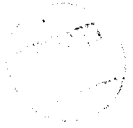


1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION



3 UNITED STATES OF AMERICA, . Case No. 06-20465
4 Plaintiff, .
5 v. . Detroit, Michigan
6 AREF NAGI, . October 11, 2006
7 Defendant. . (Hon. Bernard A. Friedman)
8

9 DETENTION HEARING
10 BEFORE THE HONORABLE DONALD A. SCHEER
11 UNITED STATES MAGISTRATE JUDGE

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1 Detroit, Michigan

2 Wednesday, October 11, 2006

3 At about 1:15 P.M.

4 - - -

5 THE CLERK: The Court calls Case Number 06-20465,
6 United States of America versus Aref Nagi.

7 MS. MARION: Your Honor, Mr. Thomas is not here yet,
8 and he's -- Richard Thomas is representing Mr. Nagi. I
9 understand he's on the way, but I do not see him here.

10 THE COURT: He was in the courtroom earlier.

11 MS. MARION: He had to go out to another court.

12 THE COURT: We'll pass the case.

13 (Pause in proceedings from about 1:15-1:29 P.M.)

14 THE CLERK: The Court recalls Case Number 06-20465,
15 United States of America versus Aref Nagi.

16 MS. MARION: Good afternoon, your Honor.
17 Diane Marion appearing on behalf of the United States.

18 THE COURT: Good afternoon.

19 MR. THOMAS: Your Honor, James Thomas and
20 Doraid Elder appearing on behalf of the defendant.

21 THE COURT: Thank you. Good afternoon.

22 This is the date and time set for completion of
23 arraignment and a detention hearing.

24 MR. THOMAS: Your Honor, we have been served a copy
25 of the indictment. We waive a formal reading. We stand mute

1 to the charges, and -- and we ask the Court to set a bond.
2 It's my understanding that, in her infinite wisdom, Ms. Marion
3 is not going to grant -- allow us to have that, and so we
4 would ask you for a detention hearing.

5 THE COURT: Very well.

6 MS. MARION: That's correct, your Honor.

7 Your Honor, I do apologize. I -- I -- I've had all
8 the arraignment paperwork with me and the acknowledgement
9 paperwork with me every day for two weeks and I forgot to
10 bring his over today, but I can advise him and the Court that
11 on Count One, which is the drug conspiracy count, the maximum
12 term of imprisonment is forty years; the maximum fine is one
13 million.

14 Count Two, which is the continuing criminal
15 enterprise, the minimum term of imprisonment is potentially
16 thirty years with a maximum fine of one million dollars.

17 I will follow up with paperwork to Mr. Thomas.

18 MR. THOMAS: Judge, we have acknowledged receipt of
19 the indictment. We acknowledge that the -- the maximum
20 penalties are as she stated, and so we can wait to execute the
21 documents.

22 THE COURT: Very well. I'll direct that the
23 documents be prepared, submitted, signed, and filed so that
24 the record is complete, but I'll accept the acknowledgement on
25 the record.

1 MS. MARION: Thank you.

2 THE COURT: The defendant having waived a formal
3 reading of the charging documents and standing mute, his plea
4 of -- a plea of not guilty is entered in his behalf.

5 Have counsel received copies of the Pretrial
6 Services Report and Recommendation?

7 MS. MARION: Yes, your Honor.

8 MR. THOMAS: Yes, Judge.

9 THE COURT: Is the government prepared to proceed
10 with the detention hearing?

11 MS. MARION: Yes, your Honor, we are.

12 THE COURT: You may proceed.

13 MS. MARION: Thank you.

14 We'd like to call Ted Brzpzinski to the stand.

15 THE COURT: Mr. Brzpzinski, will you raise your
16 right hand, sir?

17 **EDWARD BRZPZINSKI, GOVERNMENT'S WITNESS, SWORN**

18 THE COURT: Thank you. Please have a seat in the
19 witness stand, state your full name for the record, and spell
20 your last name.

21 THE WITNESS: Edward Brzpzinski. It's
22 B-r-z-p-z-i-n-s-k-i.

23 **DIRECT EXAMINATION**

24 BY MS. MARION:

25 Q. Thank you.

1 Are you employed?

2 A. Yes, ma'am. I'm a special agent with the FBI in Detroit.

3 Q. And how long have you been employed there?

4 A. A little over five years.

5 Q. And as part of your employment, you were assigned to an
6 investigation involving Mr. Nagi. Is that correct?

7 A. That's correct.

8 Q. Could you tell the Court specifically where you're at,
9 what group, what you do, and how you came to be involved in
10 the investigation?

11 A. I work on the Gangs Criminal Enterprise Squad with FBI
12 Detroit Division, and we have a criminal enterprise
13 investigation on the Highwaymen Outlaw Motorcycle gang, and
14 Mr. Nagi was identified as a member of the gang involved in an
15 array of activities, to include drug trafficking.

16 Q. Okay. Could you start with or tell the Court when
17 exactly your involvement in the investigation began?

18 A. It was approximately August of last year. We started
19 wiretaps on Mr. Nagi's phone in October of last year.

20 Q. Okay, and as part of the investigation, what steps did
21 you or your agency take? I noticed you mentioned wiretaps.
22 Were there other steps that were taken as well?

23 A. Wiretaps. We had informants that made purchases of
24 narcotics from Mr. Nagi and surveillances where we interdicted
25 shipments of drugs that Mr. Nagi had delivered or possessed.

1 Q. Okay. And in terms of the investigation itself, you said
2 that it went back probably about a year ago?

3 A. Approximately.

4 Q. August 2000 -- August 2005?

5 A. Yes, roughly.

6 Q. As part of the investigation, did you conduct background
7 checks or personal history checks on Mr. Nagi?

8 A. Yes, we did.

9 Q. Can you give the Court whatever information you have
10 regarding Mr. Nagi's background?

11 A. Mr. Nagi was born in the State of New York. He's got
12 family connections over in Yemen. From our information from
13 other law enforcement personnel along with source information
14 is that he has some pretty strong political connections over
15 in Yemen, and his -- currently his brother is over there in
16 Yemen.

17 Q. And under what circumstances is his brother over there,
18 if you know?

19 A. From my understanding, his brother fled to Yemen when
20 D.E.A. was looking at him for possible drug charges.

21 Q. Okay. And you said "law enforcement information." Do
22 you have any specific information from a particular law
23 enforcement agency relative to Mr. Nagi's connection to Yemen?

24 A. Yes. I got information from the Troy Police Department
25 that Mr. Nagi personally told a police officer up there that

1 if he was ever to get into a lot of trouble, he could just go
2 to Yemen because he's got, you know, big-time political ties
3 over there and the U.S. could never bring him back.

4 THE COURT: Which Mr. Nagi are we talking about?

5 THE WITNESS: Aref Nagi.

6 MS. MARION: Aref Nagi. This Mr. Nagi.

7 BY MS. MARION:

8 Q. So his brother is already there, correct?

9 A. That's correct.

10 Q. Okay, and this is -- your testimony is focusing now on
11 Mr. Aref Nagi, who is present in court?

12 A. That is correct.

13 Q. Okay. Can you give the Court an idea of his family
14 background or who he may live with or where he may live?

15 A. Mr. Nagi-- Aref Nagi has listed as a primary residence up
16 in Sterling Heights where his wife lives up there, and I --
17 he's got a young child, I believe, who's about one years [sic]
18 old and a couple other children. I -- I believe Nasser Nagi
19 lived with him from time to time, but he also has a house down
20 in Dearborn where he stayed with one of his girlfriends by the
21 name of Shannon Boreal [ph. spelling], and then he also lived
22 out in Westland on Floraine [ph. spelling] with Monica Zuk,
23 who was one of his girlfriends at the time.

24 Q. Okay. And this was during the course of your
25 investigation?

1 A. That's correct.

2 Q. Okay. Do you have any information relative to any
3 business dealings or employment history Mr. Nagi may have?

4 A. Mr. Nagi is the at least part owner if not the sole owner
5 of the Pancho Villa Restaurants, one in Sterling Heights and
6 one in Dearborn.

7 Q. And you said that this investigation began as an
8 investigation of the Highwaymen, correct?

9 A. That's correct.

10 Q. And that Mr. Nagi -- during your investigation, you
11 learned he was associated with them?

12 A. We learned that he was a vice president of the Detroit
13 Chapter at the time that we started our investigation, that he
14 was involved in narcotics trafficking.

15 Q. Okay. And start back with that. As the vice president
16 of the Detroit Chapter, what exactly does that mean?

17 A. It puts him in a respected position of power within the
18 -- the Highwaymen group, that he was able to give orders to
19 send --

20 MR. THOMAS: Objection. Foundation.

21 BY MS. MARION:

22 Q. How many months of wiretaps did you listen to?

23 A. Approximately nine.

24 Q. And how many calls involved Mr. Nagi?

25 A. Roughly thirty thousand.

1 Q. Okay. Were any of those calls centering on the
2 Highwaymen or his association with the Highwaymen?

3 A. Yes, they were.

4 Q. Okay. Is that how you gained your information?

5 A. Partially.

6 Q. Okay. Would it be fair to say that information was
7 obtained from other sources, from training or knowledge of how
8 motorcycle associations work and function?

9 A. Correct. And -- and, you know, sources that were members
10 of that organization also.

11 Q. Okay. And that's your basis for this testimony.

12 A. Correct. And with the -- the intercepts on the wires
13 where he identified himself as a member, as a vice president,
14 having a lot of power in the club to give people orders to
15 pretty much do whatever he wanted to tell them to do.

16 Q. Okay. And -- and what would some of those -- what would
17 some of the typical orders be that somebody in a position of
18 authority would give?

19 A. It could be anything from mopping the floor at the
20 clubhouse to going to beat somebody up for the club or
21 potentially shoot somebody for the club.

22 Q. Okay. Do you have any specific instances that you can
23 recall where Mr. Nagi either gave an order or was involved in
24 any acts of violence that were, I guess, part of the club
25 responsibilities or part of the belonging to the Highwaymen?

1 A. I know there -- there was one at his Pancho Villa
2 Restaurant in Dearborn. He went with a couple of members down
3 there and beat up one of the cooks and allegedly stabbed him
4 and threw him out in the dumpster.

5 Q. And when was that, if you know?

6 A. I don't remember. During the time frame that our
7 wiretaps were up, I -- off the top of my head, I don't
8 remember the exact month.

9 Q. So it would have been sometime between October 2005 and
10 May 2006?

11 A. That's correct.

12 Q. Okay. Were there any other instances, even if not
13 associated with the Highwaymen, where Mr. Nagi discussed or
14 was involved in acts of violence?

15 A. There's numerous calls, where, you know, he discusses
16 punching someone out at a bar. You know, one specific call I
17 remember where he's having an argument or, you know, his --
18 his words were "a beef with" some unknown individuals, and he
19 called his son Nasser and asked him to bring down an AK-47
20 assault rifle to him and just-- I mean, just numerous
21 instances where he's got guns, where they were at a bar in --
22 I believe it was either Allen Park or Lincoln Park where shots
23 were fired in -- in the air. You know, they left in their
24 truck and were pulled over by the police. He made a comment
25 that, "Luckily I got rid of mine," before the police stopped

1 him, just numerous instances where he's -- he's possessing a
2 firearm.

3 Q. In terms of his background, do you know if he has any
4 prior criminal history?

5 A. I know he was on probation for, it was --it was, I
6 believe a cocaine and a weapons charge out of Detroit.

7 Q. I'm sorry. I couldn't hear you.

8 A. A cocaine and a weapons charge out of Detroit.

9 Q. Okay.

10 A. And I believe there was another narcotics possession. I
11 think it might have been in the State of New York, but I'm not
12 positive.

13 Q. Okay. And he was on probation to the -- for that charge
14 during the course of your investigation?

15 A. That's correct.

16 Q. Now, you said that there were -- there was an instance
17 where -- or an incident where he asked Nasser to bring him an
18 AK-47. Nasser is his son, correct?

19 A. That's correct.

20 Q. Okay. And then there was another incident where he was
21 talking on the phone about a shooting in Allen Park, Lincoln
22 Park, somewhere in there?

23 A. Correct.

24 Q. And do you know of any other instances where Mr. Nagi has
25 had firearms?

1 A. There were probably, honestly, too many to count with --
2 where he's referred to having or being heated up, you know,
3 having two guns on him, calling people to go pick them up,
4 calling people to go pick up ammunition for the guns that he
5 had.

6 Q. Now, in terms of the types of narcotics, you said that
7 the investigation entailed the use of informants, wiretaps,
8 and other things. Were there also purchases made from
9 Mr. Nagi?

10 A. Yes.

11 Q. And what type of controlled substances did he typically
12 deal in?

13 A. Marijuana, cocaine, Ecstasy, Viagra.

14 Q. Okay. And during the course of your investigation, say
15 from October through May, approximately how much would he deal
16 in, say, any given month?

17 A. It's difficult to say. I mean, we -- you know, one
18 month, he'd -- he'd probably do sixty to a hundred pounds of
19 marijuana, and the next month he'd be waiting for a shipment.

20 Q. Okay. If you recall or -- or if you know, was there any
21 one particular incident where there was a large shipment of
22 controlled substances that you either intercepted it on the
23 wiretap or got source information or both?

24 A. Well, there were a couple that, you know, he -- at the
25 beginning that we know that he got sixty pounds of marijuana,

1 and that was probably in October, November.

2 MR. THOMAS: Your Honor, if I may, I heard "they."
3 I heard a question they talked to Mr. Nagi, but I heard an
4 answer "they." I don't know whether that was Mr. Nagi or it's
5 alleged to be somebody on his behalf, and I think that might
6 be important for the Court to know.

7 MS. MARION: I'll clear it up.

8 THE COURT: Thank you.

9 BY MS. MARION:

10 Q. Okay. When you say "they," who are you referring to?

11 A. Mr. Nagi, and it would have been Monica Zuk at the time.

12 Q. Okay. Were there, to your knowledge, any narcotics
13 dealings involving Mr. Nagi at the Highwaymen clubhouse?

14 A. Yes, numerous, according to source information.

15 Q. Okay. And if you recall, were there any large shipments
16 that took place at that clubhouse?

17 A. There was an incident back in I believe it was April of
18 last year where the source reported that there was a tractor
19 trailer filled with cocaine that had pulled up to the back of
20 the clubhouse, and Mr. Nagi was there to receive the shipment
21 along with a couple other guys.

22 Q. Okay. And you said that when you began the
23 investigation, that Mr. Nagi was the vice president for the
24 Detroit chapter, I believe.

25 A. That's correct.

1 Q. Does he still maintain or hold any type of position with
2 the Highwaymen at this point?

3 A. He -- at this point, he's -- he's still a member, and he
4 would be considered an honorary member, which after five years
5 you -- you become an honorary member, which gives you a more
6 respected position in the club, where you don't have to, you
7 know, go to as many functions. You know, kind of lets you
8 freelance a little more.

9 Q. Okay. Now, as a part of the investigation and -- and
10 part of unsealing these indictments, you obtained search
11 warrants. Is that correct?

12 A. That's correct.

13 Q. Okay. And one of those search warrants was for
14 Mr. Nagi's residence?

15 A. Yes.

16 Q. I guess there were several search warrants.

17 A. The -- we had one for the house in Sterling Heights, yes.

18 Q. Okay. And were you, in fact, part of that search?

19 A. I was not at that location.

20 Q. Yeah, but you know agents that were part of that?

21 A. That's correct.

22 Q. Okay. And do you know what, if anything, was obtained
23 from that location?

24 A. They had twenty-nine firearms at that location: assault
25 rifles, shotguns, handguns.

1 MS. MARION: Okay. If I could, your Honor?

2 THE COURT: You may.

3 BY MS. MARION:

4 Q. I'm going to hand you these and just ask if you can tell
5 what these are.

6 Let me backtrack for a moment. You are the case
7 agent on this investigation, correct?

8 A. That's correct.

9 Q. So that even though you may not have been present at a
10 scene, any evidence taken from that scene would have been, I
11 guess, screened through you?

12 A. Yes, eventually.

13 Q. Okay, eventually. So you've had an opportunity to review
14 the reports or notes or talk to the agents who were present at
15 that scene?

16 A. That's correct.

17 Q. Okay. So -- and those pictures were taken of -- those
18 pictures are items that were found at that location?

19 A. That's correct.

20 Q. Okay. Now, you since have had an opportunity to do some
21 history on some of those firearms, correct?

22 A. That's correct.

23 Q. And what have you been able to discover so far?

24 A. Only four of them were legally registered to Aref Nagi.
25 Many of them weren't, and I believe four for sure, maybe five,

1 were reported stolen.

2 Q. Okay. Now, you've testified relative to some of his
3 background and the drug-dealing and some of the acts of
4 violence. Another point I would like to direct your attention
5 to is witness safety or informant safety. Is there anything
6 from the wiretaps or from your investigation or source
7 information that would lead you to believe that Mr. Nagi or
8 his associates present a threat or a risk to any of the
9 witnesses or informants in this case?

10 A. I believe so. Through source information and through the
11 wire intercepts when -- during the course of our investigation
12 when things were happening with search warrants or
13 interdictions, they were trying to figure out who it was and
14 said they were going to deal with the people when they figure
15 out who it was, and there's other conversations with -- with
16 sources with Mr. Nagi discussing who they may think the, you
17 know, snitches or government informants are and that they need
18 to find out who it is and -- and take care of them.

19 Q. Okay, and when you say "they," are you referring to
20 Mr. Nagi and the Highwaymen --

21 A. Yes, as a --

22 Q. -- a group of individuals?

23 A. Yes.

24 Q. Okay. And typically, with that group, who would be
25 involved in those discussions? Would that be the -- I guess,

1 the -- the higher-up people?

2 A. It would be the leadership and what they consider the --
3 the committee, which meets with the -- the chapter presidents,
4 and the committee helps make all the decisions on, you know,
5 courses of actions, violence, whatever course of actions that
6 the Highwaymen may take on any particular issue, and as
7 Mr. Nagi didn't run for reelection for vice president of
8 Detroit, he was appointed to that committee.

9 Q. So he still held a position of authority, just not vice
10 president?

11 A. That's correct.

12 Q. Okay.

13 MS. MARION: I have nothing further, your Honor.

14 THE COURT: Thank you.

15 You may cross-examine.

16 **CROSS-EXAMINATION**

17 BY MR. THOMAS:

18 Q. Agent Brzpzinski, you've -- you've been involved in this
19 investigation since August of last year.

20 A. Since it opened.

21 Q. And are you the agent in charge of the case?

22 A. Yes, sir.

23 Q. It's my understanding that you've been testifying not
24 only from your own personal knowledge but also from what other
25 people have told you.

1 A. That's correct.

2 Q. And to the extent that you've been told by other agents,
3 these are agents that you're working with. Is that right?

4 A. That's correct.

5 Q. You've also received information from other informants.

6 A. Correct.

7 Q. These informants are obviously giving you information
8 based on what they allegedly know. Is that right?

9 A. That's a fair statement, yes.

10 Q. Are any of these informants paid informants?

11 A. Yes.

12 Q. Are any of these informants, informants who are trying to
13 work off a deal --

14 A. Yes.

15 Q. -- for potential charges that they have that they want to
16 get reduced?

17 A. Yes.

18 Q. Are any of these informants offered any other incentives
19 by the -- by the federal government: for example,
20 consideration towards other matters, whether they be federal
21 or state?

22 A. I'm not sure what you mean, "other matters."

23 Q. I'm talking about other state charges that they --

24 A. We have -- we have informants in this -- in this case
25 that, you know, are motivated by -- to help us based on it

1 being the right thing to do and --

2 Q. That's not what I asked you.

3 A. -- and also --

4 Q. That's not what I asked you. What I asked you is whether
5 they were motivated as a result of working off a deal, and you
6 said, "Yes." Is that right?

7 A. One of them may be, yes.

8 Q. Okay. And whether or not they had potential financial
9 rewards, yes?

10 A. I wouldn't describe it as "rewards." I would describe it
11 as paying expenses to be able to assist us. The -- the
12 informants -- we don't have informants that were motivated by
13 money to assist us, no.

14 Q. How do you know that? Can you read informants' minds?

15 A. No.

16 Q. I just asked you a simple question. Did you pay any
17 informants money?

18 A. Yes.

19 Q. Are any of these informants drug users?

20 A. Not to my knowledge.

21 Q. Any of these informants have a history of drug use or
22 drug abuse?

23 A. No.

24 Q. Not one.

25 A. No.

1 Q. In your becoming familiar with Mr. Nagi, you indicated
2 that you -- you knew that he was living or at least he had an
3 address on -- in Sterling Heights. Is that right?

4 A. That's correct.

5 Q. And you had surveillance of that address at different
6 times during the investigation.

7 A. A couple times, yeah.

8 Q. During that period of time, did you ever see Mr. Nagi
9 there?

10 A. Yes.

11 Q. Okay. You tried to indicate that he was living other
12 places and not living at the Sterling Heights address. Is
13 that -- is that the -- the gist of your testimony on direct?

14 A. Yes, he wasn't living at that location.

15 Q. And yet you try to link him to the weapons that are at
16 that address.

17 A. That was his permanent listed address, and there's a --

18 Q. During your investigation, did you ever see him in
19 possession of a firearm?

20 A. Did I see him? No.

21 Q. Did you ever see him transporting anything that looked
22 like it might be a firearm in or out of that Sterling Heights
23 address?

24 A. No.

25 Q. When you were receiving these wiretaps and the evidence

1 to the effect that he was supposed to be angry at somebody and
2 that he wanted to get guns, did you send surveillance out to
3 document the fact that a gun was actually delivered?

4 A. Not on that one, no.

5 Q. Did you ever document the fact that he was ever in
6 possession of a weapon by having a pretext stop during a time
7 that you thought that he might have a weapon as a result of
8 these wiretaps?

9 A. No.

10 Q. You did do pretext stops in this case.

11 A. From time to time, correct.

12 Q. That is a legitimate and effective means that agents are
13 familiar with and do use at times.

14 A. Correct.

15 Q. You could have done that if you thought that he did have
16 a weapon.

17 A. We could have, yeah.

18 Q. But during the whole time that you were involved in
19 listening to these conversations, surveilling him, and
20 investigating him, you did not have him stopped to determine
21 whether he had a weapon.

22 A. No.

23 Q. And you did not find him in possession of any weapon.

24 A. No.

25 Q. Do you know what the term "puffery" is?

1 A. "Puffery"?

2 Q. Yeah.

3 A. No.

4 Q. Ever have somebody say he's going to kick your ass in the
5 schoolyard?

6 A. Yeah.

7 Q. I'll bet you he didn't try, as big as you are.

8 A. Well, from time to time, maybe.

9 Q. But -- but -- but do you understand the concept?

10 A. I understand the concept.

11 Q. A person might be angry and might say something that they
12 really don't mean.

13 A. Right.

14 Q. You knew that Mr. Nagi was born in the United States,
15 correct?

16 A. Correct.

17 Q. He's of Yemeni descent.

18 A. Correct.

19 Q. You know that he is -- is employed and has at least two
20 bars, maybe three.

21 A. I know he owns them.

22 Q. Did you check with the State of Michigan to determine
23 whether or not he'd been -- he has a liquor license?

24 A. I didn't check, but from the wire intercepts, I -- my
25 knowledge is he does.

- 1 Q. These are not insignificant properties, are they?
2 They're -- they're valuable. Would you agree?
- 3 A. I agree.
- 4 Q. Two of the three bars are operating and in business.
5 A. Correct.
- 6 Q. One in Dearborn and one in Sterling Heights.
7 A. Correct.
- 8 Q. You say that his wife lives in Sterling Heights. You
9 were aware, were you not, that there were children living with
10 his wife?
- 11 A. Correct.
- 12 Q. Some of which were his children? Correct?
13 A. I believe so, yes.
- 14 Q. Some of which were their children, correct?
15 A. I'm not positive on the exact --
- 16 Q. Were you aware of the fact that his brother's son, the
17 brother that you said that was a fugitive, is living with him
18 and his wife in Sterling Heights?
- 19 A. I had heard that Aref Nagi was looking after his
20 brother's son, but I wasn't sure where he was living.
- 21 Q. All right. Do you know whether or not he has any
22 educational background?
- 23 A. I believe he's got a Bachelor's degree.
- 24 Q. Do you know where from?
25 A. No, I don't, sir.

1 Q. Did you know whether or not he declared income taxes and
2 paid his taxes?

3 A. I believe -- I believe he did, yes.

4 Q. All right. The Pancho Villas are the two restaurants he
5 has. There was a bar by the name of Instinct Bar. Were you
6 aware of that?

7 A. Yes.

8 Q. Did you have any opportunity to interview or talk to his
9 family?

10 A. No, sir.

11 Q. When he was arrested in this case, was he cooperative
12 with you?

13 A. He wasn't -- I didn't -- I didn't personally arrest him.
14 I didn't hear he was uncooperative.

15 Q. Well, you've been testifying from hearsay, right?

16 A. I -- I didn't -- I didn't hear he was uncooperative.

17 Q. And if he was uncooperative, you think that that might
18 have been important and you might have mentioned that, and it
19 would have been something that you would have found out so
20 that you --

21 A. I'm sure if he was, I would have been told.

22 Q. Okay. You talked about a drug case that he had in
23 New York. Is -- is that right?

24 A. I believe so, yes.

25 Q. Were you aware that it was in 1986?

1 A. I knew it was several years back, yes.

2 Q. And do you understand that he was given probation in that
3 case?

4 A. Correct.

5 Q. And that his probation ended after one year with
6 improvement?

7 A. I'm -- if you say so, sir. I don't know.

8 Q. If I say so. You can say so because that would be
9 hearsay, right?

10 A. I -- you have the record in front of you, sir. I don't
11 have his criminal history memorized to what exactly happened
12 when he got probation.

13 Q. Were you -- you were aware of the fact that he was
14 charged in Wayne County with possession of drugs, right?

15 A. Correct.

16 Q. Were you aware of the circumstances surrounding that?

17 A. To an extent, yes.

18 Q. Was it in 2004?

19 A. I believe so.

20 Q. Was it in front of Judge -- Judge Townsend?

21 A. I don't recall the judge's name.

22 Q. Were you investigating the case at that time? I mean,
23 could you -- were you in the background at all in that case?

24 A. We were -- we were -- at that time, we were putting
25 together the background on our investigation.

1 Q. Were you -- were you aware of the fact that he was in
2 possession and received a 74-11 for one-point-three grams of
3 cocaine?

4 A. Yes.

5 Q. And that's all.

6 A. Yes.

7 Q. All right. You were aware that he had a -- a -- a permit
8 to carry a concealed weapon up until that offense.

9 A. Up until that offense, correct.

10 Q. And that the felony conviction was under a statute in
11 Michigan that provided that it not be a criminal record. Were
12 you aware of that?

13 A. Yes, sir.

14 Q. Was the case in 1986 a felony?

15 A. I don't believe so.

16 Q. Was the -- and -- and the case obviously is not a felony
17 in 2004 --

18 A. Correct.

19 Q. -- because it was dismissed.

20 Are you aware of any felony that he's been convicted
21 of?

22 A. Convicted of? No.

23 Q. All right. If I'm not a convicted felon and I have a
24 home, I can have weapons in my home. That's -- that's a right
25 that you have as an American citizen, right?

- 1 A. If you're not a convicted felon?
- 2 Q. Yes.
- 3 A. Right.
- 4 Q. Are you aware when you searched the home that there was a
5 passport there?
- 6 A. There may have been.
- 7 Q. Did you confiscate his passport?
- 8 A. I wasn't at the scene, sir.
- 9 Q. Were you aware that the passport was confiscated?
- 10 A. No, I'm not.
- 11 Q. You indicated that he had told an officer in Troy that he
12 had political ties in Yemen.
- 13 A. Correct.
- 14 Q. Are you aware of whether or not he's ever traveled to
15 Yemen?
- 16 A. I don't know if he has or not.
- 17 Q. Are you aware who these political ties are in Yemen?
- 18 A. Allegedly a general in the army.
- 19 Q. And -- and when was it that this was alleged to have
20 occurred that he said this?
- 21 A. Sometime over the last year or two. I got a call from
22 the officer, actually, this morning that told me the
23 information.
- 24 Q. Now, did this officer call you, or did you reach out for
25 him?

- 1 A. He called me.
- 2 Q. He -- did he read about this in the newspaper?
- 3 A. I don't know how he found out about it.
- 4 Q. We had a conversation over at the side and I asked you
5 the question whether or not at the time that this indication
6 was made that -- that he had this person in Yemen that was
7 political, was there any report ever made of that, any written
8 report that you're aware of?
- 9 A. We -- we have written reports that he has ties to people
10 in Yemen, yes.
- 11 Q. No, no, no.
- 12 A. Oh, that the police officer --
- 13 Q. I want to start over again. Yeah.
- 14 A. -- that the police officer made?
- 15 Q. Yeah.
- 16 A. I'm not aware if he did or not.
- 17 Q. Obviously, his brother is in Yemen.
- 18 A. Correct.
- 19 Q. All right. We talked about phone conversations that you
20 might have overheard, or there might be phone records showing
21 phone calls to Yemen. Correct?
- 22 A. Correct.
- 23 Q. The brother is a fugitive. Is that --
- 24 A. I'm not sure if he's in fugitive status or not.
- 25 Q. And there is nothing inappropriate about his brother

1 being in Yemen, is there?

2 A. My understanding, he was on a tether when he fled to
3 Yemen.

4 Q. Well, then I want to take you back. Then you're --
5 you're indicating that it was inappropriate that he fled to
6 Yemen.

7 A. My understanding it was, yes.

8 Q. But did his brother have two restaurants and a bar in
9 Michigan?

10 A. From my understanding from the wire intercepts, his
11 brother was part owner of that and left them -- left them to
12 Aref when he took off.

13 Q. He left his children and his mom.

14 A. Right.

15 Q. But Aref has children here in -- in Michigan.

16 A. Right.

17 Q. And he's taking care of his brother's children, correct?

18 A. I -- that's what you're saying, sir. I'm not going to
19 argue that.

20 Q. And are you going to argue with me about whether he has
21 other family members that are here in Michigan?

22 A. No.

23 Q. As many as eight other family members who are here and
24 willing to talk about whether or not he's going to flee. You
25 wouldn't argue with that either.

1 A. No.

2 Q. Are you aware of any other real estate that he has
3 besides the house in -- in -- in Sterling Heights and the --
4 the bar and the -- the two restaurants?

5 A. He owned a house on Bliss, and he used to own the -- the
6 Highwaymen Clubhouse out in Irish Hills, but I believe that
7 has been sold.

8 Q. You ever aware in any of the cases that he's ever had --
9 any of the cases that he's ever had, whether he be arrested,
10 charged, convicted, released, that he has never appeared for
11 an appearance when he was given a court appearance?

12 A. I'm not aware of it, no.

13 Q. Were you aware that he had training at Michigan Career
14 Institute?

15 A. No.

16 Q. Were you aware that he was an honor student there?

17 A. No.

18 Q. In 1993.

19 A. No, sir.

20 Q. Were you aware that he is a master automobile mechanic
21 and he has a license with the State of Michigan?

22 A. No.

23 Q. Were you aware that he had a full scholarship at Macomb
24 Community College and had graduated with high honors with a
25 3.83 grade point average?

1 A. No, sir.

2 Q. Were you also not aware of the fact that the Society of
3 Manufacturing Engineers had given him an Outstanding Student
4 Service Award in 1995 and 1996?

5 A. Unaware of that, sir.

6 Q. You are.

7 A. Unaware.

8 Q. Unaware.

9 Did you know that in 1996 he was honored at Macomb
10 County Community College in a recognition dinner, and he was
11 one of the named students that was being honored?

12 A. Did not know that.

13 Q. Did you know that he made the Dean's List at Wayne State
14 University thereafter in 1997 and '98?

15 A. No, sir.

16 Q. And that he received the Golden Key National Honor
17 Society Award at Wayne State University in 1997?

18 A. Unaware.

19 Q. Were you aware that this is during the time that you're
20 alleging that he was intimately involved with the Highway
21 Motorcycle Club? Were you aware of that?

22 MS. MARION: Objection, your Honor. I think he said
23 "1997."

24 THE WITNESS: I -- I wasn't looking at his --

25 MR. THOMAS: I said "1997."

1 MS. MARION: And we --

2 MR. THOMAS: Let him answer.

3 THE WITNESS: I'll answer.

4 BY MR. THOMAS:

5 Q. Can you answer that?

6 A. In 1997, we didn't have an open case on that.

7 Q. Doesn't matter. Were you aware that he was supposed to
8 have been involved --

9 A. In -- in --

10 Q. -- by history, by hearsay, by any other witness to the
11 effect that he was supposed to have been involved with the
12 Highway Motorcycle Club?

13 A. In 1997?

14 Q. Yes, sir.

15 A. My information that he wasn't involved with them in 1997.

16 Q. He was not.

17 A. That's my understanding.

18 Q. Not.

19 A. Not.

20 Q. Did you know that he graduated from Wayne State
21 University in 1998 with a Bachelor of Science?

22 A. No, sir.

23 Q. With honors.

24 A. No, sir.

25 MS. MARION: Your Honor, if we want to save time, he

1 can just submit all these as part of his record for the
2 detention hearing.

3 THE COURT: I'll let Mr. Thomas decide how to
4 present his evidence.

5 MR. THOMAS: I mean, Judge, I'm -- I'm going to
6 move, but I -- I think that the fact that he did not know
7 these things is important, as it relates to the investigation,
8 so I'm going to move through maybe five more exhibits and I'll
9 be done.

10 BY MR. THOMAS:

11 Q. Did you know that Wayne State University had given him an
12 award for community service?

13 A. No, sir.

14 Q. And that Poncho Villas Restaurants are -- are a
15 corporation?

16 A. Correct.

17 Q. You had indicated that you thought that his brother was a
18 partner in the Poncho Villa Restaurants?

19 A. From a couple of the intercepted telephone calls, yes.

20 Q. Did you take time to go over to the State of Michigan and
21 take a look at the corporate filings for Poncho Villas --

22 A. Not at this point, sir.

23 Q. -- to see if you could corroborate what it was that you
24 heard from somebody on a phone call?

25 A. At the time of the investigation, at that point, we

1 didn't do it because we didn't want to jeopardize our
2 investigation.

3 Q. Well, how -- how do you jeopardize your investigation by
4 going to the Michigan Department of Commerce and asking them
5 for something that is a public record?

6 A. We believe that there's no -- some corruption issues
7 within the Highwaymen, and they have connections within
8 different departments, and we didn't want to jeopardize the
9 fact that we were looking into Aref Nagi or the Highwaymen by
10 going and pulling any corporate records on anything.

11 Q. I'm going to have you take a look at proposed Exhibit
12 Number N, which are the Articles of Incorporation.

13 MR. THOMAS: May I approach, Judge?

14 THE COURT: You may.

15 BY MR. THOMAS:

16 Q. This is proposed Exhibit N. Take a look at the filing
17 dated January 6, 1998.

18 When was it that Mr. Nagi's brother had fled?

19 A. When did he flee?

20 Q. Yes.

21 A. It was in the last couple years. I'm not sure of the
22 exact date.

23 Q. All right. Take a look on there and see whether or not
24 you see his name anywhere on the corporate filing, any other
25 name other than Aref Nagi on that document.

1 A. No, sir.

2 Q. Do you think it might have been important before you
3 testified under oath about whether or not his brother was
4 involved with the corporation, that you might have looked at
5 some corporate record to determine whether or not what you'd
6 learned on the wiretap was verifiable?

7 A. I just told you what I heard on the wiretap, sir, that
8 his brother left him with debt from the restaurants, so I
9 assumed that he was involved in the restaurant business with
10 him.

11 Q. Do you know what Danaj [ph. spelling] Investments is?

12 A. I believe it's his incorporation.

13 Q. And what is it that that -- that investment company does,
14 if you know?

15 A. I have no idea.

16 Q. Were you aware that they do janitorial services?

17 A. No.

18 Q. And that money is generated as a result of that?

19 You did not -- you were not -- I didn't --

20 A. I'm -- I -- I don't believe that to be the case, but I'm
21 not aware of that, no.

22 Q. Were you aware that there was a filing with the Michigan
23 Department of Labor and Economic Growth in 1998 by Mr. Nagi on
24 behalf of that Danaj Investments, L.L.C.?

25 A. No, sir.

1 Q. Instinct Bar and Grill is a Michigan Corporation as well,
2 is it not?

3 A. I believe so.

4 Q. Any other names on that that you know of?

5 A. I know that a guy by the name of Pip was running that the
6 entire time our investigation was up and running.

7 MR. THOMAS: Your Honor, I'm moving to admit
8 Exhibits A through T.

9 MS. MARION: No objection.

10 MR. THOMAS: These exhibits are being tendered to
11 show significant community ties and -- and background relating
12 to Mr. Nagi. May I tender them to the Court?

13 THE COURT: You may. A through T?

14 MR. THOMAS: G.

15 THE COURT: All right.

16 MR. THOMAS: I'm sorry. A through T.

17 THE COURT: T. -- Are admitted without objection.

18 (Defense Exhibits A-T, various documents, received at
19 about 2:06 P.M.)

20 BY MR. THOMAS:

21 Q. Were you aware of any health problems that the defendant
22 has?

23 A. Specific health problems? No.

24 Q. Were you aware that in 2003 that he had his spleen
25 removed?

1 A. I recall hearing something about that, yes.

2 Q. Are you aware of what the nature of treatment is when
3 somebody has their spleen removed?

4 A. No, sir.

5 Q. Are you aware that there is significant medication that a
6 person has to take in order to replace that which is lost?

7 A. If you say so. I don't know.

8 Q. Do you have any opinion on the quality of medical care in
9 Yemen as it applies to maybe compared to the United States?

10 A. Never been there, sir.

11 Q. Do you think it would be reasonable to assume that a
12 person would rather be in the United States so that he could
13 continue to receive medical treatment rather than go to a
14 foreign country?

15 MS. MARION: Your Honor, I'm going to -- your Honor,
16 I'm going to object at this point only because I do know that
17 when you have your spleen removed, it doesn't require any
18 drugs or medical treatment after.

19 THE COURT: Objection is sustained.

20 BY MR. THOMAS:

21 Q. Agent Brzpzinski, did you find any drugs in his home in
22 Sterling Heights?

23 A. I know there was marijuana found. I -- I don't believe
24 it was at Sterling Heights. I think it was at the Dearborn
25 address, but I'm not positive on that.

1 Q. This thing about beating of a man in Dearborn and
2 throwing him into the dumpster, was there any charges that
3 were laid as a result of that alleged event?

4 A. Not at this point, no.

5 Q. Did you verify the fact that a person was stabbed?

6 A. Through the source information.

7 Q. I mean, is there a -- a person who you looked at and you
8 could see that he went to the doctor because he'd been knifed
9 and -- and received medical treatment as a result of being
10 knifed?

11 A. Again, we know who that individual is, sir, and it was
12 not pursued because at that point in our investigation it
13 would have uncovered the fact that we were actively
14 investigating the Highwaymen and Aref Nagi.

15 Q. So what you're telling me is it was never verified.

16 A. No, but it will be. It was verified --

17 Q. We're here today --

18 A. -- through reliable sources.

19 Q. -- on what we know now?

20 A. It depends on your definition of "verified." It was
21 verified through very reliable sources, yes.

22 Q. Is this guy a drug user?

23 A. No.

24 Q. Was this guy given money? Was this guy given a deal?

25 MS. MARION: Are we talking about the guy that was

1 beaten or the -- who are we talking about here?

2 MR. THOMAS: We're talking about the verifier.

3 THE COURT: Which question do you want answered?

4 MR. THOMAS: All three. I'll do them one at a time.

5 THE COURT: Thank you.

6 BY MR. THOMAS:

7 Q. Was this guy offered money?

8 A. Offered money?

9 Q. Yes.

10 A. He was not offered money.

11 Q. Was he --

12 A. He was paid money from time to time.

13 Q. Okay. So he was given money, which is -- I think that
14 might be worse, wouldn't it? He was given money.

15 A. That's a matter of opinion, I guess.

16 Q. Okay. He was given -- was this a person that had a
17 criminal case pending?

18 A. No.

19 Q. Was it a person that was -- it was contemplated that a
20 criminal case would be pending?

21 A. No.

22 Q. Was this person ever a user of -- of narcotics?

23 A. Not to my knowledge.

24 Q. Okay. This tractor that was supposedly filled with
25 cocaine and weighed tons, was this -- was this -- was this

1 tractor-trailer -- was it ever confiscated?

2 A. No. That was in, I believe it was, April of last year.

3 Q. So there's nothing to verify that that in fact did occur.

4 No seizure of cocaine, correct?

5 A. Correct.

6 Q. No photographs of the trailer.

7 A. Correct.

8 Q. It's just source information based on informants'
9 statements.

10 A. Correct.

11 Q. All right. Were you aware that the Highwaymen Motorcycle
12 Club is a social club as well as what it is that -- that you
13 allege that they were involved in?

14 A. The Highwaymen is an outlaw motorcycle gang, sir.

15 Q. Did you know that they raised money for a slain police
16 officer named Mark Sewers [ph. spelling]? Did you know that?

17 A. I was aware that they had a fund raiser.

18 Q. Did you know that he's a -- a Detroit police officer that
19 was shot, right?

20 A. Yes.

21 Q. Were you aware that they raised money -- in -- in -- in
22 the -- in the thirty thousand phone conversations that you
23 have of my client, raised money for Make-a-Wish Foundation in
24 Lansing? Were you aware of that?

25 A. No, I wasn't, actually.

1 Q. Were you aware that they raised money for the Cancer
2 Society and Saint John's Hospital?

3 A. No.

4 Q. Were you aware of that?

5 A. No.

6 Q. That's not in the wiretaps.

7 A. Not to my recollection, no.

8 Q. So if you don't know about them, you probably don't know
9 about Toys for Tots either.

10 A. I'm aware they had a Toys for Tots at the clubhouse, yes.

11 Q. But that they -- they had a fund raiser for Toys for
12 Tots?

13 A. They had a Toys for Tots event at the clubhouse, yes.
14 That was --

15 Q. Is there any other events --

16 A. -- intercepted on the wire.

17 Q. -- relating to charity that -- that you know of that we
18 don't know, that we haven't mentioned now?

19 A. I -- I know they -- not that I'm aware of. I mean,
20 charity -- if -- I mean, they collect money for their brothers
21 that are in jail, and -- and I guess that would be considered
22 charity because they send them money.

23 Q. You knew that wasn't what I was asking about.

24 A. No, I didn't, sir.

25 MR. THOMAS: Nothing further, Judge.

1 THE COURT: Redirect?

2 MS. MARION: Just a few, your Honor.

3 **REDIRECT EXAMINATION**

4 BY MS. MARION:

5 Q. Agent Brzpzinski, were you aware that Articles of
6 Incorporation filed with the State of Michigan don't have to
7 include every single person's name on it?

8 A. Yes.

9 Q. You were asked about the informants being paid money.
10 What types of monies are informants paid by your agency, and
11 what is the purpose of the payment?

12 A. Either expense or service.

13 Q. What would be an expense?

14 A. To cover gas for driving around, meals, just any -- any
15 expense incurred while they're out, you know, in this case,
16 you know, with the Highwaymen going to, you know, bars or
17 whatever they're doing, you know --

18 Q. Could that also --

19 A. -- so they don't spend money out of their own pocket.

20 Q. I'm sorry. Could that also include paying for cell
21 phones?

22 A. Yes.

23 Q. All right. And that would be so that they would have a
24 means of continuing to communicate with you and with other
25 individuals, correct?

1 A. That's correct.

2 Q. All right. Now, you were asked about, I believe, the
3 brother fleeing, and then you were asked a series of
4 questions: "Well, Mr. Nagi has family here, correct?" It was
5 Mr. Nagi's brother that fled, right?

6 A. That's correct.

7 Q. Okay. So and he also left family and businesses and
8 other things behind?

9 A. Correct.

10 Q. And when you were asked about the Articles of
11 Incorporation didn't list Mr. Nagi's brother, what information
12 do you have that Mr. Nagi's brother left him in debt or had an
13 interest anyways in Poncho Villas? Where did that come from?

14 A. An intercepted call where Aref Nagi is complaining that
15 his brother left him with those restaurants and left him with
16 a ton of debt from them --

17 Q. Okay.

18 A. -- along with the Instinct Bar.

19 Q. Okay. In regards to the Toys for Tots and the Make-a-
20 Wish Foundation, were there wiretaps on other individuals'
21 phones as well as Mr. Nagi's?

22 A. Yes.

23 Q. Okay. And specifically, who -- who was that other
24 individual?

25 A. Robert Burton.

1 Q. And who is he?

2 A. He's a Highwaymen member.

3 Q. Okay.

4 A. A former west side president.

5 Q. Okay. An associate with Mr. Nagi at all?

6 A. Yes.

7 Q. Okay. Did Mr. Burton ever talk about Toys for Tots,
8 Make-a-Wish, anything like that?

9 A. Just more in passing of, you know, "We have the Toys for
10 Tots. Are you going to stop at the clubhouse tonight?" I
11 mean, nothing beyond that.

12 Q. Okay. You were also asked about doing pretext stops to
13 determine whether or not Mr. Nagi had any gun. Was there any
14 reluctance on your part or -- or the -- the part of the
15 investigation to actually conduct pretext stops?

16 A. Absolutely.

17 Q. Okay. And what was the reason for that?

18 A. A couple. One, we -- we didn't feel the need to alert
19 him or heat him up that we were looking at him, and depending
20 on the area he was at, again I -- we have numerous allegations
21 of police corruption that he may be associated in. Pretty
22 difficult to just go to a police department and ask them to
23 pull him over, do a pretext stop, when you don't know who
24 you're talking to.

25 Q. Okay. Would it be fair to say that some of those avenues

1 in terms of public corruption are being investigated and may
2 ultimately be charged?

3 A. Absolutely.

4 Q. Okay. I think you were asked if that -- you -- the
5 answer you stated, that was also the reason for not --

6 MR. THOMAS: Well, your Honor, I think that the
7 purpose of this -- this -- this hearing doesn't go to what's
8 going to be charged or what they think might be charged. I --
9 I think that that's totally inflammatory and irrelevant.

10 MS. MARION: I'm bringing it up merely --

11 THE COURT: I'll overrule the objection. You raised
12 the issue of efforts on behalf of the Highwaymen to -- to
13 raise money for police officers, and I think the government is
14 -- is permitted to explore it.

15 BY MS. MARION:

16 Q. I believe you also said that that -- the -- the -- not
17 wanting to jeopardize the investigation was also the reason
18 for not getting the Articles of Incorporation.

19 A. Correct.

20 Q. Okay. And again, that's just simply because you don't
21 know who you're dealing with or what ties they may have?

22 A. That's correct.

23 Q. Okay. Oh, final thing. You were asked about tying the
24 guns to Mr. Nagi, the -- the guns that were found at
25 Sterling Heights. Is there anything through your

1 investigation, be it conversations Mr. Nagi had with Nasser or
2 conversations he had with other individuals, that would tie
3 him to those guns?

4 A. Yes. There's a -- during the course of the
5 investigation, Mr. Nagi was on state probation, and he was
6 talking on the telephone and made the comment that, "I hope
7 they -- I hope they don't go down," or, "I'm glad they didn't
8 go down in the basement," referring to his Sterling Heights
9 house, "and look in that safe, because if they would have
10 found all those guns, I was screwed."

11 Q. Okay. And to your knowledge -- I -- I realize you
12 weren't at the search, but to your knowledge, were the guns
13 that are the subject of the pictures -- were they found in a
14 safe in the basement?

15 A. I believe all but three of them were found in that safe.

16 Q. Okay.

17 MS. MARION: I have nothing further, your Honor.

18 THE COURT: Thank you.

19 You may step --

20 MR. THOMAS: Just a -- just --

21 THE COURT: Oh, you have follow-up?

22 MR. THOMAS: Can I, Judge?

23 THE COURT: You may.

24 MR. THOMAS: All right.

25 **RE-CROSS-EXAMINATION**

1 BY MR. THOMAS:

2 Q. Agent Brzpzinski --

3 A. Yes, sir.

4 Q. -- you say that Mr. Nagi even -- Mr. Nagi had his
5 brother, who was a partner in the businesses that he had,
6 right?

7 A. That's my belief, yes.

8 Q. That's your belief, and your belief is based on something
9 that somebody said on the phone.

10 A. Something that Aref Nagi said on the phone.

11 Q. And -- and -- and you believe everything that was said on
12 the phone.

13 A. Do I believe everything?

14 Q. Yes.

15 A. I don't think that's a fair statement to say.

16 Q. Okay. So -- so then his brother was supposed to be
17 involved with him in the restaurant, working with him hand-to-
18 hand and -- and -- and doing the types of things that partners
19 do in a restaurant. Is that what your implication is by
20 saying that the brother was a partner?

21 A. At -- at the time, yes.

22 Q. Now, I showed you copies of the corporate documents, and
23 the corporate documents don't have his brother's name on it,
24 but you answered the question of Ms. Marion, the fact that,
25 well, that doesn't mean anything: he could have been a

1 participant, and he could have been in the bar, right?

2 A. Right.

3 Q. But you know from your investigation that his brother was
4 in prison from 1988 to 2003, right?

5 A. I -- if you say so. I don't know that for a fact.

6 Q. Well, you -- you -- you know that the brother supposedly
7 is on escape status, so you have to be aware of the fact that
8 he has a criminal history, and you have to be -- in your
9 investigation, didn't you look into the fact that he was in
10 prison?

11 A. I knew he was in Yemen, so to look at someone that was in
12 Yemen wasn't relevant to my investigation.

13 Q. It -- it is now because now you want to say, because he's
14 in Yemen, his brother is going to follow him there, and you
15 say that he'd follow him there because he doesn't have any
16 real interest in the -- in the -- in the restaurant. You have
17 no evidence that the brother had any interest in the
18 restaurant. He was in prison for -- from 1990 -- from 1988 to
19 2003.

20 A. If you say so.

21 Q. Didn't you ever come across that in your investigation?

22 A. I may have, sir. I don't --

23 Q. All right.

24 A. -- remember the exact dates of it. Like I said, I was
25 investigating Aref Nagi and the Highwaymen.

1 Q. Now, you've got an investigation going; multiple
2 jurisdictions are involved. Are -- what are you reading?

3 A. Nothing. I've got a piece of paper in my hand --

4 Q. All right.

5 A. -- from a cough drop.

6 Q. All right. You realize the logic of saying that he's a
7 danger to the community when you have an investigation that's
8 going on from August of 2005 until now, right?

9 A. Right.

10 Q. In those -- in that investigation, if you thought that
11 life was in jeopardy, would you have acted to intervene?

12 A. Yeah. If we knew something was imminent, that it was
13 going to happen, we would have attempted to stop it.

14 Q. So as it relates to the use of the guns, getting the
15 AK-47, going out and going to do harm to these people, the --
16 the alleged stabbing, all right, those are things that you
17 would intervene if you knew that those things were happening.

18 A. If we know prior to them happening, correct.

19 Q. Right. Well, you had surveillance, did you not?

20 A. From time to time, yes.

21 Q. You had wiretaps, did you not?

22 A. Right.

23 Q. For a period of -- how long was it? There was two or
24 three extensions?

25 A. Correct.

1 Q. And yet you did not act.

2 A. We acted when we -- when --

3 Q. You acted at the end. You didn't act to save life or
4 limb when you thought that life or limb was -- was -- was in
5 jeopardy, and that's because you didn't really think that life
6 and limb were in jeopardy.

7 A. That's not true.

8 MR. THOMAS: Nothing further.

9 Thank you, Judge.

10 MS. MARION: One quick question, your Honor.

11 THE COURT: You may.

12 **REDIRECT EXAMINATION**

13 BY MS. MARION:

14 Q. Agent, when you said that of course you would stop
15 anything if you thought it was imminent, when did you discover
16 or when did you find out about these incidents? For example,
17 the stabbing of . . . [unintelligible word], did you find out
18 before or after it happened?

19 A. The day after, and in -- I said the -- now, with the
20 AK-47, we didn't know what house he was at -- at when we
21 intercepted the call, so it was either one of three locations,
22 so --

23 Q. Were you sitting on the wiretap twenty-four hours a day?

24 A. No, I was not.

25 Q. All right. Other agents did it?

1 A. That's correct.

2 Q. You reviewed them when you could get to them?

3 A. I usually reviewed them the next morning.

4 MS. MARION: Nothing further.

5 **RE-CROSS-EXAMINATION**

6 BY MR. THOMAS:

7 Q. Well, you weren't personally sitting on it? You've been
8 testifying from hearsay, right?

9 A. I've listened to every single call that was made on this
10 phone.

11 Q. But as the -- as the -- the listen that was taking place,
12 you've got two agents that are sitting there twenty-
13 four/seven.

14 A. No.

15 Q. You've got agents that are sitting there listening.

16 A. Right.

17 Q. And you're telling me that there was no agent that was
18 involved in listening at the time that any conversation was
19 had regarding drugs or money or guns. Is that what you're
20 telling me? So that you could not interdict because you
21 didn't know what was happening at the time.

22 A. Oh, no. Of course there was an agent there and that, you
23 know, they would advise us from time to time what -- what they
24 thought was pertinent for us to know in case we wanted to go
25 interdict it.

1 Q. Well, and so that's the purpose of having them there, and
2 that is to let you know, while things are hot, that you can --
3 that you can react, right?

4 A. Right.

5 Q. And are you telling me, then, that the agents did notify
6 you when there was discussions regarding retribution or guns?

7 A. From time to time, yes.

8 Q. Okay. So you could have acted if you thought it was a
9 real threat, because you did have advance knowledge that
10 things -- things were going to happen, because you had agents
11 who were listening to the tapes at the time.

12 A. No.

13 Q. I just --

14 A. I had no -- there was no knowledge of any imminent danger
15 or threat that we had prior knowledge to that we could stop.

16 Q. So here's what I got -- I got, and I want to focus on
17 this. You never had a discussion with anybody who was
18 monitoring the tapes, who told you that there was a
19 conversation relating to, "Go get a gun, or I'm going to go
20 hurt somebody." You never had anybody tell you that.

21 A. I did have somebody tell me that.

22 Q. All right. And so then you were aware, then, as it was
23 happening --

24 A. After the fact. I did not get advised on that date that
25 it happened. I was told the next morning about those calls.

1 Q. Was action still imminent at that time?

2 A. It -- it could have been, yes, at that point.

3 Q. And you -- and you did not --

4 A. I would have acted if I was advised at the time that
5 those calls were made. I was not told until the next morning.

6 Q. Agent Brzpzinski, I'm having some difficulty, because I
7 want to understand this, because I want to make sure that we
8 understand each other.

9 A. Okay.

10 Q. All right. You've got agents that are listening in on
11 the phone conversations.

12 A. And -- and --

13 Q. Correct?

14 A. Correct.

15 Q. All right. That's their job. They're supposed to
16 monitor the wiretap.

17 A. Correct.

18 Q. And if something is hot, there's surveillance teams that
19 are going to go out and -- and surveille and do things if
20 things are imminent. Correct?

21 A. Correct.

22 Q. All right. During the time that you had the wiretaps,
23 that did occur: There were things that you thought might be
24 hot, and surveillance teams were sent out to follow up based
25 on phone conversations, right?

1 A. Correct.

2 Q. Now what I'm trying to get to is, with that in place --
3 and you're the person who's monitoring these things with the
4 people that are listening to the wiretaps -- did you learn
5 about the gun, or going to get a gun, or going to stab
6 somebody or to extract retribution, any one of those three
7 dangerous things that you're using as a basis to keep him
8 detained? Did you ever learn about those real time?

9 A. Of going to get a gun for retribution?

10 Q. Yes. A -- so that the person who's monitoring the phone
11 call said, "Hey, Ed, we've got something going. It looks like
12 they're going out and they're going to go get an AK-47."

13 A. I did not get a call on that till the next day, as I told
14 you.

15 Q. What about the knife?

16 A. We learned -- that wasn't discussed on the wiretap; that
17 was source information.

18 Q. What about the guy in the dumpster?

19 A. That's the same one I'm talking about.

20 Q. Was there any indication at any time that there was a
21 potential problem -- a threat or a potential problem to a
22 witness or to somebody else that you got notice of that you
23 did not act on?

24 A. No, because they don't discuss that on the telephone.
25 They're going to do violent acts, for the most part, that we

1 wouldn't know the exact location to be able to act on it. If
2 we could act on it, we would have.

3 Q. Even though your -- your -- your investigation would have
4 been jeopardized.

5 A. Well, if we can save somebody's life, yes.

6 MR. THOMAS: Nothing further, Judge.

7 MS. MARION: I have nothing.

8 THE COURT: You may step down.

9 (Witness excused at about 2:26 P.M.)

10 THE COURT: Ms. Marion, I was handed four
11 photographs. They are neither identified nor offered.

12 MS. MARION: Your Honor, the agent identified them
13 as the guns that were found in the Sterling Heights home. I
14 -- I will --

15 THE COURT: The exhibits are not identified in any
16 way.

17 MS. MARION: Pardon?

18 THE COURT: Are they to be numbered? Are they four
19 exhibits? Are they one exhibit? Are they offered as
20 evidence?

21 MS. MARION: They're not offered. They were just
22 simply just to show to the Court. That was it. Not offered
23 as exhibits, your Honor.

24 THE COURT: Thank you.

25 Does the government have additional evidence?

1 MS. MARION: No, your Honor.

2 THE COURT: We're going to take a recess while I
3 take a grand jury report. We'll be back in just a very --

4 MR. THOMAS: Do we clear this room?

5 THE COURT: You --

6 MR. THOMAS: Can we stay here?

7 THE COURT: Sure.

8 (Pause in proceedings from about 2:28-2:29 P.M.)

9 THE COURT: We can go back on the record, then, in
10 U.S. versus Nagi.

11 Ms. Marion, I understand that the government rests?

12 MS. MARION: Correct.

13 THE COURT: Mr. Thomas, does the defendant have
14 evidence or proffer?

15 MR. THOMAS: Your Honor, we'll adopt the Pretrial
16 Services report that was generated in this matter, and we're
17 not going to present any further evidence, I don't think.

18 THE COURT: Thank you.

19 MR. THOMAS: I should say to the Court that family
20 and friends are here and that they're here to vouch for his
21 appearance, and they would be very happy to be queried by the
22 Court, but I think that it's cumulative.

23 THE COURT: I'll accept your proffer.

24 Argument.

25 MS. MARION: Yes, your Honor. Just -- I'll try to

1 be brief, your Honor.

2 I think just a couple of things to note, your Honor:
3 One, this is a presumption case. The burden is on the
4 defendant to establish that there are conditions that could be
5 met that would ensure the safety of the community as well as
6 his appearance.

7 I would note that Mr. Nagi has two prior contacts
8 with law enforcement. Both of those are misdemeanors. This
9 would be his first significant contact with law enforcement,
10 and it is significant. If convicted on the continuing
11 criminal enterprise alone, he's looking at a minimum of thirty
12 years' imprisonment, your Honor, based on the amount of
13 narcotics that are involved in the activity that has taken
14 place.

15 I think -- in terms of risk of flight, I think again
16 even if you just separate out totally the fact that he has a
17 brother that fled to -- to Yemen, Mr. Nagi is again looking at
18 a significant amount of jail time and a severe loss of
19 freedom, something that he has not faced up until this moment,
20 so I think that that in and of itself is a -- a significant
21 risk of flight.

22 But aside from that, your Honor, we have thirty
23 thousand phone calls over a seven-month period of time that
24 detail drug deals and retribution and revenge and the
25 Highwaymen and all the activities that are associated with a

1 criminal organization, and that's what this is. This is not a
2 social club. This is a criminal organization, and even though
3 they are allegations and just charges at this point, I don't
4 know what happened between 1997 or 1998 and 2005, but
5 obviously something went seriously wrong because our
6 allegations are that Mr. Nagi, if he indeed earned all those
7 awards and everything else, suddenly turned into something
8 totally different, based on the wiretaps and his own phone
9 calls and hand-to-hand buys as well as surveillances.

10 I think that Mr. Nagi represents a danger to the
11 community, given the fact that he performed all of these acts
12 while he was on probation. Keep in mind it was under Hodda
13 [ph. spelling], a 74-11. If he had kept his nose clean for a
14 year, then the record would have been totally expunged. He
15 participated in these activities jeopardizing that and knowing
16 that if caught, he could end up with that conviction on his
17 record. So not only being -- while being on probation but
18 even for a short duration, he could not stop involving himself
19 in these types of activities, and I think that that's
20 significant in terms of how well he would follow this Court's
21 orders in terms of obeying conditions appearing.

22 As I said, risk of flight; the amount of time that
23 he's looking at alone would cause most individuals to
24 seriously consider fleeing, particularly if they had ties
25 outside this country, and he does. Whether his brother is

1 there legally as a fugitive or not doesn't matter; he has a
2 brother in Yemen who's been there for a while, and there is
3 really nothing to stop him from going there.

4 Aside from that, your Honor, we have the normal,
5 day-to-day concerns that occur when we're talking about
6 witnesses and informants in this case. As the Court learned
7 from the testimony, they spent a considerable amount of time
8 anytime there was any type of law enforcement activity trying
9 to determine who the sources were to be able to take care of
10 them and to deal with them, so we have some legitimate
11 concerns along those lines as well.

12 Beyond that, the Court has heard all the testimony,
13 and I really have nothing else to add, your Honor.

14 THE COURT: Thank you.

15 Defense argument?

16 MR. THOMAS: Your Honor, there may be a presumption
17 pursuant to 18 U.S.C. Section 3142, but there is no
18 presumption of innocence, and what the government has said is
19 that there are thirty thousand phone calls and implies that
20 all those phone calls are phone calls in which there is
21 criminal activity afoot. I suggest that the case has not been
22 proved, certainly not beyond a reasonable doubt.

23 What is the test here? The test is whether or not
24 there is any conditions or any set of conditions upon which
25 this defendant can be released which would satisfy this

1 Honorable Court, and I -- and I suggest to you that there are
2 circumstances.

3 The defendant is married, has children, has custody
4 through his wife and himself of other children who are living
5 in the household in Sterling Heights. I think it's
6 disingenuous for the government on one hand to say, "Oh, yes,
7 well, these weapons were in the house, and so -- therefore
8 they're his," but, "Oh," on the other hand, "he's not there;
9 he's out with his two girlfriends."

10 His wife is here in court today. He will appear
11 when he's told to appear.

12 The fact that he has a brother in Yemen, he has
13 several other brothers and sisters who are here. He's one of
14 -- I think it's seven or eight children?

15 How many children?

16 THE DEFENDANT: Fifteen.

17 MR. THOMAS: Fifteen. -- One of fifteen children,
18 seven or eight who are here in the Detroit area.

19 He owns a home. He has corporations that own two
20 significant properties: Poncho Villas Restaurant. He has
21 another bar, and he has at least one other piece of real
22 estate, according to the agent. These are -- these are
23 substantial ties to the community.

24 The fact that he has a brother in Yemen or the fact
25 that he's of Arabic descent and the fact that maybe there were

1 phone calls that were made from the house to Yemen can be
2 easily explained if in fact the -- the son who lives there is
3 talking to his father, who is overseas.

4 There is no evidence of any passport or any
5 intention for him to travel, and I suggest to the Court that
6 all those things that they're saying as it relates to the
7 defendant and how dangerous he's supposed to be are belied by
8 the fact that between August of 2005 and now, they have not
9 interdicted, they have not arrested, they have not in any way
10 tried to protect anybody from the supposed harm that the
11 defendant is going to extract upon them, harm that is verified
12 by third-hand testimony -- second-hand testimony, which is
13 either as a focus of a reward or a focus of -- of -- of some
14 cooperation agreement.

15 I don't know if I heard Ms. Marion correctly, but is
16 she then intending now to go back -- after the termination of
17 probation with improvement, to go back now and -- and to
18 reinstall a criminal charge against a defendant whose case was
19 dismissed?

20 THE COURT: I have no idea.

21 MR. THOMAS: The fact is that they are misdemeanor
22 pleas. There is no evidence that those weapons were in the
23 house at a time that those misdemeanors were -- when he was on
24 probation for that last misdemeanor. There's no evidence of
25 that.

1 Okay. We're going to argue. All right.

2 But -- but -- but my view of it is that there were
3 significant numbers of those that are -- these weapons are
4 registered. This defendant had a concealed weapons permit up
5 and until he was convicted in this case.

6 I suggest that the information that I presented to
7 you, those Exhibits A through T, they show a completely
8 different person than what the government says, and so now
9 they say, "Well, it shows a different person, so it must not
10 have been him." I say it shows a different person, and they
11 have to prove that he was different.

12 And his mere association with the Highwaymen or even
13 the fact that he was an officer in the Highwaymen's Motorcycle
14 Club, if that is found to be true, the Highwaymen Motorcycle
15 Club has had significant charitable events that they have
16 participated in and, interestingly enough, with the police,
17 with hospitals, with Make-a-Wish.

18 So I'd ask the Court to give him a bond, a
19 reasonable bond. Tether him to his house or to his business,
20 and if the government sees fit -- and I've done this in other
21 cases -- a GPS tether, which would give them real time
22 information as to where he's at and whether or not he's in
23 compliance with this Court's rulings relating to travel or
24 work or being at home at a certain time.

25 THE COURT: Thank you.

1 Rebuttal?

2 MS. MARION: No, your Honor.

3 THE COURT: Very well.

4 I will take the matter under advisement until I have
5 an opportunity to review the defense exhibits, my notes of the
6 testimony, the Pretrial Services report and recommendation. I
7 will enter a written order at such time as I am able to
8 complete that investigation. I am doubtful that it will be
9 today. Counsel will be notified at such time as the order was
10 entered, and my order is appealable to Judge Friedman as the
11 district judge assigned to the case.

12 MS. MARION: Thank you, your Honor.

13 THE COURT: Thank you.

14 (Proceedings concluded at about 2:38 P.M.)

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