

Appendix A-4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	DOCKET NUMBER
)	1:16-CR-221-LMM
)	
JACOBY BURNS,)	ATLANTA, GEORGIA
)	OCTOBER 28, 2016
DEFENDANT.)	
)	
)	
)	

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE LEIGH MARTIN MAY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	LAUREL BOATRIGHT UNITED STATES ATTORNEY'S OFFICE ATLANTA, GEORGIA 30303
FOR THE DEFENDANT:	PAUL COGNAC PEACHTREE CITY, GEORGIA 30269

*MECHANICAL STENOGRAPHY OF PROCEEDINGS
AND COMPUTER-AIDED TRANSCRIPT PRODUCED BY*

OFFICIAL COURT REPORTER:	MONTRELL VANN, RPR, RMR, RDR, CRR 2160 UNITED STATES COURTHOUSE 75 TED TURNER DRIVE, SOUTHWEST ATLANTA, GEORGIA 30303 (404)215-1549
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1 (IN ATLANTA, FULTON COUNTY, GEORGIA, OCTOBER 28, 2016, IN
2 OPEN COURT.)

3 THE COURT: OKAY. GOOD AFTERNOON. YOU MAY BE SEATED.

4 MS. BOATRIGHT: GOOD AFTERNOON, YOUR HONOR.

5 MR. COGNAC: GOOD AFTERNOON.

6 THE COURT: WE ARE HERE IN CRIMINAL ACTION 16-CR-221,
7 UNITED STATES OF AMERICA VS. JACOBY BURNS.

8 AND IF COUNSEL WOULD INTRODUCE THEMSELVES FOR THE RECORD,
9 PLEASE.

10 MR. COGNAC: PAUL COGNAC ON BEHALF OF MR. BURNS, YOUR
11 HONOR.

12 THE COURT: OKAY. GOOD AFTERNOON.

13 MS. BOATRIGHT: LAUREL BOATRIGHT ON BEHALF OF THE
14 UNITED STATES OF AMERICA, JUDGE.

15 THE COURT: GOOD AFTERNOON.

16 GOOD AFTERNOON TO YOU AS WELL, MR. BURNS.

17 MR. BURNS: GOOD AFTERNOON, MA'AM.

18 THE COURT: WE ARE HERE TODAY FOR MR. BURNS'
19 SENTENCING. ON AUGUST 16TH, 2016, MR. BROWN PLED GUILTY TO THE
20 SINGLE COUNT IN THE INDICTMENT WHICH IS THE OFFENSE OF HEROIN
21 DISTRIBUTION. IT'S MY UNDERSTANDING FROM REVIEWING THE RECORD
22 THAT THERE ARE SOME OBJECTIONS TO THE PRESENTENCE REPORT THAT WE
23 NEED TO TAKE UP FIRST. AND ALTHOUGH THERE MAY BE MULTIPLE
24 OBJECTIONS, I THINK REALLY THE MAJOR ONE I'D LIKE TO TALK ABOUT
25 FIRST IS THE OBJECTION TO THE APPLICATION OF THE ENHANCEMENT FOR

1 THE CAREER OFFENDER, THE ISSUES ABOUT THE FELONY OBSTRUCTION
2 BEING A CRIME OF VIOLENCE.

3 AND WHAT WE'LL DO, MR. COGNAC, IS I'LL HEAR FROM YOU ON
4 THAT FIRST, AND THEN I'LL HEAR FROM MS. BOATRIGHT ON THAT, AND
5 THEN AFTER WE GET THROUGH THAT ISSUE, IF THERE ARE ADDITIONAL
6 OBJECTIONS, WE CAN GO THROUGH THOSE AFTER THAT. BUT LET'S TAKE
7 UP THIS ONE ISSUE FIRST.

8 MR. COGNAC: AND I HAVE SUPPLIED THE GOVERNMENT, AND I
9 HAVE ONE, ALTHOUGH IT -- THIS ISSUE IS SOMEWHAT CONVOLUTED. AND
10 THE FEDERAL DEFENDER'S PROGRAM HAS PREPARED A FLOW CHART --

11 THE COURT: OKAY.

12 MR. COGNAC: -- IN HOW TO DEAL WITH CAREER OFFENDERS
13 AND WHETHER WE GO WITH THE CATEGORICAL APPROACH OR THE MODIFIED
14 CATEGORICAL APPROACH.

15 THE COURT: OKAY.

16 MR. COGNAC: WE ACKNOWLEDGED AT THE OUTSET THAT THERE
17 IS AN ELEVENTH CIRCUIT CASE DEALING WITH THE ARMED CRIMINAL --
18 ARMED CAREER CRIMINAL ACT, U.S. V. BROWN THAT IS AT 805 F.3D
19 1325, WHICH DEFINES FELONY OBSTRUCTION AS A CRIME OF VIOLENCE
20 FOR THE ARMED CAREER CRIMINAL ACT. HOWEVER, AND THERE ARE SOME
21 OTHER EARLIER DECISIONS WHICH ALSO FIND SIMILARLY. HOWEVER,
22 THOSE PRIOR DECISIONS WERE BEFORE KIND OF THE WATERSHED CASE OF
23 DESCAMP (PHONETIC) WHICH REALLY DEALS WITH HOW DO WE DETERMINE
24 WHETHER SOMETHING QUALIFIES AS A VIOLENT FELONY -- A CRIME OF
25 VIOLENCE, AND, IF SO, DO WE USE A CATEGORICAL OR A MODIFIED

1 CATEGORICAL APPROACH. THAT PARTICULAR DECISION DEALT WITH
2 BURGLARY. AND AT THE TIME WE ARE OPERATING UNDER 4B1.2A, THE
3 DEFINITION THAT'S COMMONLY REFERRED TO AS THE ELEMENTS CLAUSE.
4 AND WE TAKE THE POSITION THAT, UNDER THE ANALYSIS REQUIRED IN
5 DESCAMP, IN THAT CASE THEY WERE LOOKING AT BURGLARY. AND THEY
6 FOUND THAT THAT PARTICULAR STATUTE, WHAT YOU DO IS -- AND WE
7 KIND OF SKIP DOWN. IS IT -- IS IT PUNISHABLE BY MORE THAN A
8 YEAR? YES. WAS HE AT LEAST 18 YEARS OLD AT THE TIME? SO FOR
9 THE CAREER OFFENDER CLAUSE, THEN WE GET TO DESCAMP, AND THEN WE
10 FIND WHAT -- WE ARE INSTRUCTED IN DESCAMP TO FIND WHAT IS THE
11 GENERIC OFFENSE. AND IN THAT PARTICULAR CASE THEY LOOKED AT THE
12 LEFAVE (PHONETIC) AND SCOTT, BUT THE OTHER DECISIONS HAVE LOOKED
13 AT THE FEDERAL STATUTE CASE LAW OR COMMON LAW ELEVENTH CIRCUIT
14 PRECEDENT. AND THE STATUTE THAT I USED WAS THE FEDERAL STATUTE,
15 SECTION 111. AND THEN WHAT YOU DO IS DETERMINE WHETHER THE
16 STATUTE IS DIVISIBLE OR INDIVISIBLE. IF IT IS DIVISIBLE AND
17 THAT IT CAN BE DONE IN MORE THAN ONE WAY, THEN YOU SEE -- YOU
18 CAN GO TO WHAT'S CALLED THE MODIFIED CATEGORICAL APPROACH. IF
19 IT IS INDIVISIBLE, AND OUR POSITION IS THAT IT IS INDIVISIBLE
20 BECAUSE IT ONLY CAN BE DONE -- THERE'S ONE SET OF ELEMENTS THAT
21 HAS DIFFERENT MEANS OF COMMITTING THE OFFENSE, BUT THEY'RE ALL
22 THE SAME WHEN THEY'RE SUBMITTED TO THE JURY. THE JURY DOES NOT
23 HAVE TO FIND DIFFERENT -- WHETHER HE WAS OFFERED, DOING, OR
24 THREATENING TO DO VIOLENCE. THOSE ARE JUST DIFFERENT MEANS OF
25 THE SAME ELEMENT, AND THE JURY WOULDN'T HAVE TO FIND THE

1 ALTERNATIVE. THEY WOULD JUST HAVE TO FIND ONE OF THOSE. SO OUR
2 POSITION THAT IT IS INDIVISIBLE, THEREFORE, WHICH SHOULD BE A
3 CATEGORICAL APPROACH. AND UNDER THE CATEGORICAL APPROACH, WHAT
4 YOU DO IS ANALYZE THE STATUTE, CAN SEE IF IT IS BROADER THAN THE
5 GENERIC DEFINITION. IF IT IS BROADER AND IT ENCOMPASSES THINGS
6 OUTSIDE THE GENERIC DEFINITION, THEN IT IS NOT A PREDICATE
7 OFFENSE UNDER THE CATEGORICAL APPROACH. AND WHEN WE LOOK -- THE
8 CASES THAT I CITED WHICH SPECIFICALLY DEALT WITH THE GEORGIA
9 OFFENSES INCLUDE THINGS THAT ARE NOT WITHIN THE DEFINITION OF
10 THE FEDERAL STATUTE AND THAT ALSO ARE NOT SPECIFICALLY VIOLENCE,
11 IN THAT SPECIFICALLY JACKSON VS. STATE AND ALSO IN REDD --
12 AGAIN, THESE ARE ALL IN MY SENTENCING MEMORANDUM. IN REDD, THE
13 COURT FOUND BY ASSUMING A FIGHTING STANCE AND PLACING HIS FISTS
14 IN FRONT OF HIS FACE AND YELLING OBSCENITIES AT THE OFFICER,
15 THAT THAT QUALIFIED AS OFFERING TO DO VIOLENCE TO THE OFFICER
16 WHEN THERE WAS NO ACTUAL CONTACT, JUST THE VERBAL ACTS IN AND OF
17 THEMSELVES WOULD CONSTITUTE A CRIME OF VIOLENCE AND BECAUSE THAT
18 WAS BROADER THAN THE FEDERAL STATUTE WHICH ONLY WOULD ENCOMPASS
19 ACTUAL PHYSICAL CONTACT. AND ACCORDING TO THE EARLIER JOHNSON
20 DECISION, THAT IS 559 U.S. 133, THE SUPREME COURT HELD THAT
21 PHYSICAL FORCE MEANS A VIOLENT FORCE THAT IS FORCE CAPABLE OF
22 CAUSING PHYSICAL PAIN OR INJURY TO ANOTHER PERSON.

23 AND BECAUSE OF THE GEORGIA CASES THAT INTERPRET THAT
24 STATUTE THAT INCLUDE TAKING A FIGHTING STANCE AND VERBAL ACTS
25 AND THE OTHER CASES THAT I CITED TO, THAT IT DOESN'T REQUIRE

1 ACTUAL PHYSICAL CONTACT OR FORCE THAT WAS MEANT TO CAUSE
2 PHYSICAL PAIN OR INJURY TO ANOTHER PERSON.

3 THE COURT: BUT HOW ABOUT THE PART IN THE 4B1.2A1
4 WHERE IT TALKS ABOUT, "OR THREATENED USE OF PHYSICAL FORCE?"
5 AND WHEN I READ THE WORDS OF THAT ENHANCEMENT AND I SEE THAT
6 THREATENED PIECE IN THERE, IT WOULD SEEM TO ME THAT EVEN THESE
7 KIND OF LESSER CONVICTIONS FOR FELONY OBSTRUCTION WOULD HAVE
8 THIS THREATENED USE OF PHYSICAL FORCE COMPONENT WITHIN THEM.

9 MR. COGNAC: RIGHT. BUT UNDER THE JOHNSON DECISION,
10 THE ONE I JUST CITED TO, THAT THEY -- THOSE WOULDN'T QUALIFY
11 BECAUSE IT REQUIRES A PHYSICAL FORCE, MEANS A VIOLENT FORCE THAT
12 IS FORCE CAPABLE OF CAUSING PHYSICAL PAIN OR INJURY TO ANOTHER
13 PERSON.

14 SO THE THREATENED PART OF IT WOULDN'T -- UNDER THE JOHNSON
15 DECISION WOULDN'T QUALIFY. SO WHEN WE GO THROUGH THE ANALYSIS,
16 WHEN WE GO THROUGH THE FLOW CHART, WHAT WE DETERMINE BY LOOKING
17 AT THE CASE LAW, LOOKING AT THE FEDERAL STATUTE, IS THAT IT'S
18 ONE INDIVIDUAL -- INDIVISIBLE TERMS, ELEMENTS, THEREFORE, WE
19 HAVE TO GO BY A CATEGORICAL APPROACH. WE DON'T LOOK AT THE
20 DOCUMENTS THAT ARE APPROVED BY SHEPARD. WE DON'T LOOK AT THE
21 CONVICTION. WE DON'T LOOK AT THE INDICTMENT. WE JUST LOOK AT
22 THE STATUTE. AND BECAUSE THE STATUTE THROUGH CASE LAW
23 INCLUDES THINGS THAT WOULD NOT BE INCLUDED WITHIN THE FEDERAL
24 DEFINITION THAT IT'S OVERLY BROAD, AND, THEREFORE, IT IS NOT A
25 PREDICATE OFFENSE UNDER THE CATEGORICAL APPROACH.

1 THE COURT: WELL, ABOUT THE BROWN CASE, HOW DO WE GET
2 AROUND THERE BEING 2015 ELEVENTH CIRCUIT PRECEDENT THAT SAYS THE
3 OPPOSITE GIVEN THAT THE DESCAMP DECISION WAS A COUPLE YEARS
4 PRIOR TO THAT?

5 MR. COGNAC: WE GET AROUND THAT BECAUSE WHEN YOU LOOK
6 AT THE BROWN DECISION, THEY DON'T GO THROUGH THAT ANALYSIS.
7 THEY DON'T DETERMINE WHAT THE GENERIC DEFINITION IS. THEY DON'T
8 GO THROUGH THE ANALYSIS THAT'S REQUIRED BY DESCAMP. THEY SIMPLY
9 CITE TO EARLIER DECISIONS BEFORE DESCAMP AND RELY ON THOSE
10 EARLIER DECISIONS THAT DEFINED IT AS A CRIME OF VIOLENCE WITHOUT
11 GOING THROUGH THE ANALYSIS THAT'S REQUIRED IN DESCAMP.

12 THE COURT: DO WE KNOW ANYTHING ABOUT WHAT ARGUMENTS
13 WERE MADE IN THAT CASE AND WHETHER OR NOT DESCAMP WAS BROUGHT UP
14 IN ANY WAY IN THE BROWN CASE?

15 MR. COGNAC: IT WAS. I MEAN, IN THE BRIEF -- IT IS
16 BRIEFED, BUT IT IS NOT ADDRESSED IN THE DECISION.

17 THE COURT: RIGHT. IN THE DECISION IT'S NOT, BUT DO
18 YOU KNOW IF THAT WAS SOMETHING BEFORE THE COURT THAT THEY
19 CONSIDERED IN ANY WAY FROM THE BRIEFING OR FROM THE COURT BELOW?

20 MR. COGNAC: I KNOW THAT IT WAS IN THE BRIEFS, BUT I
21 DON'T -- I DON'T EVEN KNOW IF THEY HAD ORAL ARGUMENT, BUT I KNOW
22 THAT IT WAS ADDRESSED IN THE BRIEFS.

23 THE COURT: OKAY. OKAY. MS. BOATRIGHT.

24 MS. BOATRIGHT: THANK YOU, YOUR HONOR. JUST BRIEFLY,
25 THE -- AS THE COURT HAS RECOGNIZED, THE ELEVENTH CIRCUIT HAS

1 ALREADY -- HAS SPOKEN TO THIS QUESTION. AND EFFECTIVELY WHAT
2 DEFENSE COUNSEL IS ASKING RIGHT NOW IS FOR THIS COURT TO SAY
3 THAT THE ELEVENTH CIRCUIT GOT IT WRONG WITH BROWN. AND HERE'S
4 WHY. BECAUSE THE ELEVENTH CIRCUIT IN THE BROWN CASE IN 2015,
5 WHICH WAS DECIDED AFTER THE DESCAMP CASE, WE KNOW THAT THE
6 DESCAMP CASE WAS PART OF THE BRIEFING. AND WE ALSO KNOW THAT
7 THE ELEVENTH CIRCUIT CONSISTENTLY APPLIES THE DEFINITION OF
8 CRIME OF VIOLENCE FROM THE ARMED CAREER CRIMINAL ACT TO THE
9 CAREER OFFENDER GUIDELINE. SO WHEN YOU KIND OF LINK EACH OF
10 THOSE SORT OF IMPOSSIBLE-TO-IGNORE REALITIES TOGETHER, WE HAVE
11 THE ELEVENTH CIRCUIT CONCLUSIVELY DETERMINING THAT GEORGIA'S
12 FELONY OBSTRUCTION STATUTE, THIS STATUTE, IS CATEGORICALLY A
13 CRIME OF VIOLENCE UNDER THE ARMED CAREER CRIMINAL ACT EVEN IN
14 LIGHT OF DESCAMP, EVEN UNDER AND IN LIGHT OF THE SUPREME COURT
15 GUIDANCE IN DESCAMP, IF I'M PRONOUNCING THAT CORRECTLY, PLUS THE
16 FACT THAT THE ELEVENTH CIRCUIT CONSISTENTLY, THROUGH BINDING
17 PRECEDENT, APPLIES THE SAME DEFINITION IN THE ARMED CAREER
18 CRIMINAL ACT TO THE CAREER OFFENDER GUIDELINE. WHEN WE TAKE
19 THOSE TWO FACTS, WE HAVE BINDING ELEVENTH CIRCUIT PRECEDENT HERE
20 FOR THIS COURT TO APPLY. AND IT MAY VERY WELL BE THE CASE
21 THAT -- THAT THE -- WELL, LET ME -- THAT IS -- THAT IS SIMPLY
22 WHERE WE'RE AT. IN ADDITION TO THE COURT'S FURTHER POINT, THE
23 GUIDELINE ITSELF, THE CAREER GUIDELINE ITSELF CONTEMPLATES THAT
24 A CRIME OF VIOLENCE UNDER THE CAREER OFFENDER GUIDELINE CAN
25 CONSIST OF SOMETHING OTHER THAN THE ACTUAL USE OF FORCE, TO THE

1 COURT'S POINT. THE GUIDELINE SPECIFICALLY SAYS, OR THREATENED
2 USE OF PHYSICAL FORCE. THAT MAPS ALMOST EXACTLY UNDER THE
3 GEORGIA FELONY OBSTRUCTION STATUTE WHICH SAYS THAT OBSTRUCTION
4 CAN BE COMMITTED BY OFFERING OR BY ACTUALLY -- HERE. LET ME
5 QUOTE IT EXACTLY TO THE COURT. BY OFFERING OR DOING VIOLENCE TO
6 THE PERSON OF A LAW ENFORCEMENT OFFICER. SO WE HAVE THE
7 ATTEMPTED THREATS, ACT, OR BEGINNING OF THREATS AND WE ALSO
8 ACTUALLY HAVE ACTS OF THREATS -- ACT OF VIOLENCE. EXCUSE ME.
9 SO FOR ALL OF THOSE REASONS THE GOVERNMENT URGES THIS COURT TO
10 GO AHEAD AND APPLY WHAT'S BINDING PRECEDENT IN THE ELEVENTH
11 CIRCUIT HERE.

12 THE COURT: OKAY. THANK YOU VERY MUCH.

13 MS. BOATRIGHT: THANK YOU.

14 THE COURT: NOW, IN TERMS OF THIS FIRST ISSUE WHETHER
15 OR NOT FELONY OBSTRUCTION OF A LAW ENFORCEMENT OFFICER DOES
16 QUALIFY AS A CRIME OF VIOLENCE AS DEFINED BY THE GUIDELINES, I
17 AM GOING TO OVERRULE THAT OBJECTION AND BASED UPON, FIRST, U.S.
18 VS. BROWN. AS COUNSEL FOR THE GOVERNMENT HAS STATED, THIS WAS
19 AN ELEVENTH CIRCUIT CASE IN 2015 THAT IS ON POINT. YES, IT WAS
20 DEALING WITH THE A.C.C.A., BUT I DO THINK THAT IT IS PROPERLY
21 LINKED UP UNDER ELEVENTH CIRCUIT PRECEDENT. I DO UNDERSTAND THE
22 ARGUMENT AND I DO -- I DO UNDERSTAND ALSO THAT A BODY OF LAW
23 THAT REQUIRES A FLOW CHART SUCH AS THIS TO APPLY, I MEAN, DOES
24 SPEAK TO SOME VERY PROBLEMATIC APPLICATION ISSUES IN THIS WHOLE
25 BODY OF LAW RIGHT NOW. AND I THINK IT'S AN ISSUE WHERE THERE

1 ARE A LOT OF GOOD ARGUMENTS OUT THERE UNDER THESE NEW SUPREME
2 COURT CASES, AND THIS TRULY IS AN EVOLVING AREA OF THE LAW THAT
3 I THINK EVEN IN THE NEXT YEAR OR TWO WE'RE GOING TO SEE SOME
4 DECISIONS COMING OUT OF THE SUPREME COURT THAT ARE GOING TO GO
5 DIFFERENT WAYS MAYBE THAN THE ELEVENTH CIRCUIT ON THIS. BUT
6 UNTIL THESE ISSUES ARE MORE CLARIFIED BY THE ELEVENTH CIRCUIT,
7 WHAT AS A DISTRICT COURT THAT I'M DOING IS GOING TO APPLY THE
8 PRECEDENT THAT I HAVE IN FRONT OF ME. AND EVEN THOUGH THE
9 ELEVENTH CIRCUIT DID NOT ANALYZE DESCAMP OR DESCAMP, OR HOWEVER
10 YOU PRONOUNCE IT, IN A WAY THAT I THINK WOULD HAVE BEEN HELPFUL
11 FOR US TO KNOW EXACTLY WHAT THEIR REASONING IS, THE ISSUES WERE
12 BEFORE THE COURT. FOR WHATEVER REASON THEY DID NOT FIND THEM
13 PERSUASIVE TO CHANGE THEIR MIND ABOUT THIS ISSUE. SO BECAUSE IT
14 IS BINDING PRECEDENT ON ME, I AM GOING TO APPLY IT. AND IT
15 REALLY IS VERY CLOSE ON POINT TO WHAT WE HAVE HERE. IT'S
16 CERTAINLY, LIKE I SAID, AN EVOLVING AREA OF THE LAW. AND IT MAY
17 BE THAT FUTURE SUPREME COURT CASES DO CHANGE THAT. AND IT'S
18 SOMETHING THAT I'M HOPEFUL, AS THE CASE LAW DEVELOPS, THAT THERE
19 WILL BE A LITTLE BIT MORE CLARITY ON EXACTLY HOW ALL THESE CASES
20 ARE GOING TO BE READ TOGETHER. BUT GIVEN WHAT I HAVE TODAY,
21 WHICH IS THIS BINDING U.S. VS. BROWN DECISION, I AM GOING TO
22 OVERRULE THAT OBJECTION, AND I DO FIND THAT THE FELONY
23 OBSTRUCTION OF A LAW ENFORCEMENT DOES QUALIFY AS A CRIME OF
24 VIOLENCE UNDER THE GUIDELINE.

25 SO, MR. COGNAC, DO YOU HAVE ADDITIONAL OBJECTIONS TO THE

1 P.S.R. THAT YOU WANTED TO RAISE?

2 MR. COGNAC: YOUR HONOR, THE ONLY OTHER OBJECTION
3 DEALT WITH THE SHEPARD DECISION AND WHAT DOCUMENT YOU COULD LOOK
4 FOR IF YOU DECIDED IT WAS MODIFIED CATEGORICAL APPROACH. BUT
5 SINCE YOU'VE ALREADY MADE THAT RULING, I WAS REALLY JUST
6 OBJECTING TO THE POLICE REPORT BEING INCLUDED IN THE P.S.R. AND
7 WHETHER THAT COULD BE USED TO DETERMINE IT WOULDN'T QUALIFY
8 UNDER THE SHEPARD DOCUMENTS. BUT BECAUSE YOU'VE ALREADY MADE
9 THAT RULING, IT DOESN'T REALLY IMPACT WHERE WE'RE AT AT THIS
10 POINT.

11 THE COURT: OKAY. THANK YOU.

12 MS. BOATRIGHT, DID YOU HAVE ANY OBJECTIONS TO THE
13 PRESENTENCE REPORT?

14 MS. BOATRIGHT: NONE, YOUR HONOR.

15 THE COURT: OKAY. SO SUBJECT TO THE RULING I JUST
16 MADE, I DO ADOPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN
17 THE PRESENTENCE REPORT, WHICH MEANS THE SENTENCING OPTIONS UNDER
18 THE GUIDELINES ARE AS FOLLOWS: A STATUTORY PENALTY OF NOT MORE
19 THAN 20 YEARS IMPRISONMENT, A ONE-MILLION-DOLLAR FINE. THERE IS
20 NO MANDATORY MINIMUM, A TOTAL OFFENSE LEVEL OF 29, A CRIMINAL
21 HISTORY CATEGORY OF SIX, A CUSTODY GUIDELINE RANGE OF 151 TO 188
22 MONTHS, A FINE GUIDELINE RANGE OF 30,000 TO ONE MILLION.
23 RESTITUTION IS NOT APPLICABLE. THERE IS A SPECIAL ASSESSMENT OF
24 A HUNDRED DOLLARS. FORFEITURE IS NOT APPLICABLE. THERE IS A
25 COST OF CONFINEMENT OF \$30,621 ANNUALLY, A COST OF SUPERVISION

1 OF \$3,909 ANNUALLY. THERE'S NO PROBATION OPTION. IN TERMS OF
2 SUPERVISED RELEASE, IT IS TWO TO FIVE YEARS. AND AS TO
3 IMMIGRATION RELATED ISSUES, MR. BURNS IS A U.S. CITIZEN, SO WE
4 DO NOT HAVE ANY IMMIGRATION RELATED ISSUES TO CONSIDER.

5 SO, FIRST, I WANT TO KNOW IF COUNSEL HAS ANY OBJECTIONS TO
6 THE CALCULATION OF THE GUIDELINES OTHER THAN THE ONE THAT YOU
7 HAVE JUST MADE, MR. COGNAC? ANYTHING ABOUT WHAT I'VE STATED AS
8 NOT BEING THE PROPER GUIDELINES?

9 MR. COGNAC: NOTHING OTHER THAN WAS PREVIOUSLY STATED,
10 YOUR HONOR.

11 MS. BOATRIGHT: NONE FROM THE GOVERNMENT, YOUR HONOR.

12 THE COURT: OKAY. AND BEFORE I HEAR FROM COUNSEL ON
13 THEIR SENTENCING RECOMMENDATIONS, I DO WANT TO JUST MENTION ON
14 THE RECORD THAT I DID RECEIVE THE SENTENCING MEMORANDUM FROM
15 EACH PARTY THAT TALKED ABOUT THE OBJECTION WE JUST DEALT WITH A
16 MOMENT AGO, BUT ALSO CONTAINED ADDITIONAL INFORMATION ABOUT
17 SENTENCING RECOMMENDATIONS. AND I HAVE READ BOTH OF THOSE
18 DOCUMENTS, AND THAT WILL BE PART OF WHAT I'VE REVIEWED TO BASE
19 MY DECISION ON TODAY. BUT I SAY THAT NOT TO SHORTEN YOUR
20 PRESENTATION, BUT JUST SO THAT YOU KNOW THAT I HAVE READ THAT
21 INFORMATION. SO AT THIS TIME I'M GOING TO HEAR FROM
22 MS. BOATRIGHT ON BEHALF OF THE GOVERNMENT AS TO THEIR
23 RECOMMENDATION.

24 MS. BOATRIGHT: THANK YOU, YOUR HONOR. ACTUALLY ONE
25 MOMENT. AS THE COURT KNOWS, THE GOVERNMENT IS RECOMMENDING A

1 DOWNWARD VARIANCE IN THIS CASE FROM THE GUIDELINE SENTENCE THAT
2 THE COURT HAS CALCULATED -- EXCUSE ME -- THE GUIDELINE RANGE
3 THAT THE COURT HAS CALCULATED. THERE ARE A NUMBER OF REASONS
4 FOR THAT, MOST SIGNIFICANTLY MR. BURNS IS A DEFENDANT WHO IS
5 HERE BEFORE THIS COURT AS A RESULT OF A LARGER INITIATIVE THAT'S
6 BEEN ONGOING IN A PARTICULAR AREA OF THE CITY FOR OVER A YEAR
7 NOW. AND THE GOVERNMENT HAS TAKEN AND ATTEMPTED TO TAKE
8 CONSISTENT POSITIONS WITH RESPECT TO DEFENDANTS WHO HAVE COME
9 BEFORE THE NORTHERN DISTRICT OF GEORGIA MORE BROADLY, NOT JUST
10 IN FRONT OF YOUR HONOR.

11 AS PART OF THAT, THE GOVERNMENT RECOGNIZES THAT THE AMOUNT
12 OF DRUGS AT ISSUE IN THE INSTANT OFFENSE IS SMALL COMPARED TO
13 THE AMOUNT OF DRUGS THAT COULD BE AT ISSUE. MR. BURNS IS HERE
14 AS A RESULT OF A SINGLE DRUG TRAFFICKING INSTANCE, OF A SINGLE
15 INSTANCE OF DRUG TRAFFICKING. THAT SAID, THE GOVERNMENT HAS
16 RECOMMENDED A SENTENCE OF 96 MONTHS. THAT IS A 55-MONTH
17 DOWNWARD VARIANCE FROM THE LOW END OF THE GUIDELINES AS
18 CALCULATED. THE REASON WHY THE 96-MONTH RECOMMENDATION IS JUST
19 AND REASONABLE UNDER THE 3553(A) FACTORS IS NOT JUST BECAUSE OF
20 THIS -- THAT THE GOVERNMENT IS SEEKING TO HAVE SOMEWHAT
21 CONSISTENT SENTENCES APPLIED IN THE CONTEXT OF THIS LARGER
22 INITIATIVE, BUT ALSO BECAUSE MR. BURNS' CRIMINAL HISTORY IS --
23 IS ACTUALLY ENTITLED -- HE IS A PERFECT EXAMPLE OF WHAT CAREER
24 OFFENDER MEANS. HE -- HIS UNDERLYING CONVICTIONS THAT QUALIFY
25 HIM FOR THE HIGH GUIDELINE SENTENCE ARE PRETTY ATROCIOUS ACTS OF

1 VIOLENCE. THE AGGRAVATED ASSAULT FROM EARLY 2000, THAT'S
2 CLASSIC, BREAKING INTO SOMEONE'S HOUSE AND SHOOTING AT A PERSON.
3 AND AS THE COURT IS WELL AWARE HAVING ADOPTED THE FINDINGS OF
4 FACT IN THE P.S.R., THE FELONY OBSTRUCTION OF LAW ENFORCEMENT
5 OFFICERS IN THIS CASE WERE NOT MINIMAL ACTS OF CONDUCT. AND THE
6 COURT HAS EVIDENCE THAT MR. BURNS KNOWING, FOR EXAMPLE, THAT HE
7 WAS H.I.V. POSITIVE WAS DELIBERATELY BITING AND SCRATCHING AND
8 TRYING TO INFECT THE POLICE OFFICERS WHO WERE -- WHO WERE
9 ATTEMPTING TO EFFECTUATE AN ARREST. SO THIS PUTS MR. BURNS
10 SQUARELY WITHIN WHAT THE CAREER OFFENDER GUIDELINES WERE
11 INTENDED (VERBATIM) TO ADDRESS. THAT SAID, THE GOVERNMENT
12 RECOGNIZES THAT MR. BURNS' CONDUCT IN THE INSTANT OFFENSE, AS
13 WELL AS HOW HE'S COME BEFORE THIS COURT IN THE FIRST PLACE,
14 ENTITLES -- THE GOVERNMENT BELIEVES THAT A DOWNWARD VARIANCE OF
15 SOME KIND IS JUSTIFIED. BUT 96 MONTHS IS APPROPRIATE FOR ALL
16 THE REASONS THAT I'VE JUST SAID.

17 THE COURT: OKAY. THANK YOU VERY MUCH.

18 MS. BOATRIGHT: THANK YOU.

19 THE COURT: MR. COGNAC. AND IT'S MY UNDERSTANDING AS
20 WELL THAT YOU HAVE MAYBE SOMEBODY OR SOME PEOPLE THAT WANT TO
21 SPEAK. AND WHAT I'LL LET YOU DO, TOO, IS MAKE YOUR
22 PRESENTATION, BUT AT ANY POINT YOU WANT TO CALL ANYBODY, JUST GO
23 AHEAD AND DO THAT. AND I'LL HEAR FROM THEM AT WHAT POINT IN
24 TIME IN YOUR PRESENTATION YOU WOULD LIKE THEM TO SPEAK.

25 MR. COGNAC: OKAY. IN ADDRESSING THE 3553(A) FACTORS,

1 THE COURT IS AWARE THAT THE ADVISORY GUIDELINES, THEY'RE NOT
2 MANDATORY ON THE COURT AND THEY ARE NOT PRESUMED REASONABLE.
3 AND REALLY WHAT MAKES THIS CASE AND TAKES IT OUT OF THE
4 HEARTLAND OF THE TYPICAL DRUG OFFENSE IS THE AMOUNT INVOLVED.
5 WE'RE TALKING ABOUT LESS THAN A QUARTER OF A GRAM. THE
6 POLICE -- ACTUALLY THE CRIME LAB REPORT SAYS LESS THAN A GRAM.
7 THE POLICE REPORT HAD TWO WEIGHTS, .23 AND .20, SO WE'RE TALKING
8 EITHER A FIFTH OF A GRAM, MAYBE A QUARTER OF A GRAM. THIS IS
9 THE WEIGHT OF A COUPLE OF GRAINS OF SAND ON ONE OCCASION, THE
10 SALE OF THAT ON ONE OCCASION. IN FEDERAL COURT WE ARE TYPICALLY
11 DEALING WITH MULTIPLE KILOS, HUNDREDS OF THOUSANDS IF NOT
12 MILLIONS OF DOLLARS WORTH OF DRUGS. IT IS VERY UNLIKELY THAT
13 THIS IS THE HEARTLAND CASE THAT WE SEE IN THIS DISTRICT.

14 NOW, THE GOVERNMENT HAS THIS INITIATIVE THAT THEY'RE TRYING
15 TO CLEAN UP THE VINE CITY AREA COMMONLY KNOWN AS THE BLUFF.
16 THIS IS NOT THE FIRST TIME THE GOVERNMENT HAS HAD THIS
17 INITIATIVE. IT WAS DONE IN THE EARLY 2000'S, IT WAS DONE IN THE
18 LATE 1990'S WHERE THEY GO INTO THIS OPEN-AIR DRUG MARKET AND
19 THEY MAKE THESE SWEEPS AND THEY PROSECUTE THESE OFFENSES THAT
20 TYPICALLY WOULD NOT BE PROSECUTED IN FEDERAL COURT BECAUSE THEY
21 ARE TRYING TO CLEAN UP A SPECIFIC AREA. AND ACTUALLY BECAUSE
22 IT'S CLOSE TO THE STADIUM AND THE NEW STADIUM, THEY'RE TRYING TO
23 DO SOMETHING ABOUT THE OPEN-AIR DRUG MARKET THAT IS WITHIN FEET
24 OF THE STADIUM. SO WHEN WE'RE DEALING WITH SUCH A MINUSCULE
25 AMOUNT -- AS A MATTER OF FACT, WHEN CALCULATING THE GUIDELINES,

1 THE MINIMUM AMOUNT THAT THEY CONSIDER IS TEN GRAMS, AND THAT
2 GETS YOU 12, A LEVEL 12. WE'RE DEALING WITH SOMEWHERE BETWEEN A
3 40TH AND A 50TH OF AMOUNT TO TRIGGER THAT LEVEL 12. AND UNDER
4 THE GUIDELINES HAD HE NOT BEEN A CAREER OFFENDER, HE WOULD HAVE
5 BEEN LOOKING AT 21 TO 27 MONTHS. WHEN YOU TAKE THAT INTO
6 ACCOUNT AND THEN YOU LOOK AT THE OTHER INFORMATION THAT'S
7 PRESIDED (VERBATIM) IN THE PRESENTENCE REPORT, THE FACT THAT HE
8 DOES HAVE A DRUG DEPENDENCY, THAT HE'S DOING THIS IN ORDER TO
9 FEED HIS OWN DRUG DEPENDENCY, AND THIS IS, YOU KNOW, A ONE-TIME
10 SALE OF ONE-FORTIETH TO ONE-FIFTIETH OF THE AMOUNT TO REQUIRE
11 THE LOWEST POSSIBLE LEVEL IN THE FEDERAL SYSTEM, IT IS TRULY
12 OUTSIDE THE HEARTLAND OF CASES THAT WE TYPICALLY SEE. AND
13 THAT'S WHY WE'RE ASKING FOR A SENTENCE THAT WOULD BE THE SAME AS
14 IF HE WERE NOT A CAREER OFFENDER. BECAUSE OF OUR ARGUMENTS THAT
15 WE MADE -- AND WE UNDERSTAND YOUR RULING THAT YOU HAVE FOUND
16 HE'S A CAREER OFFENDER UNDER THE GUIDELINES -- BUT A REASONABLE
17 SENTENCE, GIVEN ALL OF THE FACTORS UNDER 3553(A), GIVEN THE
18 AMOUNT, THE ONE TIME THAT WE'RE TALKING ABOUT HERE -- AND, YES,
19 HE HAS A CRIMINAL HISTORY. THERE'S NO DOUBT ABOUT THAT, BUT HE
20 HAS SERVED THE APPROPRIATE TIME THAT HE WAS SENTENCED TO. HE'S
21 BEEN PUNISHED FOR THOSE CRIMES. TO NOW TAKE A CRIME THAT WOULD
22 HAVE BEEN 21 TO 27 MONTHS AND MAKE IT 151 TO 188, OR EVEN THE
23 GOVERNMENT'S RECOMMENDATION OF 96 MONTHS, IS, FRANKLY, AN
24 INJUSTICE. IT'S JUST NOT RIGHT. IT'S NOT FAIR. IT'S NOT
25 REASONABLE. AND WE WOULD ASK THAT A SENTENCE TYPICAL OF WHAT HE

1 WOULD BE AT NOT BEING A CAREER OFFENDER, BECAUSE OF THE ISSUE OF
2 THE TINY AMOUNT AND THE DEBATABLE ISSUE OF WHETHER HE'S CAREER
3 OFFENDER OR NOT, WE THINK IF YOU TAKE ALL THAT IN CONSIDERATION,
4 A SENTENCE IN THE RANGE OF 15 TO 18 MONTHS WOULD BE APPROPRIATE.
5 AND WE WOULD ASK FOR DRUG TREATMENT PROGRAM, THE MOST INTENSIVE
6 DRUG TREATMENT PROGRAM THAT THE COURT COULD PRESCRIBE, AND THAT
7 HE BE SENTENCED TO A FACILITY AS CLOSE TO ATLANTA AS POSSIBLE.

8 HE DOES HAVE A FRIEND HERE. HER NAME IS ELEANORA
9 BURNS. SHE WOULD LIKE TO SPEAK ON HIS BEHALF.

10 THE COURT: OKAY. MS. BURNS, IF YOU CAN COME UP TO
11 THE PODIUM AND JUST SAY AND SPELL YOUR NAME BEFORE YOU START
12 TALKING SO WE MAKE SURE WE GET IT CORRECT IN THE RECORD, PLEASE.

13 MS. BARNES-RAMEY: OKAY. MY NAME IS ELEANOR
14 BARNES-RAMEY. THANK YOU FOR ALLOWING ME TO COME UP. I'M KIND
15 OF NERVOUS. I LEFT A PACKAGE BACK THERE, BUT HE SENT ME THE
16 PACKAGE. AND I'M A VERY GOOD FRIEND OF HIS. AND WHEN I READ
17 THE PACKAGE, YOUR HONOR, IT WAS ALMOST LIKE I HAD FORMED THIS
18 OPINION AND SAID, NO, I DON'T THINK I WANT TO BE BOTHERED, YOU
19 KNOW WHAT I MEAN. SO WHEN I TALK TO EACH AND EVERY ONE OF HIS
20 FAMILY MEMBERS AND SOMEBODY THAT CARES ABOUT HIM, THEY SAY THAT
21 THIS MAN WENT OUT IN THE THIRD GRADE TO STEAL FOOD TO FEED HIS
22 SIBLINGS. AND SO THAT'S WHEN I EXPLAINED TO HIM WHAT ME AND MY
23 BROTHER WENT THROUGH, BUT WE HAD A GRANDMOTHER AND WE HAD A
24 SUPPORTIVE GRANDFATHER THAT CAME AND TOOK US AWAY FROM OUR
25 MOTHER SO THAT WE WOULDN'T BE EXPOSED TO THE STUFF THAT HE'S

1 BEEN THROUGH.

2 I'M ASKING YOU, YOUR HONOR, TO BE LENIENT WITH HIM. I WILL
3 BE THERE TO SUPPORT HIM IN WAYS OF WHERE HE CAN HAVE A LIFE FOR
4 HIMSELF, NOT ONLY HAVE A LIFE FOR HIMSELF, BE A PRODUCTIVE
5 CITIZEN. BECAUSE LACK OF EDUCATION IS NUMBER ONE. AND, NUMBER
6 TWO, YOU LOOKING FOR LOVE FROM PEOPLE, AND YOU GOT TO LEARN TO
7 LOVE YOURSELF FIRST. AND I EXPLAINED TO HIM IF HE'S WILLING TO
8 WALK IN THE LIGHT WITH ME, I'M GLAD TO WALK WITH HIM. BUT IF
9 HE'S GOING TO BE IN THE DARK, THEN I CAN'T HELP HIM WITH
10 ANYTHING. AND I DO AGREE WITH THE ATTORNEY, COUNSELING,
11 EDUCATION IS VERY IMPORTANT FOR HIM BECAUSE HE DON'T HAVE THE
12 FAMILY STRUCTURE. AND IT'S SAD, BUT WHEN I WENT DOWN -- WHEN I
13 DRIVE DOWN THE STREET -- I'M A C.N.A. AND I TAKE CARE OF PEOPLE
14 EVERY DAY. AND MY FOCUS IS MY FAMILY, MY IMMEDIATE FAMILY, MY
15 CHILDREN, AND MY PATIENTS. IF NEITHER ONE OF THEM CALLS ME FOR
16 ANYTHING, I DON'T MOVE FOR ANYBODY. AND THIS IS WHAT I
17 EXPLAINED TO HIM, IS TO PLEASE TAKE CARE OF YOURSELF. EDUCATION
18 FIRST. BECAUSE, YOU KNOW, YOU CAN'T CONTINUE TO LIVE DOING THIS
19 TYPE OF STUFF TO PEOPLE AND MESSING YOUR LIFE UP ALSO IN RETURN.

20 THE COURT: THANK YOU.

21 MS. BARNES-RAMEY: SO I'M ASKING YOU, PLEASE, TO GIVE
22 HIM A CHANCE BECAUSE HE NEEDS COUNSELING AND HE NEEDS SUPPORT --

23 THE COURT: THANK YOU VERY MUCH.

24 MS. BARNES-RAMEY -- SO HE WON'T GET BACK OUT AND DO
25 THE SAME THING AGAIN. AND I'LL BE THERE FOR HIM IF HE WILL WALK

1 IN THE LIGHT. OKAY. THANK YOU.

2 THE COURT: THANK YOU VERY MUCH.

3 MR. COGNAC: YOUR HONOR, MR. BURNS WOULD LIKE TO
4 ADDRESS THE COURT AS WELL.

5 THE COURT: OKAY. THANK YOU, MR. BURNS. YOU CAN COME
6 UP HERE.

7 MR. BURNS: I REALLY NEED COUNSELING, BUT I'M ON --
8 I'M ON (VERBATIM) DRUGS. THAT'S WHY I WAS OUT THERE IN THE
9 BLUFF TRYING TO SUBMIT (VERBATIM) MY HABIT. BUT IF YOU GIVE ME
10 ANOTHER CHANCE, I'M GOING TO STAY AWAY FROM THE BLUFF AND YOU'RE
11 NOT GOING TO HAVE TO WORRY ABOUT ME NO MORE.

12 THE COURT: OKAY. THANK YOU VERY MUCH. AND IF Y'ALL
13 CAN JUST STAY UP AT THE FRONT RIGHT HERE AT THIS PODIUM.

14 SO, MR. BURNS, WHAT I'M GOING TO DO IS PRONOUNCE THE
15 SENTENCE AND GO THROUGH ALL THE DETAILS OF THAT, BUT WHEN I'M
16 THROUGH WITH THAT, I'M GOING TO TALK TO YOU DIRECTLY AND EXPLAIN
17 TO YOU EXACTLY HOW I CAME TO THIS SENTENCE AND PROVIDE YOU JUST
18 SOME MORE ACTUAL TALKING TO YOU ABOUT WHAT THIS MEANS. BUT
19 THERE IS SOME VERY SPECIFIC LANGUAGE THAT I HAVE TO GO THROUGH
20 IN TERMS OF PRONOUNCING THE SENTENCE.

21 SO, PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT IS
22 THE JUDGMENT OF THE COURT THAT YOU, THE DEFENDANT, JACOBY BURNS,
23 IS HEREBY COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO
24 BE IMPRISONED FOR A TERM OF 84 MONTHS AS TO COUNT ONE. IT IS
25 FURTHER ORDERED THAT YOU SHALL PAY TO THE UNITED STATES A

1 SPECIAL ASSESSMENT OF A HUNDRED DOLLARS WHICH SHALL BE DUE
2 IMMEDIATELY. I DO FIND THAT YOU DO NOT HAVE THE ABILITY TO PAY
3 A FINE AND YOUR COST OF INCARCERATION, SO I WILL WAIVE THE FINE
4 AND COST OF INCARCERATION IN THIS CASE. UPON RELEASE FROM
5 PRISON, YOU SHALL BE PLACED ON SUPERVISED RELEASE FOR A TERM OF
6 THREE YEARS. WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF THE
7 BUREAU OF PRISONS, YOU SHALL REPORT IN PERSON TO THE PROBATION
8 OFFICE IN THE DISTRICT TO WHICH YOU ARE RELEASED. WHILE ON
9 SUPERVISED RELEASE, YOU SHALL NOT COMMIT ANOTHER FEDERAL, STATE,
10 OR LOCAL CRIME. YOU SHALL COMPLY WITH THE STANDARD CONDITIONS
11 THAT HAVE BEEN ADOPTED BY THIS COURT AND YOU SHALL COMPLY WITH
12 THE FOLLOWING ADDITIONAL CONDITIONS:

13 PURSUANT TO 42 U.S.C. SECTION 14:135(A) (D) (1) AND 10 U.S.C.
14 SECTION 1565(D) WHICH REQUIRE MANDATORY D.N.A. TESTING FOR
15 FEDERAL OFFENDERS CONVICTED OF FELONY OFFENSES, YOU SHALL
16 COOPERATE IN THE COLLECTION OF D.N.A. AS DIRECTED BY THE
17 PROBATION OFFICER. YOU SHALL NOT ILLEGALLY POSSESS A CONTROLLED
18 SUBSTANCE. YOU SHALL PARTICIPATE IN A DRUG AND ALCOHOL, IF
19 NECESSARY, TREATMENT PROGRAM UNDER THE GUIDANCE AND SUPERVISION
20 OF THE UNITED STATES PROBATION OFFICER, AND, IF ABLE, CONTRIBUTE
21 TO THE COST OF SERVICES FOR SUCH TREATMENT. YOU SHALL RECEIVE A
22 MENTAL HEALTH ASSESSMENT AND FOLLOW ANY RECOMMENDATIONS FOR
23 TREATMENT UNDER THE GUIDANCE AND SUPERVISION OF THE UNITED
24 STATES PROBATION OFFICER, AND, IF ABLE, CONTRIBUTE TO THE COST
25 OF SERVICES FOR SUCH TREATMENT. YOU SHALL NOT OWN, POSSESS, OR

1 HAVE UNDER YOUR CONTROL ANY FIREARM, DANGEROUS WEAPON, OR OTHER
2 DESTRUCTIVE DEVICE. YOU SHALL SUBMIT TO A SEARCH OF YOUR
3 PERSON, PROPERTY -- REAL, PERSONAL OR RENTAL -- RESIDENCE,
4 OFFICE AND/OR VEHICLE AT A REASONABLE TIME AND IN A REASONABLE
5 MANNER BASED UPON A REASONABLE SUSPICION OF CONTRABAND OR
6 EVIDENCE OF A VIOLATION OF A CONDITION OF RELEASE. FAILURE TO
7 SUBMIT TO A SEARCH MAY BE GROUNDS FOR REVOCATION. YOU SHALL
8 WARN ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO
9 SEARCHES PURSUANT TO THIS PROVISION, AND YOU MUST PERMIT
10 CONFISCATION AND/OR DISPOSAL OF ANY MATERIAL CONSIDERED
11 CONTRABAND OR ANY OTHER ITEM WHICH MAY BE DEEMED TO HAVE
12 EVIDENTIARY VALUE RELATED TO VIOLATIONS OF SUPERVISION.

13 AND AS I MENTIONED, I'M GOING TO TALK TO YOU DIRECTLY AND
14 EXPLAIN TO YOU HOW I GOT TO THIS 84-MONTH SENTENCE. AND IN THE
15 FEDERAL SYSTEM, AS I KNOW THAT YOU'VE BEEN TOLD BY YOUR LAWYER,
16 IT'S DIFFERENT HOW WE DO SENTENCING HERE THAN WE DO IN THE STATE
17 SYSTEM. FIRST, WE LOOK AT THE GUIDELINES. AND AS YOU'RE AWARE,
18 THE GUIDELINES IN YOUR CASE HAVE YOU AT 151 TO 188 MONTHS WHICH
19 IS A VERY, VERY SERIOUS SENTENCE. THAT CERTAINLY IS BASED UPON
20 WHAT YOU DID TO GET HERE, WHICH IS THE SELLING OF THE HEROIN,
21 BUT A LOT OF THIS HAS TO DO WITH YOUR HISTORY AND WHAT YOU'VE
22 DONE OVER THE PAST, AND THEN YOU HAVE A RECORD THAT HAS 23
23 ARRESTS AND 15 CONVICTIONS. AND IT'S FOR ALL SORTS OF DIFFERENT
24 TYPES OF CRIME, BUT MANY OF THESE ARE VERY SERIOUS. WE HAVE
25 AGGRAVATED ASSAULT, BURGLARY, AGGRAVATED BATTERY, AND FELONY

1 OBSTRUCTION OF LAW ENFORCEMENT WHICH WE'VE TALKED ABOUT BEFORE.
2 AND THESE ARE CRIMES OF VIOLENCE. THEY'RE VERY SERIOUS CRIMES.
3 AND WITH EACH CONVICTION THERE HASN'T SEEMED TO BE A DETERRENCE.
4 THERE HASN'T BEEN SOMETHING THAT HAS STOPPED YOU FROM DOING IT
5 AGAIN. AND A LOT OF THAT I DO REALIZE IS THE DRUG ADDICTION
6 THAT YOU'VE BEEN STRUGGLING WITH AND IT HAS SOMETHING TO DO WITH
7 THE WAY THAT YOU GREW UP AND THE FACT THAT YOUR MOM WAS ADDICTED
8 TO DRUGS, YOUR DAD WASN'T THERE. AND I HAVE TO SAY IF I COULD
9 GO BACK WHEN YOU WERE YOUNG AND YOU DIDN'T HAVE ENOUGH FOOD FOR
10 YOUR SIBLINGS AND YOUR MOM WAS OUT NOT TAKING CARE OF YOU, AND I
11 COULD FIX THAT PERIOD OF TIME, I MEAN, I WOULD DO THAT. I WOULD
12 GO BACK THERE AND MAKE SURE YOU WERE CARED FOR AND YOU HAD
13 ENOUGH TO EAT. AND I'M NOT ABLE TO DO THAT. I'M NOT ABLE TO GO
14 BACK IN TIME AND FIX THE BAD SITUATION THAT YOU GREW UP IN. AND
15 THAT'S JUST PART OF WHAT WE HAVE TO DEAL WITH HERE, BUT I HAVE
16 TO LOOK AT THE SERIOUSNESS OF WHAT YOU'VE DONE IN THESE PAST 37
17 YEARS. AND THE FACT THAT YOU GREW UP IN BAD CIRCUMSTANCES
18 DOESN'T EXPLAIN EVERYTHING THAT YOU'VE CHOSEN TO DO YEAR AFTER
19 YEAR. AND I KNOW YOU'VE BEEN IN DIFFERENT COURTS AND SENTENCED
20 AT DIFFERENT TIMES, AND, FOR WHATEVER REASON, THAT MOMENT HASN'T
21 REACHED YOU WHERE YOU'VE REALLY TURNED THINGS AROUND. AND I
22 KNOW A LOT OF IT HAS TO DO WITH THIS DRUG ADDICTION YOU'VE BEEN
23 WRESTLING WITH, BUT YOU'RE LEADING A VERY DANGEROUS LIFE.
24 YOU'RE LEADING A DANGEROUS LIFE FOR OTHERS IN THE COMMUNITY, BUT
25 YOU'RE LEADING A VERY DANGEROUS LIFE FOR YOURSELF BECAUSE YOU

1 ARE PUTTING YOURSELF IN SOME BAD SITUATIONS. AND NO ONE IN THIS
2 COURTROOM, NONE OF YOUR FRIENDS, NONE OF YOUR FAMILY WANTS TO
3 SEE YOU GET SHOT, TO GET IN MORE DIFFICULT SITUATIONS. THEY
4 WANT YOU TO BE HEALTHY. THEY WANT YOU TO BE FEELING GOOD AND
5 HAVING A GOOD LIFE. AND YOU ARE NOT ON THE PATH WHERE THAT'S
6 GOING TO HAPPEN. SO I DON'T KNOW IF THIS AMOUNT OF TIME -- I
7 MEAN, IT'S REALLY A FRACTION OF WHAT YOU COULD BE GETTING EVEN
8 THOUGH IT'S A VERY SERIOUS SENTENCE, THIS 84 MONTHS, IT'S STILL
9 67 MONTHS LOWER THAN WHAT THE GUIDELINES SAID I SHOULD GIVE YOU.
10 BUT I AM CONCERNED ABOUT THE UNDERLYING CRIME, THE VERY SMALL
11 AMOUNT OF DRUGS THAT WAS INVOLVED. AND I REALLY DO THINK THAT
12 IF YOU HAVE SOME VERY INTENSIVE DRUG REHABILITATION AND YOU'RE
13 AWAY FROM THIS LIFESTYLE FOR A PERIOD OF TIME, I SEE NOTHING
14 ABOUT YOU THAT INDICATES TO ME THAT YOU CAN'T TURN THIS AROUND.
15 AND AS MS. BARNES SAID, I MEAN, THIS LIFE IS OUT FOR YOU IF YOU
16 CAN GET THESE DRUGS UNDER CONTROL AND GET YOUR ATTITUDE CHANGED
17 AROUND AND YOU CAN GET IN THE LIGHT. I MEAN, THERE'S NO REASON
18 THAT YOU CAN'T TURN THIS AROUND. AND FEDERAL PRISON I'M NOT
19 GOING TO SAY IS A GOOD PLACE BECAUSE IT'S NOT, BUT I WILL SAY
20 THAT THE SERVICES THERE ARE A LOT BETTER THAN THE ONES IN THE
21 STATE SYSTEM. AND THEY ARE SERIOUS ABOUT GIVING YOU DRUG
22 TREATMENT IF YOU REALLY WANT TO PARTICIPATE AND YOU WANT THIS TO
23 BE MEANINGFUL. THERE ARE MUCH BETTER PROGRAMS IN THE FEDERAL
24 SYSTEM THAN THERE ARE IN THE STATE. AND IF THIS IS KIND OF THE
25 POINT WHERE YOU'RE READY TO DO THIS, THERE ARE PROGRAMS IN PLACE

1 THAT CAN HELP YOU. AND WHAT I'M LOOKING FOR IS A SENTENCE THAT
2 IS ENOUGH TO REALLY RESPECT THE SERIOUSNESS OF WHAT YOU'VE DONE,
3 WHICH IS SELLING DRUGS, AND THIS KIND OF 23 ARRESTS AND 15
4 CONVICTIONS, BUT I WANT THERE TO BE HOPE THERE FOR YOU TO TURN
5 THIS AROUND. AND I HAVE TO SAY IF I SENTENCED YOU TO THIS 151
6 TO 188 MONTHS, I JUST THINK THAT WOULD BE TOO MUCH. I THINK
7 THAT IF YOU HAVE THIS DRUG TREATMENT, THAT I THINK SEVEN YEARS
8 IS MORE THAN ENOUGH TO RESPECT THE SERIOUSNESS OF WHAT YOU DID,
9 BUT ALSO TO CAPTURE THE HOPE THAT THERE IS IN ALL OF US THAT YOU
10 CAN FIND THAT POINT WHERE YOU'RE READY NOT TO FEEL LIKE THIS,
11 NOT TO BE ON THE STREETS, NOT TO BE IN DANGEROUS SITUATIONS, NOT
12 TO SCARE YOUR FAMILY, AND TO REALLY BE THE MAN THAT YOU ALWAYS
13 COULD BE. SO THAT'S WHY THIS PARTICULAR SENTENCE, I THINK,
14 MAKES SENSE.

15 AS EVERYONE HAS SAID, THIS ISN'T THE TYPICAL CASE WE HAVE
16 IN FEDERAL COURT. IT IS PART OF A BROADER PROGRAM, BUT IT IS A
17 SITUATION WHERE WITH DRUG TRAFFICKING EVEN A LOW-LEVEL PERSON IS
18 NECESSARY FOR THE WHOLE THING TO WORK. AND EVEN THOUGH YOU HAD
19 A SMALL ROLE, IT'S PART OF SOMETHING THAT IS DESTROYING A
20 NEIGHBORHOOD AND IT IS DESTROYING A COMMUNITY. BUT I JUST DON'T
21 THINK YOU'RE SOMEONE THAT HAS TO BE IN JAIL FOR 151 MONTHS TO
22 GET THIS INTO YOUR HEAD THAT YOU JUST CAN'T DO THIS ANYMORE. I
23 THINK 84 IS GOING TO BE ENOUGH, BUT I THINK IT'S SERIOUS. IT
24 DOES SHOW THE IMPORTANCE OF YOU KIND OF UNDERSTANDING WHAT IT IS
25 THAT YOU'VE DONE.

1 I ALSO SEE THAT YOU DO HAVE SOME STRONG FAMILY SUPPORT. I
2 KNOW THAT THERE WAS SOME OTHER FOLKS THAT WERE GOING TO BE HERE
3 TODAY BUT COULDN'T, BUT YOU HAVE A FIANCEE, A MOTHER AND I THINK
4 IT WAS A SISTER MAYBE THAT ARE IN YOUR LIVES AND THAT CARE FOR
5 YOU. SO YOU'VE GOT THESE PEOPLE OUT THERE THAT LOVE YOU, THAT
6 WANT TO BE THERE FOR YOU. AND WHAT I WILL SAY, TOO, WHEN YOU
7 GET OUT, AND YOU WILL GET OUT, PART OF YOUR SENTENCING IS
8 SOMETHING CALLED SUPERVISED RELEASE. AND I KNOW RIGHT NOW THAT
9 DOESN'T MEAN A LOT TO YOU BECAUSE ALL YOU SEE IS THE SEVEN
10 YEARS, WHICH IS KIND OF THE MORE, I GUESS, BIGGER PART OF THIS,
11 BUT FOR THREE YEARS AFTER YOU GET OUT, YOU'RE GOING TO HAVE TO
12 HAVE DRUG TESTS. YOU'RE GOING TO HAVE TO REPORT IN TO YOUR
13 PROBATION OFFICER, AND YOU'RE GOING TO HAVE TO SHOW YOUR
14 PROBATION OFFICER THAT YOU'RE ON THIS RIGHT PATH. AND IF YOU
15 VIOLATE THAT AND YOU HAVE DIRTY DRUG SCREENS, YOU'RE GOING TO
16 COME BACK TO ME, AND WE'RE GOING TO HAVE TO LOOK AT ANOTHER
17 SENTENCE FOR YOU. AND WHAT I'LL SAY IS RATHER THAN TREATING THE
18 SUPERVISED RELEASE AS JUST SOME OTHER HORRIBLE THING YOU HAVE TO
19 GO THROUGH, I REALLY WANT YOU TO LOOK AT IT AS A STRUCTURE THAT
20 CAN HELP YOU STAY ON THE RIGHT PATH WHEN YOU GET OUT. BECAUSE
21 WHEN YOU GET OUT, SOME OF THOSE TEMPTATIONS ARE GOING TO BE
22 THERE. AND WHAT I HOPE THAT YOU'LL THINK IS, OKAY, IF I GO HANG
23 WITH THESE PEOPLE AND I GET INTO TROUBLE AGAIN, I'M GOING TO
24 HAVE TO HAVE THIS DRUG TEST BY MY PROBATION OFFICER, I'M GOING
25 TO END UP RIGHT WHERE I WAS BEFORE, AND I DON'T WANT TO DO THAT.

1 I MEAN, YOU CAN TELL PEOPLE, I CAN'T DO THIS, I'M GOING TO BE
2 DRUG TESTED. AND USE THIS TIME WHILE YOU'RE ON SUPERVISED
3 RELEASE TO HELP YOU GET A JOB, HELP YOU TO GET INTO SOME
4 PROGRAMS WHEN YOU'RE OUT AND KEEP YOURSELF KIND OF ON THIS RIGHT
5 PATH BECAUSE IT'S NOT GOING TO BE EASY. BUT IF YOU USE THE
6 RESOURCES OF THE SUPERVISED RELEASE, IF YOU TALK TO YOUR FAMILY
7 WHEN YOU'RE HAVING PROBLEMS AND FRIENDS THAT ARE GOOD THAT
8 AREN'T GETTING YOU IN TROUBLE AND SAY, HEY, I'M HAVING A
9 PROBLEM, CAN WE GO SOMEWHERE, CAN WE DO SOMETHING, I NEED TO GET
10 AWAY FROM THESE PEOPLE, TALK TO THE PEOPLE THAT LOVE YOU AND
11 SUPPORT YOU, AND REALLY DO WHAT YOU CAN TO KEEP ON THE PATH WHEN
12 YOU GET OUT BECAUSE THAT'S WHAT'S GOING TO MAKE THIS SUCCESSFUL,
13 IS THE GOOD PROGRAM WHEN YOU GET IN, AND THEN WHEN YOU GET OUT,
14 REALLY APPRECIATING AND TAKING SERIOUS THESE SUPERVISED RELEASE
15 RESTRICTIONS THAT YOU'LL HAVE ON YOU WHEN YOU GET OUT AND
16 THINKING OF THEM AS TOOLS TO HELP YOU STAY ON THE PATH, NOT AS
17 SOMETHING ELSE TO FIGHT AGAINST. AND THAT WOULD BE WHAT I WOULD
18 ENCOURAGE YOU TO DO. AND LIKE I SAID BEFORE, THERE WILL BE DRUG
19 TREATMENT AND THERAPY AND THINGS LIKE THAT AVAILABLE TO YOU
20 WHILE YOU'RE ON SUPERVISED RELEASE WHEN YOU GET OUT. SO IF
21 YOU'RE SERIOUS, I MEAN, I'M HOPEFUL THAT THE TOOLS WILL BE THERE
22 FOR YOU TO REALLY MAKE THIS WORK ONCE YOU GET OUT.

23 I WAIVE THE FINE BECAUSE OF YOUR INABILITY TO PAY A FINE.
24 THE SPECIAL ASSESSMENT IS MANDATED UNDER THE STATUTE. THE
25 THREE-YEAR PERIOD OF SUPERVISED RELEASE AND SPECIAL CONDITIONS

1 WILL ASSIST THE PROBATION OFFICER AND LAW ENFORCEMENT IN
2 MONITORING YOU FOR COMPLIANCE WITH TREATMENT, RECOMMENDATIONS,
3 AND THE PARTICIPATION IN FURTHER CRIMINAL ACTIVITY. WHEN I
4 DEvised THE SENTENCE I TOOK INTO CONSIDERATION CERTAIN FACTORS
5 PURSUANT TO 18 U.S.C. SECTION 3553(A), AND THOSE INCLUDED THE
6 NATURE AND CIRCUMSTANCES OF THE OFFENSE, AND THE HISTORY AND
7 CHARACTERISTICS OF THE DEFENDANT, THE NEED FOR THE SENTENCE
8 IMPOSED TO REFLECT THE SERIOUSNESS OF THE OFFENSE, TO AFFORD
9 ADEQUATE DETERRENCE, TO PROTECT THE PUBLIC, AND TO PROVIDE YOU
10 WITH TRAINING, CARE, AND/OR TREATMENT, THE KINDS OF SENTENCES
11 AVAILABLE, THE KINDS OF SENTENCE IN THE SENTENCING RANGE
12 ESTABLISHED FOR THE OFFENSE AS SET FORTH IN THE GUIDELINES, ALL
13 PERTINENT POLICIES, AND THE NEED TO AVOID SENTENCE DISPARITY.
14 THE SENTENCE DOES MEET THE CRITERIA OF PUNISHMENT, DETERRENCE,
15 AND INCAPACITATION.

16 YOU HAVE BEEN DETAINED WITHOUT BAIL SINCE YOUR ARREST AND
17 YOU ARE NOT A CANDIDATE FOR VOLUNTARY SURRENDER BECAUSE OF THE
18 PROVISIONS FOUND IN 18 U.S.C. SECTION 3143.

19 I'M NOW GOING TO ASK BOTH COUNSEL IF YOU HAVE ANY
20 OBJECTIONS TO THE ULTIMATE FINDINGS OF THE COURT, THE GUIDELINE
21 CALCULATIONS, THE SENTENCE, OR THE MANNER IN WHICH IT HAS BEEN
22 PRONOUNCED OTHER THAN THOSE THAT HAVE ALREADY BEEN MADE. IF SO,
23 OBJECTIONS SHOULD BE FULLY MADE AT THIS TIME, OR THEY WILL BE
24 CONSIDERED AS HAVING BEEN WAIVED.

25 MS. BOATRIGHT, DO YOU HAVE ANY OBJECTIONS?

1 MS. BOATRIGHT: NONE, YOUR HONOR.

2 THE COURT: MR. COGNAC, DO YOU HAVE ANY OBJECTIONS
3 OTHER THAN THOSE THAT YOU HAVE ALREADY MADE?

4 MR. COGNAC: JUST AS ALREADY MADE, BUT I THINK FOR THE
5 RECORD I HAVE TO STATE IT AGAIN, THAT THE FELONY OBSTRUCTION HAS
6 THAT BEING A PREDICATE FOR THE CAREER OFFENDER GUIDELINE, AND
7 THEN TO SUBSTANTIVE REASONABLENESS UNDER 3553(A) WOULD BE OUR
8 OBJECTIONS, YOUR HONOR.

9 THE COURT: OKAY. CERTAINLY. AND THOSE WILL BE
10 NOTED. I WILL PUT IN THE SENTENCING, THE JUDGMENT ITSELF, THE
11 REQUEST THAT YOUR LAWYER MADE FOR YOU TO RECEIVE THE DRUG
12 TREATMENT WHILE IN PRISON. AND I ALSO WILL MAKE THE REQUEST
13 THAT YOU BE SENT TO A FACILITY AS CLOSE AS POSSIBLE TO ATLANTA.
14 WHAT I WILL TELL YOU IS THAT THE FEDERAL SYSTEM IS DIFFERENT IN
15 THAT THERE ARE PRISONS ALL OVER THE UNITED STATES. AND WHAT
16 I'VE BEEN TOLD IS THEY TRY TO PUT YOU AS MUCH AS POSSIBLE CLOSE
17 TO ATLANTA, BUT THEY CAN'T ALWAYS MAKE THAT WORK BECAUSE OF
18 WHERE THEY HAVE BEDS AVAILABLE AND THE FACT THEY HAVE FACILITIES
19 ALL OVER THE COUNTRY. BUT I'M HAPPY TO MAKE THAT
20 RECOMMENDATION, AND IT WILL BE IN THERE.

21 AND, MR. BURNS, YOU CAN APPEAL YOUR CONVICTION IF YOU
22 BELIEVE THAT YOUR GUILTY PLEA WAS SOMEHOW UNLAWFUL OR
23 INVOLUNTARY OR IF THERE'S SOME OTHER FUNDAMENTAL DEFECT IN THE
24 PROCEEDINGS. YOU ALSO HAVE A STATUTORY RIGHT TO APPEAL YOUR
25 SENTENCE UNDER CERTAIN CIRCUMSTANCES, PARTICULARLY IF YOU THINK

1 IT IS CONTRARY TO LAW. WITH FEW EXCEPTIONS, ANY NOTICE OF
2 APPEAL MUST BE FILED WITHIN 14 DAYS OF JUDGMENT BEING ENTERED IN
3 YOUR CASE. IF YOU ARE UNABLE TO PAY THE COST OF AN APPEAL, YOU
4 MAY APPLY FOR LEAVE TO APPEAL IN FORMA PAUPERIS. IF YOU SO
5 REQUEST, THE CLERK OF COURT WILL PREPARE AND FILE A NOTICE OF
6 APPEAL ON YOUR BEHALF. IN THE EVENT YOU WOULD LIKE TO APPEAL,
7 YOU HAVE A RIGHT TO A LAWYER TO ADVISE AND REPRESENT YOU. AND,
8 MR. BURNS, DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING I'VE SAID
9 TODAY AT THE SENTENCING HEARING?

10 MR. BURNS: NO, MA'AM.

11 THE COURT: OKAY. COUNSEL, IS THERE ANYTHING ELSE YOU
12 WOULD LIKE TO TAKE UP AT THIS TIME?

13 MS. BOATRIGHT: NOTHING FROM THE GOVERNMENT, YOUR
14 HONOR.

15 MR. COGNAC: NO, YOUR HONOR.

16 THE COURT: OKAY. WELL, THANK YOU ALL.

17 AND, MR. BURNS, I DO WISH YOU AND YOUR FAMILY THE BEST OF
18 LUCK. AND, WITH THAT, WE ARE IN RECESS.

19 (PROCEEDINGS ADJOURNED.)
20
21
22
23
24
25

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, MONTRELL VANN, RPR, RMR, RDR, CRR, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA, DO HEREBY CERTIFY THAT THE FOREGOING 29 PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE 16TH DAY OF DECEMBER 2016.

/S/ MONTRELL VANN

MONTRELL VANN, RPR, RMR, RDR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT