**Attorneys**:

Plaintiff: Andrew Madsen- AUSA, District of Guam

Defendant: Alexander Desantis, Assistant Federal Public Defender, District of Guam

**Character List**

Archibald Hark – Defendant, Crime: Dealing Heroin, Student @ Guam Tech, arrested for selling marijuana to friends some years ago.

Paul Lopez – DEA Special Agent (started mid 2018), Stationed in Guam

Jason Jacobs – heroin dealer; government informant

Kathryn Wongchenko – Found with 10 grams of heroin on night Hark was arrested

# Trial notes (July 8, 2021)

# Direct Examination of Paul Lopez

* **Lopez** establishes himself as a DEA Special Agent; stationed in Hagatna, Guam since beginning with the DEA. (12)
  + Has been a SA since “mid-2018” and was an agent on January 1, 2021 (12)
* **Lopez** and **Hark** met at Guam Technical Institute, and were enrolled in the same class (empirical chemical biology) (Jan 2021)(12).
* **Lopez’s** reason for taking class 🡪 “career advancement” ( Hired on as GS-7. Seeking GS-9)(13)
* **Lopez** met **Hark** when he overheard (partial conversation) **Hark** talking to another classmate about “dealing drugs” (13)
  + Hark- “used to know every MJ dealer in the city, and any half-wit could deal drugs without getting caught” and “Guam’s stringent drug laws are absurd”
  + **Hark lawyer** OBJECTION-“fishing for hearsay and inadmissible character evidence” (13)
* **Lopez** asked **Hark** if he still smokes. **Hark** responds “yeah, it’s not a big deal…” (15)
* **Lopez** asks **Hark** if he could get him some MJ
  + **Hark** response: “I used to know all the weed dealers in town. How much you looking for?”
  + **Lopez** asks for a **gram** and **Hark** laughed and said, “Sorry, can’t help ya, the guys I know can’t make any dough in moving a gram…” (16)
* One month later during 5th lab = speak about drugs again
  + Studying effect of painkillers in humans. One of them was diacetylmorphine—also known as heroin.
  + **Lopez** tells **Hark** “he has good friend who’s been dealing heroin in Hagatna” (16)
  + **Hark** expresses that selling that stuff is “crazy” and “will get you locked up for years” and “there are a lot of better ways” to make money for family. (17)
    - **Lopez** agrees w/ **Hark** that it is crazy
    - **Lopez** tells **Hark** “stuff is so addictive that his friend doesn’t need to advertise, and business is booming” and his friend is “doing right by his family…” (17)
    - **Hark** asks “how much”? and **Lopez** responds, “enough to pay mom’s mortgage payments easily”. (17)
    - **Lopez** tells **Hark** that “friend has been doing it for about two years now and never gotten caught”
    - **Lopez** to **Hark**: Buddy is looking to expand (heroin business), looking for a partner and someone with street smarts.(18)
    - Hark kept working and didn’t say anything.
  + Next Thursday
    - **Lopez** approached **Hark** when he saw him reading for class (18)
    - **Lopez** sat down next to **Hark** and said “I’m addicted to iced coffee, but it can’t make the difference other drugs can for your family, can it?” (18-19)
  + Mid-march (next lab, day before arrest)
    - **Hark** told **Lopez** to “give your friend my number” and handed over piece of paper w/ number on it

**Cross-examination**

* + Lopez testified that:
    - He didn’t know who Hark was before overhearing him talk to his friend about MJ
    - He didn’t hear Hark say that he himself dealt MJ
    - He didn’t hear Hark mention heroin to his classmate
    - He never heard Hark mention heroin before bringing it up to Hark himself
    - Most mj dealers don’t also deal heroin
    - Never spoke to Hark before, but walked across room to ask to be lab partners
    - Never told Hark he was a DEA agent
    - Doesn’t think he had training on “entrapment” from Quantico
    - Fact that he talked about drugs got his attention, but didn’t do it for promotion purposes and had no idea Hark was former dealer.
    - He doesn’t have a “good friend who deals heroin”
      * Jason Jacobs was not a good friend and he had never met him

Jason Jacobs testimony

He is a painter, but before he was a drug dealer. He sold “the whole lot” but mostly crack and heroin. Stopped once he was arrested. He served 3 years for the crime. Occasionally does informant work for the cops.

Hark calls Jacobs and says he wants to deal heroin. Jacobs gave name and number of local junky who needs drugs and told Hark to set a deal up (w/ junkie). Jacobs gave “Kathryn Wongchenko” over to Hark and told him to call her. Hark reported back that she wanted 10 grams of “black tar”—mexican heroin. It sells for $900. $90 per gram in Guam. Hark told Jacobs that he was meeting Wongchenko at Nieves, the Library. Jacobs says that Hark picked the meeting spot and meeting time. Jacobs claims that Hark was clam. Wongchenko arrived at 11:45.

Jacobs has done 5-6 stings. Hark seemed like “just another dealer”.

Hark didn’t use the word “tecata”, he said heroin. Jacobs “knows” all the dealers in Guam, and never heard of Hark. Hark told Jacobs he didn’t know anything about heroin business. Jacobs keeps the $500 from Hark as payment for informant services.

Rule 29 motion – denied (39)

# Archibald Hark testimony

Arrseted once for dealing MJ in 2015 (18 years old at the time). He plead guilty and was sentenced to 4 months under house arrest with an electronic monitor, three years’ probation, and 200 hours community service. Claims to never dealt marijuana since 2015 and never dealt any other drugs besides MJ. Was supposed to graduate as Chem Tech may of (this year).

Never considered dealing heroin nor does he have any friends that do. Claims that Lopez said that he wouldn’t get caught. When he saw Lopez at Langdells (coffee shop) says that Lopez called it a “foolproof plan”, brought up his mom, and wrote down potential earnings. His mom needed money because insurance stopped covering treatment and she would need to pay out of pocket. Considered Lopez a friend.

During 3rd lab, Hark said he smokes MJ and knows every dealer in town (2021).

* First spoke to Lopez about heroin during fifth lab (2 weeks before arrest)
* Didn’t agree to sell until 6th lab
* Took two weeks before Hark got back to Lopez about joining drug dealing friend (53)

# Jury Verdict

Guilty of crime of distribution of more than 10 grams of heroin in violation of Title 21 U.S.C. Section 841(a)(1) (pg. 64)

# Special Motion- Federal Rules of Criminal Procedure 33

(new trial on the basis of newly discovered evidence)

1. Sophia Brooks Affidavit
   1. One of first classes in Jan, she saw Agent Lopez examining what appeared to be a mugshot of Hark.
   2. Heard Lopez suggest he had motive of entrapping Hark
   3. Observed Lopez jockeying for position to pair with Hark during labs
   4. March 2021 overheard Lopez speaking to someone at the DEA.
      1. Wasn’t biting last time, but try and turn up the volume
      2. He (Hark) doesn’t want to be a custodian forever
      3. Maybe I can play up family angle
   5. Email from Dean of Students (asking for info) was in junk mail
2. Merry Boak Affidavit (79)
   1. Barista @ Langdells
   2. Overheard conversation between Lopez and Hark
      1. Lopez saw Hark and “moved toward entrance)
      2. Lopez was “thinking about our plan and I think I need to spell it out for you…”
      3. Lopez mentioned broken leg multiple times
      4. Hark told Lopez to leave him alone about “this” stuff
3. Hark’s mother’s doctor
   1. Revealed that Lopez coerced him into having his staff tell Hark’s mother that insurance wouldn’t cover her treatment
   2. Lopez told Dr that no cooperation = he would do everything to have Dr’s license to prescribe controlled substances revoked.
   3. Lopez threatened to fllod office with subpoenas and federal officers
   4. Lopez said that any disclosure of convo = charged with obstruction of justice