only made like 4 to 6.

NOTE: Hernandez denies what he said in his debriefing on July 12, 2006, that was used in (S.W.A., cn. W06-152M)

NOTE: Hernandez says that was for the lady. If he is denying what he said on July 12, 2006, does that mean he don't have a statement for his accounts? The December 5th debriefing took place after we plead guilty on December 4th. That shouldn't count cuz we were not aware of those 100 to 140 trips.

NOTE: We are supposed to be shown what kind of sentence we will be exposed to at our plea Colloquy.

(S.W.A., cn. W06-152M, p.7, (17))

NOTE: 8 to 10 trips, between 10 to 16 kilos per trip was the only discovery that was exposed to us.

(P.S.R. Espinoza, para 32)
100 to 140 trips, between 8 to 18 kilos was not exposed to us before we plead guilty. This was given on December 5, 2007. We pled guilty on December 4, 2007.

NOTE: US v Sean Michael Grier (p.12, (111.,A)) The impact of US v Booker. The Booker opinion authored by Justice Stevens for a majority of 5 reaffirmed the holding in Appendi, that any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a Jury verdict must be admitted by the defendant or proved to a Jury beyond a reasonable doubt; and extended that rule to the sentencing guidelines.

NOTE: Blakely and Beyond.
In a 5-4 decision written by Justice Scalia, The court held that "the statutory maximum" For Appendi; purpose is the maximum sentence a Judge may impose solely on the basis of the facts reflected in the Jury verdict or admitted by the defendant. In other words, the relevant statutory maximum is not the maximum sentence a Judge may impose after finding additional facts, but the maximum he may impose without any additional findings.

NOTE: Brady v U.S. p3.
We have long held that a plea does not qualify as intelligent unless a criminal defendant first receives "real notice of the true nature of the charge against him." The first and most universally recognized requirement of due process. A plea of guilty is constitutionally valid only to the extent it is "voluntary" and intelligent.

NOTE: The 100 to 140 trips did not come out till after we pled guilty.

(S.P.T., p.47 (3-6))

Q. Okay, and you also stated that in that 2½ year period of time that you made at least 80 occasions in the Dallas, Waco, Austin, and San Antonio area, is that right?

A. Yes, sir.

(S.W.A., cn. W06-152M, p.7 (17))
80 occasions.

(S.P.T., p.49, (1-4))

Q. Now, Mr. Hernandez, your here this afternoon and your stating that you carried 90 to 100 loads of cocaine to Waco, TX; is that correct?

A. Yes, sir.

(S.P.T., p.54, (7-22))

Q. And the reason for that meeting was that you were trying to cooperate--what we call in the Federal system cooperate or gain some credit towards your sentence? Lighten, your sentence, right?

A. Yes, sir.

Q. And as part of doing that you know that you have to agree that

you're going to tell the truth at the time?

A. Yes, sir.

Q. And you understood that you had to tell the truth or all your cooperation would be for not?

A. Yes, sir.

Q. Okay, and so if those agents said that you told them at that time, that you made 8 to 10 trips to Waco and picked up \$200,000.00 during that 2½ year time period, they would be telling the truth as you told them, correct?

A. Yes, sir.

NOTE: Hernandez admits he said it.

(S.P.T., p.54, (23-24))

Q. So that's what you told them in 2006?

A. As far as the lady, yes sir.

NOTE: Hernandez is denying he said it again. Why wasn't I see Agent Ed Acuna and Waco police officer D. Repp not at my sentence hearing to testify?

(S.P.T., p.55, (8-25))

Q. Okay, and then in November of 2006 you were sentenced to 151 months in the Bureau of Prisons, correct?

A. Yes.

Q. Okay, and after that you understood that you can cooperate even at that point and try and provide further information to reduce your sentence even further, is that correct?

A. Yes.

Q. And it's at that time that you first told the agents that you may have made up to 140 trips up here delivering cocaine, is that right?

A. I told them the truth.

(S.P.T., p.55, (24-25))

Q. Okay, but you did not tell the truth in 2006?

A. Back then it wasn't about Waco.

(S.P.T., p.57, (9-13))

Q. Okay, and how many times did you make deliveries there?

A. To Killeen, I only went 4 times.

Q. Four times?

A. Yes, sir.

(P.S.R., Cervantez, p.9, para (25))

Hernandez advised investigators he delivered 15 kilograms of cocaine on 3 occasions.

(S.P.T., p.66, (13-15))

Q. Okay, and did you drop kilos of cocaine at the house in Killeen?

A. Twice.

NOTE: Three different stories.

(S.P.T., p.59, (18-21))

Q. When was the first time you debriefed with Agents?

A. I can't remember. They picked me like---they picked me up in Del Rio, they picked me up in Crystel City.

(S.P.T., p.60, (2-22))

Q. And the last time would have been December 7th?

A. Yes.

Q. All right. And that's when you came out with all this new information about the 100 plus trips, etcetera.

A. Yes, sir. Because they started asking me more questions about other things.

Q. Well, if they say how many times did you come to Waco and the first time you said 8 to 10 and by the end you were saying 100 plus, how were you confused by the question?

A. Back then they didn't ask me that many questions.

Q. Well, its a simple question. How could you be confused?

A. It wasn't just about Waco.

(S.P.T., p.60, (16-22))

A. It was about Ft. Worth, Austin, Houston, San Antonia, and Corpus.

NOTE: Hernandez adds 3 more cities then what the orignal affidavit said.

(S.W.A., cn. W06-152M, p.7, (17))

Q. So the 100 plus deliveries wasn't just to Waco?

A. The main---the main route was passing through Waco. It was just about passing through Waco and getting money, but every time I would pass through Waco I would have drugs with me, too.

NOTE: How could he pass through Waco with drugs when the city of Austin, Houston, San Antonio and Corpus are all before Waco. Waco is the farthest from Mexico.

(S.P.T., p.61, (1-8))

Q. Well, so going back to your earlier testimony when you said that you were coming to Waco maybe a couple of times a week, you didn't necessarily mean you were dropping off drugs each of those times?

A. I could say I dropped---say I dropped like 90 to 95 times, drugs, and like--all them times that I dropped drugs I would get money, but as far as the money, I probably picked up like 140 to 150 times from 2003 to 2006 in total.

(S.W.A., cn. W06-152M, p.7 (17))

Hernandez stated he made 8 to 10 seperate trips to Waco, TX. To deliver multi-kilograms of cocaine to Espinoza.

(S.W.A., cn. W06-152M, p.7, (18))

Hernandez stated he transported currency for Espinoza on at least 8 occasions.

(P.S.R., Espinoza, para 33)

Hernandez advised investigators he picked up money 50 times in Waco.

(P.S.R., Espinoza, para 32)
Hernandez stated he transported cocaine between 100 to 140 times.
Recalls 130 trips from memory.

(S.P.T., p.63, (6-11))
Q. I'm going to show you what's been marked as Defendants Exhibit NO.1. You recognize that person, don't you?
A. Yes.
Q. Who is that?
A. Bubba

(S.P.T., p.63, (16-17))
Mr. Ferguson: Your Honor, may the record reflect that Exhibit 1 is a picture of Jody Neuarez, not my client.
NOTE: How can he look at a picture and say it is Bubba and the photo is Jody Neuarez.
Hernandez said he picked us out of a line up.

(S.P.T., p.66, (2-9))
Q. How did you know Rose Rangel?
A. How did I meet her?
Q. Yeah, how did you meet her?
A. Long time ago.
Q. Okay, where did you meet her at?
A. Killeen.

(S.P.T., p.66, (13-15))
Q. Okay, and did you drop kilos of cocaine at the house in Killeen?
A. Twice.

(S.P.T., p.66, (18-20))
Q. And on the occasions that you dropped the kilos of cocaine, who was present?
A. Only her and T.

NOTE: (S.P.T., p.57, (11-13))
To Killeen I only went 4 times.
(P.S.R. Ceruantez, p.9, (25))
Hernandez advised investigators he made 3 trips to deliver 15 kilograms on each of 3 occasions.

(S.P.T., p.66, (25))
Q. How many kilos did you drop off at the house, while she was there.
A. It was 20 total. 10 and 10 the next time.

(S.P.T., p.67, (3)(4-5))
Q. Okay, 20 total for both trips. Did she take possession of any of those kilos of cocaine.
A. Yes, sir.

(S.P.T., p.67, (8-10))
Q. And did you know her---was that the first time you met her was there at the house in Killeen?
A. Yes, sir.

(S.P.T., p.67, (13-16))

Q. Okay, tell me what you---how you knew her in Mexico?

A. She was handling some keys to Armando Lopez and them keys were going to be sent to me.

(S.P.T., p.67, (20-23))

Q. All right, How many kilos was that?

A. It was 20 total.

Q. All right, did you bring them all at one time?

A. Yes, sir.

NOTE: (S.P.T., p.38, (21-23))

Q. So the most you ever brought at one time was 18 kilos?

A. The most yes, sir.

NOTE: (S.P.T. p.57, (12))

A. 4 times to deliver.

(S.P.T., p.70 (18-25))

Q. And that you went to Killeen, Tx a total of 4 times.

A. Yes.

Q. And that was during that 2½ year period of time that were testifying to?

A. It was in 2004.

Q. Okay, and you're telling this court that in Killeen, TX was the first time that you met an individual by the name.

(S.P.T., p.71, (1-8))

Q. Of Rose Rangel and she was with a person named Trini; is that correct?

A. Yes.

(S.P.T., p.71 (4-8))

Q. Okay, and you never gave this information though to the Agents back on July 12, 2006 did you?

A. No sir. They never asked about her.

Q. Okay, never asked about her?

A. Back then, No sir.

NOTE: If Gabriel Hernandez really knew us, why didn't he tell the Agents our names on the day he got arrested on 1-28-06. He said he was driving for a Carlos Lopez and Carolina Cortez was to receive a phone call on where to go and who to meet in Waco, TX. Hernandez said Carolina Cortez was driving for Armando Lopez. Hernandez mentions Carlos and Armando Lopez. So why didn't he mention anybody from Waco. He didn't know us till the Agents went down there and told him about us?

(S.P.T., p.73, (15-20))

Q. Mr. Hernandez, was I correct in understanding that you said that in Dec. of 2007 was the first time these agents had asked you about Ms. Rangel?

A. They asked about her in 2007---in 2006 but they never mentioned that she would be involved in the case until 2007, they told me.

NOTE: Why did he need the Agents to tell him Rose Rangel was involved in this case? He said in 2004 he delivered cocaine in Killeen, TX and Rose and Espinoza was at the house together. (S.P.T., p.66, (13-20) (S.P.T., p.70 (21-23))

Q. And on the occasions that you dropped the kilos of cocaine, who was present?

A. Rose and T.

Q. And that was during that 2½ year period of time that were testifying to?

A. It was in 2004.

NOTE: Based on his testimony, he should have known, if what he is saying is true? Rose or myself never went to Killeen.

NOTE: Hernandez didn't know my name until July 12, 2006 when officer D. Repp went down there to debrief him. Hernandez didn't know Rose Rangel until the Agents told him in 2007.

(S.P.T., p.74 (21-25))

Q. And so the Agents said that they spoke to you in 2006, and you told them in one trip she made arrangements for 100 kilos, is that correct?

A. 100? For 100 kilos?

Q. Is that what you told them in 2006?

(S.P.T., p.75 (1))

A. I didn't tell them 100 kilos.

(S.P.T., p.74 (18-24))

Q. Okay, but what you actually told them, was on her last trip or the last time you saw her she had gone to Monterrey and made arrangements for 100 kilos, is that correct?

A. No, It's not.

Q. Oh, so if they said that in their affidavit, they're just incorrect?

A. Yes.

NOTE: (G.J.T., Agent Joe Coy, p.6 (1-5))

C.I. was aware that Rose traveled to Monterrey, Mexico and acquired 100 kilograms of cocaine which were brought back to Armando and Armando would basically piecemeal those shipments back to Waco to Trini Espinoza at the request of Rose Rangel.

NOTE: (S.W.A., p.7, (16))

Hernandez claims that the last time that Hernandez was aware that Rangel traveled to Mexico, Rangel traveled to Monterrey, Mexico to arrange for the purchase of 100 kilograms of cocaine. Once the 100 kilograms of cocaine were secured by Rangel, Rangel had the cocaine delivered to Lopez for transportation, to Rangel in Waco, TX.

NOTE: Hernandez denied saying this to Agents at our sentence hearing.

So why did Agent Coy give this testimony to the Grand Jury. Who is making up stuff, and who committed perjury?

(S.P.T., p.77, (17-19))

Q. Okay, and that month was that in Killeen? You said it was in 2004?

A. 2004. I would see---I saw her in March 2004.

S.P.T. Magdaleno Martinez

(S.P.T., p.79, (14-22))

Q. And how much cocaine did you carry with you on your trips?

What was---how much cocaine did you normally carry?

A. The least amount was 5 kilos, at the most 10 kilos.

Q. And did you---how many times did you stop here in Waco to deliver cocaine?

A. I think seven, eight times, around eight times.

Q. All right, and how much cocaine did you deliver here in Waco?

A. Practically all the time it was 5 to 7 kilos.

(S.W.A. signed Feb. 13, 2007 by Joe Coy (8))

From the start of April of 2005 through September of 2005. C.I.5^g admitted to traveling to Waco, McLennan County, TX a total of 7 occasions. Four of the trips were for drug deliveries and 3 trips were for currency pick-ups. C.I.5 admitted to transporting 7 kilograms on first trip, he did 6 kilograms on the second trip, 4 kilograms on the third trip and 7 kilograms on the last trip.

NOTE: He says 8 times at sentence hearing, from 5 to 10 kilograms, (S.W.A. Agent Joe Coy signed Feb. 13, 2007, para (8))
Magdaleno says 4 times to deliver cocaine, between 4 and 7 kilograms.

(S.P.T., p.84, (10-15))

Q. Mr. Martinez, my name is Phil Martinez. I represent a Mr. Espinoza in this case. You stated you began working for a Armando Lopez in 2004. Do you know the month that was in 2004?

A. I think October or November.

Q. And when did you get arrested?

A. 9-11-2005.

NOTE: Martinez said he started working for Armando Lopez in April of 2005 through September 2005, (S.W.A., Agent Joe Coy signed Feb. 13, 2007, para (8))

NOTE: Both Magdaleno Martinez and Gabriel Hernandez stories have changed after we plead guilty and after they talked to the investigators on December 5, 2007. A day after we pled guilty.

NOTE: Both of their stories implicated more deliveries and more amounts of cocaine, then their original debriefings.

(S.P.T., p.88, (2-8))

Q. Do you know Gabriel Hernandez, Mr. Martinez?

A. Yes, sir.

Q. And how do you know him?

A. I met him in prison in 1999.

Q. Okay, so back in 1999 were you aware that---you're saying 1999?

A. Yes, sir.

NOTE: What was Gabriel Hernandez convicted of and when did he get out of prison? What was he sentence too? It was Federal.

(S.P.T., p.90 (6-10))

Q. I have just a few questions for you? Why were you in prison in 1999?

A. Marijuana possession.

Q. And you were in the Federal system?

A. Yes, sir.

S.P.T. Erick Hernandez

(S.P.T., p.91 (13-14))

Q. What are you in prison for?

A. For 5.9 keys of cocaine.

(S.P.T., p.105, (22-25))

Q. Okay, so all you're stating then I guess to this court is that you received 7 hundred, but you don't recall if it was \$100.00 per kilo you brought to Waco; Is that correct?

A. Supposedly it was 15 pounds of marijuana.

(S.P.T., p.106, (3-5))

Q. And you belived it was marijuana at that time; is that correct?

A. I beleived.

(S.P.T., p.112, (17-25))

Q. And you in fact were not---you do not know in fact that it was'nt marijuana or that it was cocaine of if there were any drugs on that day?

A. I knew there was some drugs in the car.

(S.P.T., p.112, (17-25))

Q. And you in fact were not---you do not know in fact that it wasn't marijuana or that it was cocaine or if there were any drugs on that day?

A. I knew there were some drugs in the car.

Q. Drugs you assumed to be marijuana?

A. Yes.

Q. So you certainly didn't know whether it was marijuana or cocaine. You assumed it was marijuana or thought it was marijuana?

A. I though it was marijuana.

(S.P.T., p.122, (25))
Q. Okay, and on---here is page 12 of that affidavit.
(S.P.T., p.123, (1-12))
Q. And it says that Gabriel Hernandez also stated over a 2 1/2 year time, Hernandez made 8 to 10 separate trips to Waco, TX., is that correct? Is that what you put in your affidavit
A. That's what I put in the affidavit, Yes, sir.

(S.P.T., p.122, (6-16))
Q. Okay, but you interviewed him on Dec. 5th, shortly after we pled guilty, correct?
A. No, sir.
Q. Okay, and you were not there when he provided information saying that he made all these different trips in different vehicles, different cars, different amounts?
A. We interviewed numerous individuals. I'm not sure if that's one of the one's I did. I know I---I don't think I prepared a report. I interviewed some of the other witnesses. I'd have to look at a report to see if---to refresh my memory on that.
NOTE: Agent Coy knows he was there on Dec. 5th to interview Hernandez? Agent Coy would have interviewed all C.I. Agent Coy is acting like he can't remember to avoid perjurying himself. Who were the investigators? Coy was acting like the head agent and was preparing for the sentence hearing. So you know he did interview Gabriel Hernandez on Dec. 5, 2007.

S.P.T. Joe Coy

(S.P.T., p.113, (25), p.114, (1-7))
Q. All right, and your testimony is that from the airport to the location, the phone that you used when you came to Waco on at least 2 occasions, you remembered the exact route to the house that the agents wanted you to drive to or take them to?
A. Yes. I remember.
Q. All right, could you draw that on a map today?
A. No.
A. Not at all.
Q. All right, and even if it was candy, you don't know how much the candy weighed do you?
A. Yes.
Q. Well, I understand that, but you thought it was marijuana, right?
A. Yes. I know it wasn't candy, you know.
Q. And that would be the day that you saw Jasen Cervantes at the house you identified, correct?
A. No.
Q. In fact, you don't know if there was actually any cocaine for a fact that day?
A. No.
Q. So if---assuming it was cocaine do you have any idea of how much cocaine you had that day? You don't, do you?
(S.P.T., p.113, (10-24))
Q. So if---assuming it was cocaine do you have any idea of how much cocaine you had that day? You don't, do you?

Q. Okay, because that was information he had provided to you or other agents that yall relied on back in 2006?
A. I believe that's information he provided at the time to Agent Acuna.
Q. Which is inconsistent with what he is saying here today?
A. Yes, sir.

(S.P.T., p.131, (10-25))

Q. You heard Gabriel Hernandez say that he brought in over 1,800 kilograms into Waco of cocaine over two and a half years, right?
A. That's not what I heard, sir.
Q. What did you hear?
A. I heard that he was doing 100 to 140 trips averaging ten kilos per trip.
Q. All right, So can we agree on 1,200 kilograms?
A. I didn't say that. I don't know how they equate all the money either.
Q. Well, lets do your math, you said---how many trips did you hear?
A. I heard he said somewhere between 100 and 140.
Q. All right, and how many kilograms?
A. I think his minimum was somewhere around 10.
Q. All right, so if we use an average of 120 times 10, that's 1,200 kilograms, right?
(S.P.T., p.132, (2))
A. Yes, sir.

(S.P.T., p.132, (3-5))

Q. 1,200 kilograms in two and a half years brought into Waco, right?
A. Yes, sir.

(S.P.T., p.132, (12-23))

Q. What did you learn from your phone taps and your videos, over 200 videos, that would confirm 1,200 kilograms of cocaine coming into Waco, TX?
A. I don't believe 1,200 kilograms was being distributed on the street level at any given time.
Q. That wasn't my question.
A. I don't---you'll have to explain your question, sir.
Q. Well, how did you confirm 100 to 140 trips from Eagle Pass into Waco in this conspiracy? How did you confirm that from all the phone taps and all the videos and other surveillance that you did?
A. I don't think any of those were confirmed?

NOTE: Why did the Judge not listen to what Agent Coy testified to? When Agent Coy said I don't think any of those 1,200 kilograms were confirmed. Nothing from the phone taps or 200 videos could confirm 1,200 kilograms.

NOTE: The Judge went with the C.I. Gabriel Hernandez testimony, over Agent Joe Coy testimony.

(S.P.T., p.139, (25), p.140, (1-8))

Q. Agent in your affidavit that counsel points out regarding the statements of Gabriel Hernandez, was that based on a---what was in an original debriefing that Mr. Hernandez gave to the Agents down in Del Rio?

A. yes.

Q. And in that original debriefing did he say it was only 8 to 10 times that he came to Waco, TX? Did he say at least 8 to 10?

A. It was basically at least.

(S.P.T., p.142, (9-12))

Q. Okay did all the activity regarding surveillance and wire taps did they occur after he (Gabriel Hernandez) already been apprehended?

A. Yes, sir.

NOTE: I believe the phones were tap by the D.E.A. out of Eagle Pass, TX once Ignacio A Morales was arrested. That's how the C.I. all got busted. This is the order the drivers got caught.

NOTE:	NAME	BUSTED
	Ignacio A Morales	
	Magdaleno Martinez	9-11-2005
	Erick Hernandez	9-19-2005
	Gabriel Hernandez	7-12-2006
	Carolina Cortez	7-12-2006

NOTE: Ignacio A Morales was the person who got arrested first. He was the person who came for about 2 years. We all thought he was Gabriel Hernandez? That was why I wanted a photo. We didn't know the drivers names? Ignacio A Morales names Jody and the right addresses. I don't know when or where he got caught? I think it was around the Houston area? Magdaleno Martinez started coming after Ignacio Morales. He made 4 trips. Then he got busted.

Erick Hernandez came after Magdaleno Martinez got busted. Erick Hernandez came once. He never seen anything loaded or unloaded. Erick Hernandez claims he got busted on his second trip.

NOTE: The Agents and Erick Hernandez tried to call me and see if I wanted to buy the kilos that Erick Hernandez got busted with. I didn't buy them.

Gabriel Hernandez and Carolina Cortez got caught 7-12-2006.

NOTE: How long was the D.E.A. out of Eagle Pass, TX listening on the wire taps during their on going investigation?

NOTE: Why did Agent Coy tell the Grand Jury that he had a C.I. who was aware that Rose Rangel traveled to Montetrey, Mexico and required 100 kilograms of cocaine which were brought back to Armando. The C.I. (Gabriel Hernandez) said he never said that at our sentence hearing?

(S.P.T., p.75 (1-4))

A. I didn't tell him 100 kilos?

Q. Oh. So they're just making that up in their search warrants?
You did not give them that information?

A. No.

Agent Joe Coy

NOTE: Joe Coy affidavit prepared on 2-13-2007 is completely different then the one he prepared on 9-18-2006.
(S.W.A. cn. (W06-152M) p.6, (14))
Gabriel Hernandez stated that the cocaine that was being transported by Gabriel Hernandez belonged to Carlos Lopez. The cocaine Carolina Cortez was transporting belonged to Armando Lopez.

NOTE: My conspiracy is with Armando Lopez?
(S.W.A., done by Agent Coy Feb. 13, 2007 para 22.)
Gabriel Hernandez stated the cocaine that was being transported by Gabriel Hernandez belonged to Carlos Lopez and Armando Lopez.

NOTE: See (S.W.A. cn. (W06-152M) p.6, (14)) up above Agent Coy altered the affidavits.

NOTE: If Gabriel was to receive instructions on where to go and who to meet in Waco, TX., why would he need instructions if Gabriel Hernandez is claiming he came to Waco 100 to 140 times in a 2½ year time frame. He should have known me already? He told on Carlos Lopez and Armando Lopez once he got arrested.

(S.W.A., cn. (W06-152M), p.6 (14))
Gabriel Hernandez stated that once Carolina Cortez and Gabriel Hernandez arrived in San Antonio, Carolina Cortez would have received further instructions on where to travel and who to meet in Waco, TX.

(S.W.A., Agent Joe Coy signed Feb. 13, 2007, para (22))
Gabriel Hernandez stated that once Gabriel Hernandez arrived in San Antonio, TX. Gabriel Hernandez would be given further instructions on where to travel and who to meet in Waco, TX.

NOTE: Two different versions in his affidavits. The last one he changed it from the original.

Important Notes on Agent Joe Coy

- 1) Agent said he had a C.I. willing to testify that Rose went to Monterrey, Mexico to purchase 100 kilograms. Agent Coy told this statement to the Grand Jury.
Gabriel Hernandez the C.I. said he didn't tell the agents that at the sentence proceeding hearing.
Isn't that perjury?

2) Agent Coy changed the affidavit that Ice Agent Ed Acuna and police officer D. Repp prepared on July 12, 2006 (W06-152M) p.6, para (14).
Agent Coy prepared a (S.W.A. on Feb. 13, 2007, para (22)).
This affidavit is not like the original. Agent Coy deleted Carolina Cortez activities and put that Gabriel Hernandez did it.

3) (S.P.T., p.142, (9-12))
Q. Did all the activities regarding surveillance and wire taps, did they occur after he had been apprehended? Gabriel Hernandez, 1-28-2006.

A. Yes, sir.

NOTE: Agent Coy was aware a year before Hernandez got arrested.
See the following info.

NOTE: By November 2005, investigators were aware from activity obtained from a court ordered pen register placed on Espinoza cellular telephone number.

On 12-5-2005 Agent Coy and Ice Ed Acuna went to the Detention Center in Del Rio, TX to interview C.I.#5. They were able to debrief C.I. #5 Magdeleno Martinez. He got busted on 9-19-2005. He was the second driver. Ignacio A. Morales was the first.

The D.E.A. out of Eagle Pass, TX had a on going wire intercept on Armando Lopez cellular telephone number. It has probably been there since Ignacio A. Morales got arrested? Magdaleno Martinez and Erick Hernandez got busted within 10 days of each other.

The wire taps out of Eagle Pass, TX by the D.E.A. is how they got busted.

NOTE: If they had a on going wire tap, wouldn't they be able to tell all those trips Gabriel Hernandez claimed he did, never happen? He made them up.

NOTE: At my detention hearing or bond hearing Agent Coy said I had no contact with their C.I. Steven Clay.
Agent Coy also said they didn't have wire taps, audio video. Dick Kettler was appointed to me at that time. He perjured himself again. Steven Clay bought the first kilo. Did you ever see the audio video surveillance tape they said they had on that purchase?

NOTE: If their C.I. (Steven Clay) who was following the direction of the agents to purchase the 1 kilo? What happens if he tested the cocaine? He cut it open and snorted it. If he was following the advise and direction of the agents wouldn't he (C.I.) be consider a agent?

NOTE: Why wasn't Ice Agent Ed Acuna and officer D. Repp at my hearing to testify.

Ignacio A. Morales could prove that Gabriel Hernandez didn't make all those trips. From Nov. 2003 to Jan. 2006.

Patricio Nevarez didn't live at the house Gabriel Hernandez said he went to in 2003. Patricio didn't move into that house

till after Mingo Ramos passed away on 10-29-2004.

Look up Patricio Nevarez arrest for domestic violence with his son's mom. They were living on Dutton, I think 17th or 16th street.

Phil who went to the Grand Jury to testify. Did any of the C.I.?

When we pled guilty, we didn't know anything about 100 to 140 trips. That was never given to us or mention to us before we pled. The factual basis didn't mention any amounts except that I arranged to get 10 kilograms.

NOTE: April 16, 2007 at Detention hearing for Rose Rangel and Patricio Nevarez, Jr. (D.H.P., p.41, (4-12))

Q. Do you know how many drops were made at this house?

A. Agent Coy say I'm aware---aware of at least two.

Q. So, there were two drops that you're aware of made at this house. Don't know how much cocaine was involved, right?

A. We do know one of the---one of the drops that was made on Sept. 16th I believed, was approximately 15 kilos.

NOTE: Phil as of April 16th, 2007 Agent Coy was aware of only two drops at that house Patricio Nevarez lived at 1906 Webster.

NOTE: Phil I never told you but when I was housed at the jail at the court house. Remember when they had me isolated in a cell, with nobody around. They brought Gabriel Hernandez and put him next to me. I think so he can see who I was and what I look like. He said he was back on Appeal. I didn't asked his name. He was talking about Magdaleno Martinez, Ignacio A. Morales and Erick Hernandez. He said they were all housed together in the old jail next to the court house. he was next to me for a day and was gone. Like I told you before I didn't know him or his name.

Judge Walter Smith

Why would the Judge allow Gabriel Hernandez testimony? Gabriel Hernandez had over 20 inconsistency in his testimony. Based on his debriefing July 12, 2006 and search warrants, and affidavits. (W06-152M), (W06-153M).

The Judge also allowed Gabriel Hernandez to say that the July 12, 2006 debriefing about the 8 to 10 trips of cocaine was for the lady on his case. (S.P.T., p.46, (12-24))

The Judge also allowed it when Gabriel Hernandez said that the Agents told him Rose was involved in this case. (S.P.T., p.73, (15-20))

The Judge allowed the testimony of Gabriel Hernandez over the Agents, Ice Agent Ed Acuna, police officer D. Repp and Agent Joe Coy affidavits.

{S.P.T., p.123, (1-12))
{S.P.T., p.132, (12-23))

Gabriel Hernandez who supposedly I.D. us says a photo is of Bubba. The photo is actually Jody Nevaraz (S.P.T., p.63, Why didn't anybody checked the Border Patrol crossing? How many times did Gabriel Hernandez cross over to Mexico?

Phil Martinez,

I tried to get the sentence proceeding transcripts for Carolina Cortez and Gabriel Hernandez? For some reason they won't give them to my daughter. I really would like to see them, his background history and his P.S.I.? I would like to know what he admitted to and what his factual basis said. What he admitted to and what was he held accountable for?

This is everything I put together. Transcripts, search warrant affidavits, and Pre-sentence reports.

It is hard to believe that the Judge allowed Gabriel Hernandez testimony when he had at least 20 inconsistency in his testimony. (Brady violations).

I have been told that the only way back into court is by newly discovered evidence? What do you plan on doing? I would like to know what is it that you plan on filing?

Enclosed is some cases that I really believe they would help me. Booker, Blakely, and Apprendi and Bousley.

Phil, I have asked you a few times about that affidavit you told me you would do for me. You said the Prosecutor told you I was going to be held accountable for 90 kilos. And you passed that information on to me. That was the only reason I pled guilty. I know if you sign this affidavit I enclosed, it would be consider newly discovered evidence. You told me the last time we talked in Limestone County, that for me not to feel bad about doing this. That I needed to do this. Or if you would like to write your own affidavit in your own words that would be fine. Phil, even though it's the truth on what happen, I do feel bad, cuz I have consider you a friend. I think this is my last hope.

On the day we pled guilty. The factual basis read at my Plea Colloquy page 12, (7-9).

Trini Lopez Espinoza ordered up 10 Kilograms of cocaine.

This is where all those cases Apprendi, Booker, Blakely, and Bousley apply to my case. Please read them.

I also believe there are Brady violations concerning Gabriel Hernandez testimony.

I pled to guilty to the factual basis. 10 kilograms of cocaine.

Thanks for your time and help.

Trini Espinoza

#629-962

M.C.I.

P.O. Box 57

Marion, Ohio 43301

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Housing : OAJ51B

Docket Number: W-07-CR-016(01)
Attested Feb 8th, 2007

1 ~~XXXXXXXXXX~~, I pled guilty on Dec 4th, to one count superseding indictment with conspiracy to distribute at least five kilograms of cocaine, a Schedule 2 controlled substance, Title 21 United States Code 841(a) (1), 841 (b) (1) (A) (ii) and 846.

My case will probably be the worst case you have ever seen. The whole process was unfair. The Judge abused his authority, the Prosecutor knew Gabriel Hernandez was committing perjury. There were over 20 inconsistencies in Gabriel Hernandez testimony at my sentence hearing. He would say one thing and a few minutes later he would say something different. He even denied saying statements that were used by agents at the Grand Jury, and denied saying things that were used in Search Warrant Affidavits by the agents. U.S. District Judge Walter S. Smith Jr. is not on the bench anymore. In 2016 Judicial Council of the 5th Circuit Court of Appeals formally reprimanded Smith, after finding he made inappropriate and unwanted physical and nonphysical advances toward a female courthouse staff member in his court chambers in 1998 and lied to the investigators about the incident. The Judicial Council renewed its investigation into Smith after complaints surfaced that at least two more women had been mistreated by Smith in his chambers. His retirement ended the investigation. In a sworn statement given to the investigators, the former clerk who was groped by Smith said Smith smelled of alcohol and had the appearance of someone who had been drinking. She said Smith was not functioning, was falling apart, and was unable even to get himself to the courthouse, adding that his condition had forced him to cancel court obligations.

Note: I don't know if he was still drinking but he was not looking at the CI body movement or his reactions while testifying. Smith was leaned back in his chair looking up toward the ceiling. He also went against the head Agents Jose Joe Coy testimony which contradicted the CI Gabriel Hernandez testimony and went with the CI testimony at my sentence hearing.

Agent Joe Coy testified. Coy was asked on page 131 paragraph(10) through (25) and page 132 paragraph (1) through (23) of my Sentence Hearing Transcripts.

Q. You heard Gabriel Hernandez say that he brought in over 1,800 kilograms into Waco of cocaine over a two and a half years, right?

A. That's not what I heard.

Q. What did you hear?

A. I heard that he was doing 100 to 140 trips averaging ten kilos per trip.

Q. All right. So can we agree on 1,200 kilograms?

A. I didn't say that. I don't know how they equate all the money either.

Q. Well, let's do the math. You said -- how many trips did you hear?

A. I heard he said somewhere between 100 and 140.

Q. All right. And how many kilograms?

A. I think his minimum was somewhere around ten.

Q. All right. So if we use an average of 120 times ten that's 1,200 kilograms, right?

A. Yes, sir.

Q. 1,200 kilograms in two and a half years brought into Waco, right?

A. Yes, sir.

Q. And in the course of your investigation in this conspiracy you did wiretaps, right?

A. We did wiretaps. Yes sir.

Q. And you did video surveillance in particular on my client's home, right?

A. Yes.

Q. What did you learn from your phone taps and your video's, over 200 videos, that would confirm 1,200 kilos of cocaine coming into Waco, Tx?

A. Agent Coy said I don't believe 1,200 kilos was being distributed on the street level at any given time.

Q. That wasn't my question.

A. I don't-- you'll have to explain your question, sir.

Q. Well how do you confirm 100 to 140 trips from Eagle Pass into Waco in this conspiracy? How did you confirm that from all the phone taps and all the videos and other surveillance that you did?

A. I don't think any of those were confirmed.

.Note : Sentence Hearing Transcripts, page 140 paragraph (5) thru (8).

Q. And in that Original debriefing (Gabriel Hernandez) did he say it was only (8) to (10) times that he delivered cocaine to Waco, Tx? Did he say it was at least eight to ten?

A. It was basically at least.

Note: When I pled guilty, the only statements shown to me was Gabriel Hernandez original debriefing on July 12th 2006. Hernandez stated that over a two and a half year time frame Hernandez said he made(8) to (10) trips to Waco to deliver multi-kilograms of cocaine to Espinoza, average shipment was between 10 to 16 kilograms.

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Note: Based on his original statement I thought I was going to be held accountable for around 100 to 125 kilos.

Note: Gabriel Hernandez said at my sentence hearing that he didn't say this ? He said that a girl did this not him?

Note: Agents put in Affidavits that Gabriel said he made 8 to 10 trips to deliver multi-kilograms over a two and a half time frame ?

Note: Gabriel later said at my sentence hearing that he said a lady did that not him? Sentence Hearing Transcript page (46) paragraph (13 -24).

Q . Well they asked you that you stated to them that it was over a two and a half year time period of time ?

A . From 2003?

Q . Yes .

A. Yes.

Q .From November of 2003 ,to when you got arrested in 2006, you indicated to them over that two and a half year period of time that you made 8 to 10 trips to Waco, Tx. Is that correct ?

A. No that was for the lady that was caught on my - -- that one that was on my case, she's the one only made like 4 to 6

Note ;That means he never made a statement about me in any debriefing before we got arrested ? The only statement made about 100 to 140 trips was done on Dec 5th, a day after we pled guilty on Dec 4th

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2 Note : My lawyer told me that if I go to trial and get found guilty of just one kilo, I will get a Mandatory Life sentence based on my priors? 1st prior for Conspiracy for 100 lbs of Marijuana. Did 9 years for that. 2nd prior for 20 lbs of Marijuana, I got 10 years of Deferred Probation. I violated this on this new case.

My lawyer told me if we plea guilty we would get a Safety Valve Cap of (20) years. I said I would pled guilty but I will not debrief. We go to plead out, but before the proceeding started my lawyer told me that I didn't get the Safety Valve Cap deal. For me to go ahead and plea guilty and if they come with more time we will withdraw our plea? I pled guilty cuz I thought I was going to be held accountable for around 90 to 100 kilos based on what my lawyer told me and he said the Prosecutor told him? I pled guilty based on Gabriel Hernandez original debriefing on July 12, 2006. Which I thought would be used as my Relevant Conduct. Gabriel Hernandez said over a two and a half year period he made (8) to (10) trips to deliver multi - kilos to Waco Tx. Averaging (10) to (16) kilos per trip. He also said he pick up money on at least 8 occasions, averaging 200,000.00 per trip.

The Judge said at my Rearrangement Proceedings that the maximum punishment that can be assessed to a person convicted of that offense is Life. There's a mandatory minimum sentence for one convicted of that offense of ten years.

Note : Based on my 2 priors and 21 U.S.C. & 841 (b) (1) (A) shouldn't the Judge had said at my Rearrangement Hearing that I was looking at a mandatory minimum of life? By failing to inform a defendant accurately of a proper minimum sentence, a district court is not clear about the direct consequences of a guilty plea. To be knowing and intelligent, a defendant must have a full understanding of what the plea connotes and of its consequence.

Because of a district courts failure to correctly inform a defendant of the mandatory minimum sentence which might be imposed a defendant does not fully understand the consequences of his plea, and his rights are substantially affected. Consequently, the defendant's conviction must be vacated, and his case remanded so that he may plead anew. The failure to inform a defendant of a mandatory sentence seriously affects the fairness, integrity, or public reputation of the judicial proceedings because an appellate court cannot know whether the defendant would have pled differently had he been informed of the mandatory minimum as required under Fed. R. From. P. 11

See United States v. Williams, 277 Fed. Appx. 365.

About 2 weeks before our sentence hearing, my lawyer showed me a photo of Gabriel Hernandez, who said he has been delivering kilos to me for two and a half years and is going to testify. I look at the photo and I tell my lawyer that he wasn't the guy who was delivering to me for two and a half years? I told my lawyer so we done pled guilty to somebody we dont even know? All my lawyer could do was cuss and said to let him think? Note: You would have thought he would have withdrew my plea? Note: My lawyer also should have withdrew my plea once he reviewed the PSI and seen that they were trying to hold me accountable for 1800 kilos? Which was a debriefing done on Dec 5th, a day after we pled out on Dec 4th? This debriefing was not given to us in our discovery? This was done for the PSI Report. None of the Agents who did the debriefing on Dec 5th, were subpoena to testify at my sentence hearing? We didnt even know what Agents did the Debriefing? Note: My lawyer should have been aware of this new information that certainly would have had an effect on his advice to his client (me). Yet, he allowed sentencing to proceed. Prior to sentencing the lawyer should have informed that I had a statutory right to withdraw my guilty plea for any reason. See: Nelson v. Wilkey 2020 Ga. Lexis 468 (2020). The lawyer didn't inform me that I needed to do that? I wrote a letter telling him that I didn't plea guilty to 1800 kilos once I read it in the PSI report. I told my lawyer to get a photo of Gabriel Hernandez from the beginning but he didn't. The Judge never said what he was holding me accountable for in court? Did he give me life for my priors or the 1800 kilos? He didn't say anything on why he gave life? My lawyer objected to the amounts mention at my Sentence Hearing? But the Judge said those objections will be overruled. Even though the Head Agent just testified. Page 132 of the Sentence Hearing Transcripts, Paragraph (12 - 16). Q. What did you learn from your phone taps and your videos, over 200 videos, that would confirm 1,200 kilograms of cocaine coming into Waco, Tx? A. Agent said I don't believe 1,200 kilos was being distributed on the street level at any given time. Page 132, Paragraph (19 - 23) Q. Well, how do you confirm 100 to 140 trips from Eagle Pass into Waco in this conspiracy? How do you confirm that from all the phone taps and all the videos and other surveillance that you did? Q. Agent said I don't think any of those were confirmed. See: United States v. Holding, 948 F.3d 864 (7th Cir. 2020) The only thing the Judge said in court is the court believes that this is a case where a Life sentence is appropriate. That will be the sentence imposed. My lawyer filed my appeal and messed that up. The only time the Judge said anything about me being responsible for 1800 kilos in the PSI was when I filed for the Sentence Reduction Pursuant to 18 U.S.C. & 3582 (c) (2).

The judge said defendant was held responsible for 1800 kilos of cocaine, which is four times the minimum quantity of 450 kilos or more of cocaine required for the maximum base offense level or 38. A base offense level of 38, coupled with a criminal history category V, keeps Defendants imprisonment range unchanged at 360 to life

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3

I pled guilty on the advice of my lawyer. He had told me that if I go to trial and get found guilty of just one kilo , I would get a life sentence based on my two priors. Conspiracy of 100 lbs Marijuana received a 9 year sentence. Possession of 20 pounds of Marijuana, I received 10 years Probation. I violated the probation on this new case. About 2 weeks before trial ,my lawyer told me that if I plea guilty I will get a 20 year safety valve cap. I said I would plea guilty but I would not debrief. On Dec 4th we go to my hearing to plea. Before the proceedings start my lawyer pulled me in a room to tell me that all my codefendants got the 20 year safety valve cap. That I didnt get the deal, I guess cuz I wouldn't Debrief. My lawyer said go ahead and plea guilty and if they come back with more time we would withdraw my plea.I Pled guilty to the factual basis on Dec 4th. The factual basis said I acquired about 10 kilos, that were for a CI that we never confronted at my sentence hearing. I knew that my sentence would be based on my Relevant Conduct in my PSI. I believed that my relevant conduct would be based on the CI statements in my discovery that was shown to me and were in the search warrants affidavits. Before I pled guilty my lawyer told me that he left the Prosecutor office and he said I was going to be held accountable for at least 90 kilos of cocaine. When I did my PSI , I admitted to selling around 100 kilos. My lawyer told the lady doing the PSI that the prosecutor told him I was going to be held accountable for at least 90 kilos. When the PSI was completed I seen that on Dec 5th, some agents went back to talk to the CI. We pled guilty on Dec 4th,so these agents went the very next day to debrief these CI again. Why? Was it cuz I wasn't in the guideline range to receive a life sentence yet? They needed them to change their original debriefing to something that was 10 times more. Two CI changed their stories to more trips and more cocaine in PSI report, which was different then their original debriefings.I didn't plea guilty to this new information and this was not in the discovery, all this new information came out on Dec 5th, after we pled guilty on Dec 4th. I would have never pled guilty to this new information. Shouldn't all statement be submitted before the conspiracy has ended, not afterwards? Shouldn't my plea be void cuz it was not knowingly and Intelligently made? Based on the CI new statements in their debriefing on Dec 5th.

On 1-28-2006 Gabriel Hernandez was arrested at the Border Patrol check point with 10 kilos of cocaine in a ford Escape. After Gabriel Hernandez was advised of his Constitutional Rights concerning self incrimination, Gabriel Hernandez stated what he was delivering belonged to a Carlos Lopez and the cocaine that Cortez was transporting belonged to Armando Lopez.Gabriel Hernandez said he was to off-load his shipment in Austin , Tx and transport \$ 100,000.00 in bulk currency back to Piedad Negras, Mexico. Carolina Cortez was to receive further instructions once she arrived in San Antonio , on where to travel and who to meet in Waco ,Tx.

Note: Gabriel said he was driving for Carlos Lopez. My Conspiracy is with Armando Lopez. Gabriel told the agents who he was driving for but why didn't he mention my name? Why would they need further instructions if he supposedly knew me?He didn't know me , not until he got locked up with Ignacio A Morales, Magdalene Martinez , Erick Hernandez. These 3 were drivers for Armando Lopez.

Note : On July 12 ,2006 , 6 months later Gabriel Hernandez Original debriefing by Ice Agent Ed Acuna and Waco Police Officer D. Repp. Gabriel Hernandez stated that over a two and a half year time frame , Hernandez made 8 to 10 separate trips to Waco,Tx to deliver multi- kilos of cocaine to Espinoza. Hernandez estimated that the average shipment of cocaine delivered to Espinoza was between 10 to 16 kilos of cocaine. Hernandez claimed he transported currency for Espinoza on at least 8 occasions and the average shipment was approximately \$200,000,00.

This is what was in my discovery and Search Warrants and I pled guilty to. I thought this was going to be used for my Relevant Conduct for my sentence. I didn't plea guilty to information on Gabriel Hernandez Dec 5th debriefing? How could my plea be knowingly and Intelligently made if I was not aware of this new information that was given by Gabriel Hernandez on Dec 5th, a day after we already pled guilty . This would be his 3rd debriefing ? This new information was not in our discovery, Grand Jury Testimony or in any affidavits for search warrants ?

This would be his 4th debriefing and every one is different then the last one ? On Dec 5th in my PSI Paragraph 32 , Gabriel Hernandez was debriefed by Investigators again , a day after we already pled guilty?

Note :none of the investigators who did the debriefing were cross examined at my sentence hearing or subpoena ? Gabriel Hernandez now says he transported cocaine to Waco 100 to 140 times for Trini Espinoza. Between Nov 2003 to Jan 2006. Hernandez stated on each trip he transported between 8 to 18 kilos of cocaine per trip. Hernandez recalled he transported 15 kilos of cocaine 40 times in a Mazda , transported 18 kilos of cocaine 40 times in a ford Probe, transported 12 kilos of cocaine 30 times in a Mitsubishi Gallant, transported 10 kilos of cocaine 10 times in a ford Escape, and transported 8 kilos of cocaine 10 times in a Ford Mustang.

4

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4 Testimony for the Grand Jury of Sgt José Coy

Page 5 paragraph (6) through (25) and page 6 paragraph (1) - (4).

One of the witnesses that is willing to testify had been in the Republic of Mexico in Piedras Negras, which is right across from Eagle Pass, he identified an individual that was associated with Trini Espinoza. His —this individual, his job was actually first picking up loads of money, shipments of money. He would come to Waco and pick up as much as \$ 200,000.00 at a time, he would go to Dallas and pick up another two hundred, and maybe on the way to Austin, he would be given a phone call, meet someone, and he would pick up another \$200,000.00. In a two - and - half - year period he admitted to picking up a little over \$8 million in bulk currency from this organization. On one occasion while he was in Piedras Negras meeting with a supplier and organizer by the name of Armando Lopez, he was able to - - he was aware that an individual by the name of Rose Rangel who lives in Waco was there meeting with Armando. And for the record, Armando is already a federal fugitive, he already has an outstanding warrant for a federal indictment. He was aware that Rose traveled to Monterey, Mexico and acquired 100 kilograms of cocaine which were brought back to Armando and Armando would piece meal those shipments back to Waco, Tx.

Note: Agent Coy presented this information to the Grand Jury and in Search Warrant Affidavits.

Note: Sentence Hearing Transcripts page 74 paragraph (21) through (25) and page 75 paragraph (1) and (18) through (24) At my sentence hearing the CI Gabriel Hernandez said he never said that.

Sentence Proceeding Transcript

Page 74 paragraph (21- 25)

Q . And so the Agents said that they spoke to you in 2006, and you told them in one trip she made arrangements for 100 kilos, is that correct ?

A .100 ? For a 100 kilos ?

Q . Is that what you told them in 2006 ?

Sentence Proceeding Transcript page 75 Paragraph (1)

A . I didn't tell them 100 kilos.

Sentence Proceeding Transcript page 75 Paragraph (18) through (24)

Q .Okay . But what you actually told them was on her last trip or the last time you saw her she had gone to Monterrey and made arrangements for 100 kilos ; is that correct ?

A. No. It's not.

Q. Oh, so if they said that in their affidavit, they're just incorrect ?

A. Yes.

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5 My Lawyer was very Ineffective during the whole process of my case. The following is all the mistakes he made through the whole process of my case .

On Feb 7th, 2007 I got arrested. I was booked but was denied my phone call. They put me in segregation. I go to my Detention Hearing with my court appointed attorney. My court appointed lawyer ask the agent if I had any contact with their CI ? Agent Joe Coy said no. My court appointed lawyer ask do they have any listening devices ? Agent Joe Coy Says no. After my Detention Hearing they move me to another County Jail . They Isolated me from everybody. They processed my phone numbers and visiting list . I hire Phil Martinez to replace my court appointed lawyer and I tell him that the agent Joe Coy said I didn't have any contact with the CI and they don't have any listening devices. I also tell my lawyer when I hired him , that I wanted all my discovey . My lawyer said okay .As of today I have not reviewed everything cuz my lawyer said it was to much to print out. My lawyer said it's all on CD, that I have 13 CD of discovery . The County Jail I was isolated at said I couldn't have any phone calls and I couldn't have any visits. My lawyer asked me if I would talk to the agents and I told him no and for him to never ask me that again . My lawyer said we are talking about your life Trini . I said no again .I stayed isolated from Feb 10th to April 13th, and wasn't allowed to make any phone calls or have any visits . One mourning while I was isolated my trap on the door was open. The trap on the cell that was next to me at a angle was also open. The guy who was placed next to me was Gabriel Hernandez. That was how he knew who I was. The very next day he was gone . I file a complaint against the County Jail cuz they wouldn't let me use the phone or have any visits . April 13, they move me back to the first County Jail I was at. I was placed in segregation again . They finally let me have phone calls and visits . My daughter came to visit me and the County Jail stripped searched my daughter ? All visits at that County Jail was behind a glass . So why was it necessary to strip search my daughter ? For some reason I was moved a few months later to Seagoville, Tx . I was placed at the Seagoville Detention Center. Again I was placed in segregation. I stayed there for a couple of months. I was brought back to begin trail . My lawyer told me If I pled guilty we will get a 20 year safety valve cap . That I would be held accountable for 90 kilos. He also said if I go to trial and got found guilty for just one kilo , that I would get a mandatory life sentence based on my two priors. Frist prior was for 100 lbs of marijuana and the second prior was for 20 lbs of marijuana . I said I will pled guilty but I will not debrief. So we go to our Rearrangement Proceedings on Dec 4th, 2007 to plead out . Before the hearing started my lawyer took me to a room and said that everybody else got the 20 year safety valve cap. That I didn't get it ? I guess cuz I wouldn't debrief . My lawyer said go ahead and pled guilty anyways and if they come with to much time he would withdraw my plea.

The Court : Mr. Espinoza , you are charged in a one - count superseding indictment with conspiracy to distribute at least five kilograms of cocaine, a Schedule 2 controlled substance, in violation of Title 21 United States Code Sections 841 (a) (1) , 841 (b) (1) (A) (ii) and 846. The maximum punishment that can be assessed to a person convicted of that offense is life. There 's a mandatory minimum sentence for one convicted of that offense of ten years.

Note: See United States v. Williams, 277 Fed. Appx . 365

During the plea colloquy , the district court made a misleading statement concerning the mandatory minimum sentence that was applicable to defendant. Under 21 U.S.C.S. & 841 (b) (1) , the mandatory minimum for a drug offense can increase to life imprisonment if the defendant has been convicted of two or more prior drug felony offense's.HN5 By failing to inform a defendant accurately of a proper minimum mandatory sentence . A district court is not clear about the direct consequences of a guilty plea. To be knowingly and intelligent, a defendant must have a full understanding of what the plea connotes and of its consequence. HN6 A district court's failure to correctly inform a defendant regarding a mandatory minimum sentence is a plain error that affects the defendant's substantial rights . Because of a district court's failure to correctly inform a defendant of the minimum sentence which might be imposed, a defendant does not fully understand the consequences of his plea, and his rights are therefore substantially affected. Consequently, the defendant's conviction must be vacated and his case remanded so that he may plead anew. The failure to inform a defendant of a mandatory minimum sentence seriously affects the fairness, integrity , or public reputation of the judicial proceedings because an appellate court cannot know whether the defendant would have pled differently had he been informed of the mandatory minimum as required.

Note: The judge never gave any reason why he gave me Life ? He didn't say cuz of my two priors or any drug amount ? He never mentioned any drug amounts in my sentence hearing ?

We do my PSI interview. My lawyer tells me and the lady who is preparing my PSI that he just left the prosecutor office and that he said that I was going to be held accountable for at less 90 kilos. I admitted to only 100 kilos . I also said the guy is exaggerating on the 8 to 10 trips averaging 10 to 16 kilos per trip . After we finish my PSI they move me back to Seagoville Detention Center. When the PSI was done and my codefendant's told me they wanted to hold us accountable for 1800 kilos. I wrote my lawyer and told him I didn't plea guilty to 1800 kilos, and he needs to withdraw my plea ?

Note; he never withdrew my plea.

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6. They move me back to Waco , Tx about two weeks before my sentence hearing . My lawyer comes to see me and shows me a photo of Gabriel Hernandez, and says that this is the guy who has been delivering kilos to me for 2 and a half years. I look at it and I tell my lawyer that he was not the one who was delivering kilos to me for two and a half years ? I pass the photo back to my lawyer and he says no look at it again ? I say I don't need to , but I look at it again and say I don't know this guy . My lawyer trips out and says the F word and tells me to let him think. I say to my lawyer that I done pled guilty to somebody that I don't know. I told my lawyer that I asked you for a photo of this guy a long time ago? I didn't know the drivers names. I never asked them their names. So we all thought that the name Gabriel Hernandez was the driver that actually came to deliver to us for two and a half years. It wasn't him though . Ignacio A Morales was the only driver who came for that time frame . He debriefed and wrote a statement but didn't get on the stand to testify . The only statement he made was in the PSI, and he said he made 6 trips with 10 kilos per trip . He also names the address of where the houses were actually located ? They wanted to hold me accountable for 1800 kilos for the 3rd Debriefing that Gabriel Hernandez did a day after we already pled guilty ?

1st debriefing Gabriel Hernandez said he was going to Austin, Tx , to deliver kilos for a Carlos Lopez. Said once they reached San Antonio, Tx they would get a phone call so Carolina Cortez would know where to go and who to meet in Waco , Tx. What Carolina Cortez got caught with belonged to Armando Lopez. My Conspiracy is with Armando Lopez not Carlos Lopez ? My name was never mentioned cuz they didn't know me.

2nd Debriefing Gabriel said he made 8 to 10 trips to deliver 10 to 16 kilos per trip to Waco Tx. This was in Affidavits for our search warrants. I pled guilty to this and thought this was going to be used for my relevant conduct ?

3rd Debriefing for the PSI, which was done after we already pled on Dec 4th. Gabriel said on Dec 5th , that he made between 100 to 140 trips to Waco , Tx to deliver between 8 to 18 kilos per trip. He names 120 trips by memory ? I didn't plea guilty to this. This came out after the conspiracy ended and we already pled guilty?

Sentence Hearing Transcripts : Gabriel said different things through out his testimony ? He denies saying his second debriefing at our hearing.

Note; My lawyer still didn't withdraw my plea ? Even though he told me that he would withdraw my plea if they came with to much time ? He didn't withdraw my plea when the PSI report came out and wanted to hold me accountable for 1800 kilos ? Plus the PSI recommended a upward departure cuz the 1800 kilos was 10 times more then what level 38 carried which at the time 150 kilos was 30 years to Life .

Note: See : Nelson v. Wilkey , 2020 Ga . Lexis 468 (2020). The head Agent Joe Coy contradicted Gabriel Hernandez testimony. He said he dont believe 1200 kilos were ever distributed at any given time , and they had nothing to verify any of the 120 trips Gabriel Hernandez said he made .The following is probably the most disturbing part the lawyer knew about this new information and it would have had an effect on his client (me). He told me that I was going to be held accountable for 90 kilos. The PSI wanted to hold me accountable for 1800 kilos and recommended a upward departure because the amounts was 10 times more then what level 38 carried , 150 kilos was 30 to life at the time. Prior to sentencing , I had a statutory right to withdraw my guilty plea for any reason . A defendant's right to effective assistance of counsel regarding his guilty plea includes the right to be advised about his absolute right to withdraw his guilty plea prior to sentencing.No reasonable lawyer would allow sentencing to go forward under these circumstances .He didn't withdraw my plea when he showed me a picture of Gabriel Hernandez and I told him Gabriel Hernandez wasn't the guy who came to deliver Kilos to me for two and a half years. At my sentence hearing I tell the Judge I didn't know Gabriel Hernandez.

Note : Sentence Proceedings Transcript Page 147, paragraph 21 - 24.

(21) They didn't- -- these people that came up here today , I don't even know them, Your Honor. (I was referring to Gabriel Hernandez)

(23) When I read the report of Gabriel Hernandez ,I thought it was another individual. That's why I pleaded guilty , you know .

Note : My lawyer put in my appeal that appellant has never denied his involvement with Gabriel Hernandez, in fact he believes that Mr. Hernandez transported cocaine to Waco , Texas 8 to 10 times over a two and a one - half of time that was indicated in the affidavit.

Note : I told the Judge at my sentencing that I didn't know him, (Referring to Gabriel Hernandez) and I pled guilty thinking he was another individual ? See note up above. Sentence Proceedings page 147 ,paragraph 21 through 24.

Note : I don't know why my lawyer said that in the appeal ? I didn't even know he filed my appeal cuz I never received a copy of it ? I found out he filed my appeal cuz some Paralegal Research Associates contacted me. They said the decision in which my appeal was denied by the Court of Appeals caught the attention of one of our analysts.

So I contact my lawyer and ask him why I didn't receive a copy of my appeal he filed? He acted like he sent me one , but he didn't , I wouldn't have let him filed that appeal he sent if he would have let me read it first. I never said I had any involvement with Gabriel Hernandez. In fact the sentence transcripts will say I didn't know him and I pled guilty cuz I thought he was somebody else ?

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From : TRINI ESPINOZA, ID: A629962
To : Sara Guffey, CustomerID: 8953778
Date : 8/18/2021 5:00:18 PM EST, Letter ID: 1249867629
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8 The Judge was not paying any attention to the CI testimony. Gabriel Hernandez had over 20 inconsistencies in his testimony.

The Judge ignored the head Agent Joe Coy testimony. Agent Coy said he didn't believe that 1200 kilos were ever distributed on the streets at any given time. From all the videos and wiretaps Agent Coy said they didn't have anything to verify any of the 120 trips Gabriel Hernandez said he did. Agent Coy also said that in Gabriel Hernandez original debriefing he said that Gabriel Hernandez said he basically made 8 to 10 trips.

Note: The Judge never said why he gave me a life sentence. He didn't say it was for my two priors or the 1800 kilos that Gabriel Hernandez said he brought after we already pled guilty. We pled guilty on Dec 4th and the only discovery we seen and thought was our Relevant Conduct was the original debriefing done by Gabriel Hernandez on July 12, 2006. Gabriel Hernandez said he made 8 to 10 trips to deliver 10 to 16 kilos per trip to Waco, Tx. The 1800 kilos came out during his 3rd debriefing on Dec 5th, a day after we already pled guilty.

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From : TRINI ESPINOZA, ID: A629962
To : Sara Guffey, CustomerID: 8953778
Date : 8/18/2021 5:00:18 PM EST, Letter ID: 1249867624
Location : MCI
Housing : OAJ51B

10 PSI

Ignacio Morales said he made 6 trips to deliver cocaine to me. Each trip he said he delivered 10 kilos of cocaine. Ignacio didn't testify at my sentence hearing. His statements we're in my PSI but we didn't get to confront him. Or my lawyer never called him to the stand.

On 12 -5-2005 Magdaleno Martinez said he made four trips to deliver cocaine. 7,6,4,7, for a total of 24 kilos. He testified at my sentence hearing.

On 9-19-2005 Erick Hernandez was arrested with 6 kilos. On 1-24-2006, Erick Hernandez was debriefed in Waco, Tx. He said he delivered 15 ladies which he thought it was 15 pounds of marijuana. Now he believes it was cocaine. Erick testified but on the one trip he made he never seen the van loaded or unloaded. He just dropped the van off. He didn't see anything in the van.