

# Docket No:

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## UNITED STATES SUPREME COURT

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United States,  
Plaintiff-Respondent,

v.

Lucas Heindenstrom,  
Defendant-Petitioner.

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On Petition for Writ of Certiorari  
TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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## APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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946 F.3d 57

United States Court of Appeals, First Circuit.

UNITED STATES of America, Appellee,

v.

Lucas HEINDENSTROM, Defendant, Appellant.

No. 18-2187

|

December 30, 2019

#### Synopsis

**Background:** Defendant was convicted in the United States District Court for the District of Maine, Nancy Torresen, Chief Judge, of distribution of substance or mixture containing fentanyl. Defendant appealed his sentence.

**Holdings:** The Court of Appeals, Selya, Senior Circuit Judge, held that:

strict but-for causation was not required for district court to contemplate upward variant sentence using victim's death from use of fentanyl-laced substance knowingly sold to him by defendant, and

sentence of 60-months of imprisonment was substantively reasonable.

Affirmed.

\*59 APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE [Hon. Nancy Torresen, U.S. District Judge]

#### Attorneys and Law Firms

Robert C. Andrews, with whom Robert C. Andrews Esquire P.C. was on brief, for appellant.

Julia M. Lipez, Assistant United States Attorney, with whom Halsey B. Frank, United States Attorney, was on brief, for appellee.

Before Lynch, Selya, and Barron, Circuit Judges.

#### Opinion

SELYA, Circuit Judge.

Defendant-appellant Lucas Heindenstrom pleaded guilty to a single count charging him with drug distribution in violation of 21 U.S.C. § 841(a)(1). The district court, relying heavily on a finding that a death resulted from the offense of conviction, imposed an above-the-range term of immurement, justifying the sentence both as an upward departure and an upward variance. Concluding that the sentence is supportable when viewed as an upward variance, we affirm.

#### I. BACKGROUND

We start by rehearsing the relevant facts and travel of the case. When — as in this case — an appeal trails in the wake of a guilty plea, we normally “draw the facts from the change-of-plea colloquy, the uncontested portions of the presentence investigation report (PSI Report), and the transcript of the disposition hearing.” United States v. Narváez-Soto, 773 F.3d 282, 284 (1st Cir. 2014). Here, however, there is a wrinkle: the district court conducted an evidentiary hearing as part of the disposition hearing. Thus, we draw some additional facts from the court’s supportable findings following the evidentiary hearing. See United States v. Caramadre, 807 F.3d 359, 369 (1st Cir. 2015).

On March 31, 2016, local police responded to an unattended death in York, Maine. Officers determined that the decedent, Kyle Gavin, had been dead for some time and found a substance that contained fentanyl, an empty needle, a metal spoon, and other drug paraphernalia near his body. The officers then spoke with Gavin’s roommates and learned that Gavin, an Army veteran, had met a friend named “Lucas” on the night he died and had given Lucas money.

The officers contacted the federal Drug Enforcement Administration (DEA). The DEA discovered a series of text messages between Gavin and the appellant, sent on the night that Gavin died. Toward the end of this exchange, Gavin indicated that the drugs the appellant had sold him tasted like “sugar.” The appellant responded by assuring Gavin that the drugs were “good” \*60 and suggesting that the sweet taste came from fentanyl.

The next day, the DEA used Gavin’s cellphone to set up a heroin purchase with the appellant and arrested him when he arrived. After waiving his Miranda rights, see Miranda v.

Arizona, 384 U.S. 436, 444-45, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the appellant admitted that he had sold a gram of heroin to Gavin on March 30.

Subsequent investigation revealed that the substance trafficked by the appellant contained fentanyl, and the text-message exchange indicated that the appellant was aware of the presence of fentanyl. The appellant admitted that he had procured heroin for Gavin on two or three earlier occasions.

A toxicology report indicated that there were 121 mg/dL of ethanol, 120 mg/dL of methanol, and 5.7 ng/mL of fentanyl in Gavin's system. These revelations were consistent with the report of the medical examiner, who determined that the cause of Gavin's death was “[a]cute intoxication” from the “combined effects of ethanol, methanol and fentanyl.”

In due course, a federal grand jury sitting in the District of Maine charged the appellant with distribution of a substance or mixture containing fentanyl. After some preliminaries, not relevant here, the appellant pleaded guilty to the single count of the indictment. Following receipt of the PSI Report, the district court conducted an evidentiary hearing as a subset of the disposition hearing.

During the evidentiary hearing, Jonathan L. Arden, M.D., testified on the appellant's behalf. Dr. Arden discussed each of the substances found in Gavin's system and their contributions to Gavin's death. His opinion was that ethanol, methanol, and fentanyl “all … played a meaningful role” in Gavin's death, that is, all of them were “contributory.” But Dr. Arden could not identify any one among the three toxins as “the sole cause” of death. He explained that the levels of both methanol and fentanyl found in Gavin's system independently could be fatal, but there was no reliable way to separate their effects.

After hearing Dr. Arden's testimony, the sentencing court reviewed an array of statutory and guideline provisions. Pertinently, the court pointed out that the government had not charged the appellant under 21 U.S.C. § 841(b)(1)(C) (which carries a mandatory minimum sentence of twenty years if a defendant distributes a drug and death results). Nor did the government invoke USSG § 2D1.1(a)(2) (which sets a higher offense level when “the offense of conviction establishes that death … resulted from the use of the substance”). At the government's urging, the court then examined the applicability of USSG § 5K2.1 (which authorizes an upward departure “[i]f death resulted” from an offense of conviction). The government argued that strict but-for causation was not

a prerequisite for the application of section 5K2.1, while the appellant, citing Burrage v. United States, 571 U.S. 204, 134 S. Ct. 881, 187 L.Ed.2d 715 (2014), insisted that strict but-for causation was needed.

After weighing the evidence, the sentencing court made several factual findings. Importantly, the court found that the appellant had furnished the fentanyl discovered in Gavin's system; that the appellant knew that the substance he gave to Gavin contained fentanyl; and that Gavin's death was caused by the combined effects of the three toxins discovered in his system post-mortem (ethanol, methanol, and fentanyl). The court recognized that the amount of fentanyl in Gavin's system was possibly an independent cause of death, but it found that the government had not proven this fact by a preponderance of the \*61 evidence. Similarly, the court recognized that the amount of methanol in Gavin's system might have been an independent cause of death. Once again, though, the court eschewed any more specific finding regarding the likelihood that methanol was the independent cause of death. Finally, the court determined that although fentanyl was a contributing factor in Gavin's death, it was not a strict but-for cause as it was “impossible to say” whether Gavin would have lived but for the ingestion of fentanyl.

Against the backdrop of these factual findings, the court rejected the appellant's argument that an upward departure under section 5K2.1 demands strict but-for causation. The court concluded instead that the offense conduct only needs to be a meaningful, contributing cause of death. The court proceeded to calculate the guideline sentencing range (GSR), which it found without objection to be eight to fourteen months. The government recommended a sentence of up to ninety-six months, and the appellant argued for a sentence of thirty months.<sup>1</sup> The court advised the parties that it had considered the nature and circumstances of the offense, as well as the appellant's history and characteristics.

This brought matters to a head: finding the GSR “woefully insufficient,” the court determined that an upward departure was warranted under section 5K2.1. The court further found that forty-six months was the proper extent of the upward departure and proceeded to impose a sixty-month incarcerative sentence. The court stated explicitly, though, that if an upward departure were deemed inappropriate, it would nonetheless “have given [the same sentence] as an upward variance.” In the court's view, the very same factors that supported an upward departure also supported an upward variance.

This timely appeal ensued.

## II. ANALYSIS

Appellate review of claimed sentencing errors involves a “two-step pavane.” United States v. Matos-de-Jesús, 856 F.3d 174, 177 (1st Cir. 2017); see United States v. Martin, 520 F.3d 87, 92 (1st Cir. 2008). To begin, we examine any allegations of procedural error. See United States v. Flores-Machicote, 706 F.3d 16, 20 (1st Cir. 2013); Martin, 520 F.3d at 92. If the sentence passes procedural muster, we then examine any allegation that it is not substantively reasonable. See Flores-Machicote, 706 F.3d at 20; Martin, 520 F.3d at 92. Here, the appellant assails his sixty-month sentence both procedurally and substantively. We address his claims of error sequentially.

### A.

Before launching our inquiry into the appellant's claims of error, a threshold matter looms. As said, the district court couched its sentence both as an upward departure and as an upward variance. Viewed solely as an upward departure, the validity of the sentence is a close question. The departure provision relied upon by the district court, USSG § 5K2.1, authorizes an upward departure “[i]f death resulted” from the offense conduct. Because a departure can only be imposed pursuant to “the framework set out in the Guidelines,” United States v. Rodriguez-Reyes, 925 F.3d 558, 567 (1st Cir.) (quoting United States v. Aponte-Vellón, 754 F.3d 89, 93 (1st Cir. 2014)), cert. denied, 140 S. Ct. 193, 205 L.Ed.2d 118 (2019), a departure sentence must satisfy whatever criteria the particular departure guideline entails.

Under the departure guideline invoked by the district court, it is necessary to determine the dimensions of the “death resulted” phraseology. In probing those dimensions, we would need to ask what the Sentencing Commission meant when it used that phrase in section 5K2.1. This inquiry would include establishing what standard of causation the Sentencing Commission purposed to require for determining whether death “resulted” from a defendant's conduct. See, e.g., United States v. Rivera-Berrios, 902 F.3d 20, 24-25 (1st Cir. 2018); United States v. Colby, 882 F.3d 267, 271-72 (1st Cir.), cert. denied, 138 S. Ct. 2664, 201 L.Ed.2d 1061 (2018).

The appellant asserts that “death resulted,” as used in section 5K2.1, requires strict but-for causation linking the offense conduct to Gavin's death. In support, he points out that

the Supreme Court required such a causal link in Burrage with respect to an almost identically worded sentencing enhancement provision. To be specific, the Burrage Court held that 21 U.S.C. § 841(b)(1)(C)'s penalty-enhancement provision for death resulting from a distributed drug demands proof of strict but-for causation, that is, proof that the drug was “the straw that broke the camel's back,” “at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death.” 134 S. Ct. at 888, 892. The government counters that the less stringent type of causation found sufficient in United States v. Pacheco, 489 F.3d 40 (1st Cir. 2007), a pre-Burrage case, is all that is required to trigger a section 5K2.1 departure. There, we interpreted a “sister” provision of section 5K2.1 (section 5K2.2), which authorizes an upward departure “[i]f significant physical injury resulted” from the offense conduct. Id. at 46-47. We concluded that so long as a drug “played a meaningful role” in causing injuries, regardless of whether that drug was the “sole” or “direct” cause of those injuries, an upward departure under section 5K2.2 was permissible. Id. at 47.

The sentencing court sided with the government. Although it agreed that the government had not proven strict but-for causation, the court nonetheless concluded that Pacheco was “more germane” for present purposes. Accordingly, the court held that departing under section 5K2.1 was permissible because the drugs distributed by the appellant were a contributing and meaningful cause of Gavin's death.

Whether there is an inherent tension (or even an irreconcilable conflict) between the holdings of Burrage and Pacheco is an interesting question. In the end, however, it presents a conundrum that we need not resolve today. See Privitera v. Curran (In re Curran), 855 F.3d 19, 22 (1st Cir. 2017) (explaining that “courts should not rush to decide unsettled issues when the exigencies of a particular case do not require such definitive measures”). Because the district court made pellucid that it would have imposed the same sixty-month sentence as an upward variance and because (as we explain below) the sentence is fully supportable as an upward variance, we need not inquire into the bona fides of the upward departure. Even if the sentencing court's section 5K2.1 departure was improvident, any error in invoking a departure guideline is harmless where, as here, the district court would have imposed exactly the same sentence by means of a variance. See Aponte-Vellón, 754 F.3d at 93. We turn, then, to whether the sentencing court committed procedural error in relying upon the association between

the \*63 offense conduct and Gavin's death as a factor in constructing its upwardly variant sentence.

**B.**

A variant sentence, unlike a departure, is not hemmed in by the language of a particular guideline. Instead, it is a product of the sentencing court's weighing of the myriad factors enumerated in 18 U.S.C. § 3553(a). See Rodríguez-Reyes, 925 F.3d at 567; Aponte-Vellón, 754 F.3d at 93. As a general matter, a sentencing court is free to use any relevant factor, reliably proven, as a basis for varying up or down from the guideline range. See Matos-de-Jesús, 856 F.3d at 178; United States v. Díaz-Arroyo, 797 F.3d 125, 130 n.3 (1st Cir. 2015); cf. Koon v. United States, 518 U.S. 81, 106, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996) (observing that "Congress did not grant federal courts authority to decide what sorts of sentencing considerations are inappropriate in every circumstance"). With this understanding, we focus the lens of our inquiry on whether the challenged sentence, when evaluated as an upward variance, is vulnerable to the appellant's claim of procedural error.

Our review is for abuse of discretion. The abuse-of-discretion rubric is not monolithic. Under it, "we afford *de novo* review to the interpretation and application of the sentencing guidelines, evaluate the sentencing court's factfinding for clear error, and assay its judgment calls for abuse of discretion." United States v. Fernández-Garay, 788 F.3d 1, 3 (1st Cir. 2015). In conducting this tamisage, we remain mindful of the respect that we owe to fact-intensive sentencing determinations. See Martin, 520 F.3d at 92. We also remain mindful that a sentencing court should strive to "custom-tailor an appropriate sentence" in every case. Flores-Machicote, 706 F.3d at 20.

When a sentencing court fashions a sentence that varies from the GSR, the premise for such a variance ordinarily must "be rooted either in the nature and circumstances of the offense or the characteristics of the offender; must add up to a plausible rationale; and must justify a variance of the magnitude in question." Martin, 520 F.3d at 91. This does not mean, though, that everything about a particular offense or offender can be given weight in the sentencing calculus. See, e.g., USSG § 5H1.10 (providing that race, sex, national origin, creed, religion, and socioeconomic status "are not relevant" sentencing factors); United States v. Vázquez-Méndez, 915 F.3d 85, 87-88 (1st Cir. 2019) (explaining that a "court may not impose or lengthen a prison sentence [primarily] in order to promote a defendant's rehabilitation"). Other factors may

be simply too remote or tangential to warrant inclusion in the sentencing calculus. See United States v. Roberson, 474 F.3d 432, 436 (7th Cir. 2007) (noting that "the factors on which" district court relied were "too attenuated" to justify sentence), abrogated on other grounds by Dean v. United States, — U.S. —, 137 S. Ct. 1170, 197 L.Ed.2d 490 (2017). The possibility of overinclusiveness brings us to the heart of the appellant's procedural plaint. He claims that the court erred by giving weight to Gavin's death in constructing its upwardly variant sentence because the death was not linked to the offense of conviction (the appellant's drug sale) by a strict but-for causal chain. The appellant suggests that, without proof that the fentanyl-laced substance was the strict but-for cause of the fatality, placing Gavin's demise into the sentencing mix was unreasonable.

This suggestion lacks force. Congress has established that, apart from relevance and reliability, "[n]o limitation shall \*64 be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661; see United States v. Viloria-Sepulveda, 921 F.3d 5, 9 (1st Cir. 2019). The essence of this principle is captured in 18 U.S.C. § 3553(a), which enumerates, albeit in general terms, a broad array of categories of information that may be factored into the sentencing calculus.

Consistent with this principle, sentencing courts have long considered "more than charged conduct in fashioning sentences." United States v. Anonymous Defendant, 629 F.3d 68, 76 (1st Cir. 2010); see United States v. González-Rodríguez, 859 F.3d 134, 138-39 (1st Cir. 2017) (concluding on plain error review that consideration of uncharged criminal conduct was not procedurally unreasonable). Under this umbrella, a sentencing court may give weight to the harm done by the defendant in the course of committing the offense of conviction. See United States v. Lente, 759 F.3d 1149, 1164 (10th Cir. 2014); United States v. Scherrer, 444 F.3d 91, 92-94 (1st Cir. 2006) (en banc); see also Payne v. Tennessee, 501 U.S. 808, 825, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991) ("Courts have always taken into consideration the harm done by the defendant in imposing sentence ....").

The short of it is that section 3553(a) broadly invites a sentencing court to consider relevant and reliable information concerning the offense of conviction. See, e.g., Matos-de-Jesús, 856 F.3d at 178; Díaz-Arroyo, 797 F.3d at 130 n.3. To

this end, the statute specifically directs the court to consider the “nature and circumstances of the offense.” 18 U.S.C. § 3553(a)(1). Gavin’s death was an important part of the manuscript of the crime and, thus, was relevant to the question of punishment. Cf. United States v. Severino-Pacheco, 911 F.3d 14, 17-22 (1st Cir. 2018) (affirming upward variance partially based on dangerousness of defendant’s conduct). In addition, the court had before it a surfeit of reliable and relevant information, including (among other things) Gavin’s death certificate, the medical examiner’s report, Dr. Arden’s testimony, and the undisputed facts set out in the PSI Report. This evidence amply chronicled the circumstances of Gavin’s death and tied that event to the offense of conviction.

Although the tie fell short of strict but-for causation, no authority prohibits a sentencing court contemplating a variant sentence from using harm as a factor in the absence of such causation. Here, moreover, the causal connection between the appellant’s conduct and Gavin’s death was far from remote. The court supportably found as a fact that the fentanyl, either by itself or in combination with the other toxins in Gavin’s system, was a contributing cause of Gavin’s death. That is to say, the amount of fentanyl could have been independently fatal, and its effect could not be separated from that of the other toxins. Despite the absence of strict but-for causation, the district court — on this record — did not abuse its discretion by considering in its decision to impose an upward variance the fact that Gavin died after using the fentanyl-laced substance knowingly sold to him by the appellant. Consequently, we reject the appellant’s claim of procedural error.

#### C.

The appellant’s remaining contention is that his sixty-month sentence was substantively unreasonable. Specifically, he contends that given the lack of a strict but-for causal connection between his conduct and Gavin’s death, imposing a sentence that more than quadrupled the top of the GSR was excessive. In his view, there was no “sound policy reason” for so draconian an upward variance.

\*65 Preserved challenges to the substantive reasonableness of a sentence are reviewed for abuse of discretion. See Matos-de-Jesús, 856 F.3d at 179. When performing this review, “we cannot desultorily substitute our judgment for that of the sentencing court.” Martin, 520 F.3d at 92. In the last analysis, “[t]here is no one reasonable sentence in any given case but, rather, a universe of reasonable sentencing outcomes.” United States v. Clogston, 662 F.3d 588, 592 (1st Cir. 2011).

We afford “due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.” Martin, 520 F.3d at 92 (quoting Gall v. United States, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007)). This deference obtains even where, as here, the extent of an upward variance is substantial. See Flores-Machicote, 706 F.3d at 25. When all is said and done, “[a] sentence is substantively reasonable so long as it rests on a plausible sentencing rationale and exemplifies a defensible result.” United States v. Milán-Rodríguez, 819 F.3d 535, 540 (1st Cir. 2016) (quoting Fernández-Garay, 788 F.3d at 6).

Here, the appellant asserts that his sentence was substantively unreasonable because the evidence was “not sufficient to establish a reliable or accurate link to” Gavin’s death. To the extent that this assertion merely repackages the argument that the court could not consider Gavin’s demise as a sentencing factor without strict but-for causation, we already have rejected it. And as we have pointed out, the sentencing court supportably found that there was a meaningful causal link between the appellant’s conduct and Gavin’s death. Absent an abuse of discretion, we must defer to this finding. See Martin, 520 F.3d at 92. Based on the extensive causation evidence before the district court, we discern no abuse of discretion here.

More generally, the sentencing court made plain that the appellant’s sentence was not dictated by any single factor but, rather, by a collocation of factors. The court found, for example, that the GSR did not come close to reflecting the seriousness of the offense because it did not account for Gavin’s death. See 18 U.S.C. § 3553(a)(2)(A); see also United States v. Bollinger, 893 F.3d 1123, 1125-27 (8th Cir. 2018) (concluding that sentence more than ten times top of GSR was substantively reasonable when trafficked heroin resulted in death). So, too, the court noted that although the appellant did not intend to cause Gavin’s death, he was aware that the substance he sold to Gavin contained fentanyl and, thus, he knew he was risking Gavin’s life. Throughout, the court stressed the grave consequences of the appellant’s offense: the tragic and premature death of a young veteran and how the appellant’s conduct played into the opioid epidemic ravaging the community.

There was more. “Deterrence is widely recognized as an important factor in the sentencing calculus.” Flores-Machicote, 706 F.3d at 23; see 18 U.S.C. § 3553(a)(2)(B). Here, the court supportably found that a within-the-range

sentence would not serve as an effective deterrent to other drug traffickers tempted to turn a blind eye to the dangers of fentanyl. In the court's view, distributing a substance known to contain fentanyl was "extremely dangerous" based on its potency and known lethality.

The sentencing court was correct to view the facts and circumstances of the appellant's case holistically. See Martin, 520 F.3d at 91. Taken collectively, the court's stated sentencing purposes and its findings concerning the nature and circumstances of the offense comprise a sentencing rationale that plausibly supports a substantial upward variance.

\*66 By the same token, the sentence achieves a defensible result. At the disposition hearing, the district court emphasized that the drugs the appellant sold to Gavin contained fentanyl; that fentanyl poses an extreme peril to human life; and that the appellant was chargeable with knowledge of this special danger. Because the appellant's conduct knowingly risked Gavin's life and because his fentanyl contributed meaningfully to Gavin's death, the court reasonably concluded that a substantial upward variance was appropriate.

Nor do we regard the extent of the upward variance as exceeding the wide margins of the court's discretion. Even though the upward variance was substantial, both the consequences of the appellant's wrongdoing and the need to deter similar criminal conduct were also substantial. Moreover, the upwardly variant sentence was well below the statutory maximum of twenty years, see 21 U.S.C. § 841(b)(1)(C), and three full years below the ninety-six months suggested by the prosecutor at sentencing. Viewing the sixty-month sentence in light of all the facts and circumstances of the case, we discern no abuse of discretion. The sentence was not outside the universe of reasonable sentencing outcomes. We hold, therefore, that the sentence was substantively reasonable.

### III. CONCLUSION

We need go no further. For the reasons elucidated above, the challenged sentence is

Affirmed.

**All Citations**

946 F.3d 57

#### Footnotes

1 A thirty-month sentence, though substantially above the GSR, would have been roughly equivalent to time served.

**No. 18-2187**

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**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

---

UNITED STATES OF AMERICA,  
Plaintiff/Appellee,

v.

LUCAS HEINDENSTROM,  
Defendant/Appellant.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

---

**APPENDIX**

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APPEAL,CLOSED,COURTEXHIBITS,SEALEDDOC

**U.S. District Court  
District of Maine (Portland)  
CRIMINAL DOCKET FOR CASE #: 2:16-cr-00156-NT-1**

Case title: USA v. HEINDENSTROM  
Magistrate judge case number: 2:16-mj-00124-JHR

Date Filed: 11/15/2016  
Date Terminated: 11/28/2018

Assigned to: JUDGE NANCY  
TORRESEN

Appeals court case number: 18-2187  
First Circuit Court of Appeals

**Defendant (1)**

LUCAS HEINDENSTROM  
*TERMINATED: 11/28/2018*

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**Pending Counts**

DISTRIBUTION OF FENTANYL,  
21:841(a)(1)  
(1)

**Disposition**

60 months imprisonment; 3 years  
supervised release; \$100 special  
assessment

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

Complaints

COUNT 1 - DISTRIBUTION OF  
FENTANYL, 21:841(A)(1)

DispositionPlaintiff

USA

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Date Filed	#	Docket Text
06/13/2016	<u>1</u>	COMPLAINT as to LUCAS HEINDENSTROM (1). (ccs) [2:16-mj-00124-JHR] (Entered: 06/13/2016)
06/13/2016	<u>2</u>	SYNOPSIS as to LUCAS HEINDENSTROM (ccs) [2:16-mj-00124-JHR] (Entered: 06/13/2016)
06/13/2016	<u>4</u>	Arrest Warrant Issued by MAGISTRATE JUDGE JOHN H. RICH III as to LUCAS HEINDENSTROM. Original delivered to U.S. Marshals Service. (ccs) [2:16-mj-00124-JHR] (Entered: 06/13/2016)
06/27/2016	<u>5</u>	MOTION for Detention by USA as to LUCAS HEINDENSTROM Responses due by 7/18/2016. (GUERRETTE, JAMIE) [2:16-mj-00124-JHR] (Entered: 06/27/2016)
06/27/2016		Arrest of LUCAS HEINDENSTROM, per notification of the U.S. Marshals Service. (ccs) [2:16-mj-00124-JHR] (Entered: 06/27/2016)
06/27/2016	<u>6</u>	NOTICE OF HEARING as to LUCAS HEINDENSTROM Initial Appearance and Attorney Appointment set for 6/28/2016 08:30 AM in Portland Hearing Room before MAGISTRATE JUDGE JOHN H. RICH III. (nrg) [2:16-mj-00124-JHR] (Entered: 06/27/2016)
06/28/2016	<u>7</u>	Financial Declaration by LUCAS HEINDENSTROM (Access to document is restricted to USA and applicable defendant only) (ccs) [2:16-mj-00124-JHR] (Entered: 06/28/2016)
06/28/2016	<u>8</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III:Initial Appearance held as to LUCAS HEINDENSTROM. After court inquiry, the record reflects the defendant was arrested on 06/27/2016.

		Attorney Appointment Hearing held as to LUCAS HEINDENSTROM, Robert C. Andrews, Esq. appointed as counsel for the defendant. Defendant ordered temporarily detained and remanded to the custody of the U.S. Marshals Service. (Court Reporter: FTR) (ccs) [2:16-mj-00124-JHR] (Entered: 06/28/2016)
06/28/2016	<u>9</u>	ORAL ORDER approving <u>7</u> Financial Declaration as to LUCAS HEINDENSTROM (1) By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 06/28/2016)
06/28/2016		CJA 20 as to LUCAS HEINDENSTROM: Appointment of Attorney ROBERT C. ANDREWS for LUCAS HEINDENSTROM;  <b>NOTICE TO COUNSEL:</b> <u>CJA documents are now processed via eVoucher.</u> The link to eVoucher and procedural and policy information regarding CJA appointments can be found on our website at <a href="http://www.med.uscourts.gov/evoucher">http://www.med.uscourts.gov/evoucher</a> . Signed by MAGISTRATE JUDGE JOHN H. RICH III on 06/28/2016. (ccs) [2:16-mj-00124-JHR] (Entered: 06/28/2016)
06/28/2016	<u>10</u>	ORDER OF TEMPORARY DETENTION as to LUCAS HEINDENSTROM: Preliminary Hearing and Detention Hearing set for 7/6/2016 11:00 AM in Portland Hearing Room before MAGISTRATE JUDGE JOHN H. RICH III. By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 06/28/2016)
06/30/2016	<u>11</u>	Arrest Warrant Returned Executed on 6/27/2016 as to LUCAS HEINDENSTROM (nrg) [2:16-mj-00124-JHR] (Entered: 07/01/2016)
07/05/2016	<u>12</u>	Pretrial Services Report as to LUCAS HEINDENSTROM filed by U.S. Probation. (Access to document is restricted to USA and applicable defendant only) (SICHULA, BELINDA) [2:16-mj-00124-JHR] (Entered: 07/05/2016)
07/06/2016	<u>13</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III: Conference of Counsel held re: continuance as to LUCAS HEINDENSTROM. Detention Hearing continued as to LUCAS HEINDENSTROM. Preliminary Hearing Waived as to LUCAS HEINDENSTROM. Temporary Order of Detention stands and defendant remanded to the custody of the U.S. Marshals Service pending detention hearing. (Court Reporter: Lori Dunbar) (ccs) [2:16-mj-00124-JHR] (Entered: 07/06/2016)
07/06/2016	<u>14</u>	ORAL MOTION to Continue Detention Hearing by LUCAS HEINDENSTROM (ccs) [2:16-mj-00124-JHR] (Entered: 07/06/2016)
07/06/2016	<u>15</u>	ORAL ORDER granting <u>14</u> Oral Motion to Continue Detention Hearing as to LUCAS HEINDENSTROM (1) By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 07/06/2016)
07/06/2016	<u>16</u>	WAIVER of Preliminary Hearing by LUCAS HEINDENSTROM (ccs) [2:16-mj-00124-JHR] (Entered: 07/06/2016)

07/06/2016	<u>17</u>	NOTICE OF DETENTION HEARING Re: <u>5</u> MOTION for Detention : as to LUCAS HEINDENSTROM: Motion Hearing set for 7/18/2016 12:30 PM in Portland Hearing Room before MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 07/06/2016)
07/12/2016	<u>18</u>	Unopposed MOTION agreed to motion for limited temporary release <i>for screening</i> by LUCAS HEINDENSTROM Responses due by 8/2/2016. (Attachments: # <u>1</u> Text of Proposed Order)(ANDREWS, ROBERT) [2:16-mj-00124-JHR] (Entered: 07/12/2016)
07/18/2016	<u>19</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III: Conference of Counsel held re: motion for limited temporary release as to LUCAS HEINDENSTROM (no court reporter present). Detention Hearing Waived; defendant ordered detained pending trial and remanded to the custody of the U.S. Marshals Service. (Court Reporter: Dennis Ford) (ccs) [2:16-mj-00124-JHR] (Entered: 07/18/2016)
07/18/2016	<u>20</u>	ORDER OF DETENTION as to LUCAS HEINDENSTROM By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 07/18/2016)
07/18/2016	<u>21</u>	ORDER OF LIMITED RELEASE granting <u>18</u> Motion for Limited Temporary Release as to LUCAS HEINDENSTROM (1) By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 07/18/2016)
07/22/2016	<u>22</u>	Joint MOTION for Extension of Time to Indict , MOTION to Waive Speedy Trial ( Responses due by 8/12/2016.) by USA as to LUCAS HEINDENSTROM (GUERRETTE, JAMIE) [2:16-mj-00124-JHR] (Entered: 07/22/2016)
07/22/2016	<u>23</u>	SPEEDY TRIAL ORDER granting <u>22</u> Motion for Extension of Time to Indict as to LUCAS HEINDENSTROM (1); granting <u>22</u> Motion to Waive Speedy Trial as to LUCAS HEINDENSTROM (1) By MAGISTRATE JUDGE JOHN H. RICH III. (nrg) [2:16-mj-00124-JHR] (Entered: 07/22/2016)
08/22/2016	<u>24</u>	Joint MOTION for Extension of Time to Indict <i>and Waiver of Speedy Trial</i> by USA as to LUCAS HEINDENSTROM Responses due by 9/12/2016. (GUERRETTE, JAMIE) [2:16-mj-00124-JHR] (Entered: 08/22/2016)
08/22/2016	<u>25</u>	SPEEDY TRIAL ORDER granting <u>24</u> Motion for Extension of Time to Indict: Time excluded from 08/25/2016 until 10/05/2016 as to LUCAS HEINDENSTROM (1) By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 08/22/2016)
08/25/2016	<u>26</u>	Unopposed MOTION Temporary Release <i>For Drug Treatment</i> by LUCAS HEINDENSTROM Responses due by 9/15/2016. (Attachments: # <u>1</u> Text of Proposed Order)(ANDREWS, ROBERT) [2:16-mj-00124-JHR] (Entered: 08/25/2016)
08/26/2016	<u>27</u>	ORDER of Limited Release as to LUCAS HEINDENSTROM (1), granting <u>26</u> Motion for Limited Order of Temporary Release. By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) [2:16-mj-00124-JHR] (Entered: 08/26/2016)

10/07/2016	<u>28</u>	Third MOTION for Extension of Time to Indict and <i>Waiver of Speedy Trial</i> by USA as to LUCAS HEINDENSTROM Responses due by 10/28/2016. (GUERRETTE, JAMIE) [2:16-mj-00124-JHR] (Entered: 10/07/2016)
10/11/2016		SET Deadlines as to LUCAS HEINDENSTROM: Proposed Speedy Trial Exclusion Order due by 10/12/2016. (nrg) [2:16-mj-00124-JHR] (Entered: 10/11/2016)
10/12/2016	<u>29</u>	SPEEDY TRIAL ORDER granting <u>28</u> Motion for Extension of Time to Indict. Time excluded from October 6, 2016, until November 9, 2016, as to LUCAS HEINDENSTROM (1) By MAGISTRATE JUDGE JOHN H. RICH III. (nrg) [2:16-mj-00124-JHR] (Entered: 10/12/2016)
10/12/2016	<u>30</u>	Unopposed MOTION to Modify Conditions of Release and <i>schedule release hearing</i> by LUCAS HEINDENSTROM Responses due by 11/2/2016. (ANDREWS, ROBERT) [2:16-mj-00124-JHR] (Entered: 10/12/2016)
10/12/2016	<u>31</u>	NOTICE OF HEARING as to LUCAS HEINDENSTROM Reopened Detention Hearing set for 10/13/2016 11:30 AM in Portland Hearing Room before MAGISTRATE JUDGE JOHN H. RICH III. (nrg) [2:16-mj-00124-JHR] (Entered: 10/12/2016)
10/12/2016	<u>32</u>	NOTICE OF ATTORNEY APPEARANCE JONATHAN R. CHAPMAN appearing for USA. (CHAPMAN, JONATHAN) [2:16-mj-00124-JHR] (Entered: 10/12/2016)
10/12/2016	<u>33</u>	ADDENDUM to <u>12</u> Pretrial Services Report as to LUCAS HEINDENSTROM filed by U.S. Probation. (Access to document is restricted to USA and applicable defendant only) (SICHULA, BELINDA) [2:16-mj-00124-JHR] (Entered: 10/12/2016)
10/13/2016	<u>34</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III: Conference of Counsel held as to LUCAS HEINDENSTROM re: proposed release conditions (no court reporter present). Re-opened Detention Hearing held; Government's Motion for Detention denied. Bond set and Made as to LUCAS HEINDENSTROM (1) in amount of \$ \$10,000.00 (Unsecured). Defendant ordered released once all conditions of release order have been complied with. (Court Reporter: Lori Dunbar) (ccs). [2:16-mj-00124-JHR] (Entered: 10/13/2016)
10/13/2016	<u>35</u>	ORDER Setting Conditions of Release as to LUCAS HEINDENSTROM. By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) (Additional attachment(s) added on 10/17/2016: # <u>1</u> Addendum) (ccs). [2:16-mj-00124-JHR] (Entered: 10/13/2016)
10/13/2016	<u>36</u>	Appearance Bond ( Unsecured ) as to LUCAS HEINDENSTROM. (ccs) [2:16-mj-00124-JHR] (Entered: 10/13/2016)
10/13/2016	<u>37</u>	COURT WITNESS LIST from Re-opened Detention Hearing held on 10/13/2016 as to defendant(s) LUCAS HEINDENSTROM (ccs) [2:16-mj-00124-JHR] (Entered: 10/13/2016)

10/17/2016		NOTICE of Docket Entry Modification as to LUCAS HEINDENSTROM regarding <u>35</u> Order Setting Conditions of Release: Addendum added on 11/17/2016. (ccs) [2:16-mj-00124-JHR] (Entered: 10/17/2016)
11/15/2016	<u>38</u>	INDICTMENT as to LUCAS HEINDENSTROM count 1. (jib) (Additional attachment(s) added on 11/16/2016: # <u>1</u> Unredacted Document Available at the Clerk's Office) (jib). (Entered: 11/16/2016)
11/15/2016	<u>39</u>	SYNOPSIS as to LUCAS HEINDENSTROM (jib) (Entered: 11/16/2016)
11/17/2016	<u>41</u>	NOTICE OF ARRAIGNMENT as to LUCAS HEINDENSTROM: Arraignment set for 11/21/2016 09:30 AM in Portland Hearing Room before MAGISTRATE JUDGE JOHN H. RICH III. (ccs) (Entered: 11/17/2016)
11/21/2016	<u>42</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III: Arraignment held as to LUCAS HEINDENSTROM (1) Count 1. Plea entered: Not Guilty on count 1. Plea Accepted. (Court Reporter: FTR) (ccs) (Entered: 11/21/2016)
11/21/2016	<u>43</u>	PROCEDURAL ORDER IN A CRIMINAL CASE as to LUCAS HEINDENSTROM: Motions due by 12/5/2016. Ready for Trial on 1/9/2017. By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) (Entered: 11/21/2016)
11/30/2016	<u>44</u>	TRIAL LIST as to LUCAS HEINDENSTROM. Jury Selection set for 1/9/2017 at 9:00 AM in Portland Courtroom 1 before JUDGE NANCY TORRESEN. On Trial List for 1/9/2017. Trial Briefs due by 12/30/2016. (mnw) (Entered: 11/30/2016)
12/20/2016	<u>45</u>	Unopposed MOTION to Continue <i>to next trial list</i> by LUCAS HEINDENSTROM Responses due by 1/10/2017. (ANDREWS, ROBERT) (Entered: 12/20/2016)
12/21/2016	<u>46</u>	SPEEDY TRIAL ORDER - granting <u>45</u> Motion to Continue. Time excluded from January 9, 2017 until February 6, 2017 as to LUCAS HEINDENSTROM. By JUDGE NANCY TORRESEN. (mnw) (Entered: 12/21/2016)
12/21/2016		Reset Deadlines as to LUCAS HEINDENSTROM - Per Speedy Trial Order #46: Ready for Trial on 2/6/2017. (mnw) (Entered: 12/21/2016)
12/28/2016	<u>47</u>	TRIAL LIST as to LUCAS HEINDENSTROM Jury Selection set for 2/6/2017 09:00 AM in Portland Courtroom 1 before JUDGE NANCY TORRESEN. On Trial List for 2/6/2017. Trial Brief due by 1/30/2017. (lrc) (Entered: 12/28/2016)
01/09/2017	<u>48</u>	MOTION to Revoke Bail, MOTION for Warrant by USA as to LUCAS HEINDENSTROM (Attachments: # <u>1</u> Declaration of Kate Phillips)(mnw) Modified on 1/9/2017 to unseal per notification of arrest(ccs). (Entered: 01/09/2017)
01/09/2017	<u>49</u>	ORDER granting <u>48</u> Motion for Warrant; Sealed until Arrest or until Detainer is Lodged as to LUCAS HEINDENSTROM. By JUDGE NANCY TORRESEN. (mnw) Modified on 1/9/2017 to unseal per notification of arrest

		(ccs). (Entered: 01/09/2017)
01/09/2017	<u>50</u>	Arrest Warrant Issued by Melody Whitten, Deputy Clerk for JUDGE NANCY TORRESEN as to LUCAS HEINDENSTROM. Original delivered to U.S. Marshals Service. (mnw) Modified on 1/9/2017 to unseal per notification of arrest (ccs). (Entered: 01/09/2017)
01/09/2017		Arrest of LUCAS HEINDENSTROM, per notification of U.S. Marshals Service (ccs) (Entered: 01/09/2017)
01/09/2017	<u>51</u>	NOTICE OF HEARING as to LUCAS HEINDENSTROM: Initial Appearance on Motion to Revoke Bail set for 1/9/2017 03:00 PM in Portland Hearing Room before MAGISTRATE JUDGE JOHN H. RICH III. (ccs) (Entered: 01/09/2017)
01/09/2017	<u>52</u>	Minute Entry for proceedings held before MAGISTRATE JUDGE JOHN H. RICH III: Conference of Counsel held as to LUCAS HEINDENSTROM re: anticipated hearing (no court reporter present). Initial Appearance held re <u>48</u> MOTION to Revoke Bail filed by USA. Defendant consents to detention; Government withdraws motion. Defendant ordered detained pending trial and remanded to the custody of the U.S. Marshals Service. (Court Reporter: FTR) (ccs) (Entered: 01/09/2017)
01/09/2017	<u>53</u>	ORDER OF DETENTION PENDING TRIAL as to LUCAS HEINDENSTROM By MAGISTRATE JUDGE JOHN H. RICH III. (ccs) (Entered: 01/09/2017)
01/10/2017	<u>54</u>	Arrest Warrant Returned Executed on 01/09/2017 as to LUCAS HEINDENSTROM (mnw) (Entered: 01/11/2017)
01/12/2017	<u>55</u>	NOTICE OF HEARING as to LUCAS HEINDENSTROM - Change of Plea Hearing set for 1/27/2017 at 2:00 PM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. The defendant will be required to identify every prescription medication he is taking and to specify the dosage and frequency, purpose and effects of the medication. (The same requirement applies to medications prescribed but NOT taken, with an additional requirement that the defendant explain why it was not taken and the consequences of the failure to take it.) Failure to do so satisfactorily may result in the judges refusal to accept the plea. Counsel may find it convenient to use a written list for this purpose. <b>Counsel shall file the prosecution version and any plea agreement at least 2 business days prior to the change of plea.</b> (Check for Receipt of Prosecution Version and any Plea Agreement on 1/25/2017.) (mnw) (Entered: 01/12/2017)
01/25/2017	<u>56</u>	PROSECUTION VERSION as to LUCAS HEINDENSTROM (GUERRETTE, JAMIE) (Entered: 01/25/2017)
01/25/2017	<u>57</u>	PLEA AGREEMENT as to LUCAS HEINDENSTROM (mnw) (Entered: 01/25/2017)
01/27/2017	<u>60</u>	AMENDED PLEA AGREEMENT as to LUCAS HEINDENSTROM (mnw) (Entered: 01/27/2017)

01/27/2017	61	Minute Entry for proceedings held before JUDGE NANCY TORRESEN. Conference of Counsel held as to LUCAS HEINDENSTROM. Change of Plea Hearing held as to LUCAS HEINDENSTROM. Guilty Plea entered. The court did not adjudicate the defendant guilty - reserved pending acceptance of the binding plea agreement. (Court Reporter: Tammy Martell) (mnw) (Entered: 01/27/2017)
03/29/2017	63	Unopposed MOTION to Extend Time 7 days <i>to file objection to Pre-Sentence Report</i> by LUCAS HEINDENSTROM Responses due by 4/19/2017. (ANDREWS, ROBERT) (Entered: 03/29/2017)
03/30/2017	64	ORDER granting <u>63</u> Motion to Extend Time as to LUCAS HEINDENSTROM (1) By JUDGE NANCY TORRESEN. (MMB) (Entered: 03/30/2017)
03/30/2017	65	State Court Writ Issued for LUCAS HEINDENSTROM for 4/11/2017 in case as to LUCAS HEINDENSTROM (ccs) (Additional attachment(s) added on 3/31/2017: # <u>1</u> Unredacted writ) (ccs). (Entered: 03/31/2017)
04/19/2017	66	NOTICE OF HEARING as to LUCAS HEINDENSTROM - Presentence Conference set for 5/5/2017 at 9:30 AM in Judge Torresen's Chambers before JUDGE NANCY TORRESEN. (mnw) (Entered: 04/19/2017)
04/19/2017	67	NOTICE OF HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing set for 5/31/2017 at 10:00 AM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 04/19/2017)
05/05/2017	68	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Presentence Conference set for 5/5/2017 rescheduled to begin at 3:00 PM in Judge Torresen's Chambers before JUDGE NANCY TORRESEN. (mnw) (Entered: 05/05/2017)
05/05/2017	69	Minute Entry for proceedings held before JUDGE NANCY TORRESEN. Presentence Conference held as to LUCAS HEINDENSTROM. (Court Reporter: Tammy Martell) (mnw) (Entered: 05/08/2017)
05/08/2017	70	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing rescheduled to 9/20/2017 at 1:00 PM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 05/08/2017)
05/08/2017		Set Deadlines as to LUCAS HEINDENSTROM : Any Sentencing Memos due by 9/6/2017. (mnw) (Entered: 05/08/2017)
05/26/2017	71	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing rescheduled to 9/25/2017 at 1:00 PM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 05/26/2017)

09/13/2017	75	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing rescheduled to 12/5/2017 at 1:00 PM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 09/13/2017)
09/14/2017		Set Deadlines as to LUCAS HEINDENSTROM : Sentencing Memos due by 11/21/2017. (mnw) (Entered: 09/14/2017)
11/13/2017	76	Second MOTION to Continue <i>sentencing</i> by LUCAS HEINDENSTROM Responses due by 12/4/2017. (ANDREWS, ROBERT) (Entered: 11/13/2017)
11/13/2017	77	ADDITIONAL ATTACHMENTS as to LUCAS HEINDENSTROM re <u>76</u> Motion to Continue <i>request for conference</i> . (ANDREWS, ROBERT) (Entered: 11/13/2017)
11/15/2017	78	NOTICE OF HEARING Re: <u>76</u> Second MOTION to Continue <i>sentencing</i> as to LUCAS HEINDENSTROM - Telephone Conference set for 11/17/2017 at 2:00 PM before JUDGE NANCY TORRESEN. (mnw) (Entered: 11/15/2017)
11/17/2017	79	Minute Entry for proceedings held before JUDGE NANCY TORRESEN. Telephone Conference held as to LUCAS HEINDENSTROM. (Court Reporter: Tammy Martell) (mnw) (Entered: 11/17/2017)
11/17/2017	80	ORAL ORDER granting <u>76</u> Motion to Continue Sentencing as to LUCAS HEINDENSTROM - By JUDGE NANCY TORRESEN. (mnw) (Entered: 11/17/2017)
11/20/2017	81	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing rescheduled to 3/19/2018 at 1:00 PM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 11/20/2017)
11/20/2017		Reset Deadlines as to LUCAS HEINDENSTROM : Sentencing Memos due by 3/5/2018. (mnw) (Entered: 11/20/2017)
03/01/2018	85	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing rescheduled to 6/27/2018 at 1:00 PM in Portland Courtroom 1 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 03/01/2018)
03/01/2018		Reset Deadlines as to LUCAS HEINDENSTROM : Sentencing Memos due by 6/13/2018. (mnw) (Entered: 03/01/2018)
06/07/2018	86	NOTICE OF RESCHEDULED HEARING as to LUCAS HEINDENSTROM - Sentencing Hearing rescheduled to 7/30/2018 at 1:00 PM in Portland Courtroom 2 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 06/07/2018)
07/13/2018	87	Unopposed MOTION to Continue <i>Sentencing</i> by LUCAS HEINDENSTROM

		Responses due by 8/3/2018. (ANDREWS, ROBERT) (Entered: 07/13/2018)
07/16/2018	88	ORDER granting <u>87</u> Motion to Continue as to LUCAS HEINDENSTROM (1) By JUDGE NANCY TORRESEN. (MMB) (Entered: 07/16/2018)
07/17/2018	89	NOTICE as to LUCAS HEINDENSTROM - The Sentencing Hearing scheduled for Monday, July 30, 2018 at 1:00 p.m. has been cancelled and will be rescheduled by the Clerk's Office. (mnw) (Entered: 07/17/2018)
07/18/2018	90	NOTICE OF HEARING as to LUCAS HEINDENSTROM : Sentencing Hearing set for 11/28/2018 at 1:00 PM in Portland Courtroom 1 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due three (3) business days prior to the sentencing hearing. (mnw) (Entered: 07/18/2018)
10/22/2018	91	NOTICE OF HEARING as to LUCAS HEINDENSTROM (LOCATION CHANGE ONLY) Sentencing set for 11/28/2018 01:00 PM in Portland Courtroom 3 before JUDGE NANCY TORRESEN. Sentencing Exhibits and Documents specified in <u>Local Rule 159</u> are due five (5) business days prior to the sentencing hearing. (mlm) (Entered: 10/22/2018)
11/20/2018	95	SENTENCING MEMORANDUM by USA as to LUCAS HEINDENSTROM (GUERRETTE, JAMIE) (Entered: 11/20/2018)
11/28/2018	98	<p>NOTICE OF APPEAL re <u>103</u> judgment by LUCAS HEINDENSTROM . NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from our web site at <a href="http://www.med.uscourts.gov/operations/forms/transcript%20order.pdf">http://www.med.uscourts.gov/operations/forms/transcript%20order.pdf</a> MUST be completed and submitted to the Court of Appeals.</p> <p>NOTICE TO COUNSEL: Counsel should register for a First Circuit CMECF Appellate Filer Account at <a href="http://pacer.psc.uscourts.gov/cmecf">http://pacer.psc.uscourts.gov/cmecf</a>. Counsel should also review the First Circuit requirements for electronic filing by visiting the CMECF Information section at <a href="http://www.ca1.uscourts.gov/efiling.htm">http://www.ca1.uscourts.gov/efiling.htm</a>.</p> <p>(ANDREWS, ROBERT) Modified on 11/29/2018 to add link to judgment (slg). (Entered: 11/28/2018)</p>
11/28/2018	99	Minute Entry for proceedings held before JUDGE NANCY TORRESEN: Sentencing held as to LUCAS HEINDENSTROM. The defendant was sentenced to 60 months imprisonment; 3 years supervised release; \$100 special assessment. The defendant was remanded to the custody of the US Marshals Service. (Court Reporter: Tammy Martell) (slg) (Entered: 11/29/2018)
11/28/2018	101	COURT EXHIBIT LIST from Sentencing Hearing held on 11/28/2018 as to defendant(s) LUCAS HEINDENSTROM (Exhibits listed on the Court Exhibit List are not remotely electronically available) (slg) (Entered: 11/29/2018)
11/28/2018	102	COURT WITNESS LIST from Sentencing Hearing held on 11/28/2018 as to

		defendant(s) LUCAS HEINDENSTROM (slg) (Entered: 11/29/2018)
11/28/2018	<u>103</u>	JUDGMENT as to LUCAS HEINDENSTROM By JUDGE NANCY TORRESEN. (slg) (Entered: 11/29/2018)
11/28/2018	<u>104</u>	Statement of Reasons as to LUCAS HEINDENSTROM.(Access to document is restricted to USA and applicable defendant only) (slg) (Entered: 11/29/2018)
11/29/2018		COPIES of Notice of Appeal Sent to Counsel as to LUCAS HEINDENSTROM re <u>98</u> Notice of Appeal - Final Judgment (bfa) (Entered: 11/29/2018)
11/30/2018	<u>105</u>	APPEAL COVER SHEET as to LUCAS HEINDENSTROM re <u>98</u> Notice of Appeal - Final Judgment (bfa) (Entered: 11/30/2018)
11/30/2018	<u>106</u>	CLERK'S CERTIFICATE as to LUCAS HEINDENSTROM re <u>98</u> Notice of Appeal - Final Judgment. Documents Sent to U.S. Court of Appeals. (bfa) (Entered: 11/30/2018)
11/30/2018		Abbreviated Appeal Record Transmitted Electronically to USCA as to LUCAS HEINDENSTROM to US Court of Appeals re <u>98</u> Notice of Appeal - Final Judgment (bfa) (Entered: 11/30/2018)
12/03/2018	107	USCA Case Number as to LUCAS HEINDENSTROM 18-2187 for <u>98</u> Notice of Appeal - Final Judgment, filed by LUCAS HEINDENSTROM. (bfa) (Entered: 12/03/2018)
12/04/2018	<u>108</u>	Unopposed MOTION to recommend Cumberland County Jail as place of confinement pending appeal by LUCAS HEINDENSTROM Responses due by 12/26/2018. (ANDREWS, ROBERT) Modified on 12/4/2018 to correct typographical error (slg). (Entered: 12/04/2018)
12/04/2018	109	ORDER granting <u>108</u> Motion as to LUCAS HEINDENSTROM (1) By JUDGE NANCY TORRESEN. (MMB) (Entered: 12/04/2018)
12/31/2018	<u>110</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to LUCAS HEINDENSTROM Excerpt from Sentencing, Testimony of Dr. Jonathan L. Arden held on November 28, 2018 before Judge Nancy Torresen. Court of Appeals Docket Number 18-2187. Court Reporter/Transcriber: Tammy Martell, Telephone Number: 207-272-5566. <b>NOTICE RE REDACTION OF TRANSCRIPTS:</b> The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at <a href="http://www.med.uscourts.gov">www.med.uscourts.gov</a> . Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 4/1/2019. (MARTELL, TAMMY) (Entered: 12/31/2018)

03/11/2019 111 NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to LUCAS HEINDENSTROM Sentencing held on November 28, 2018 before Judge Nancy Torresen. Court of Appeals Docket Number 18-2187. Court Reporter/Transcriber: Tammy Martell, Telephone Number: 207.272.5566. **NOTICE RE REDACTION OF TRANSCRIPTS:** The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at [www.med.uscourts.gov](http://www.med.uscourts.gov). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 6/10/2019. (MARTELL, TAMMY) (Entered: 03/11/2019)

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SCANNED

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA ) 2:16 NOV 15 P 4:00  
v. ) Criminal No. 2:16-cr-156-NV  
LUCAS HEINDENSTROM ) (21 U.S.C. §§ 841(a)(1), 841(b)(1)(C))  
DEPUTY CLERK

## INDICTMENT

### The Grand Jury Charges:

**COUNT ONE**

On about March 30, 2016, in the District of Maine, defendant

LUCAS HEINDENSTROM

knowingly and intentionally distributed a controlled substance, namely fentanyl, in violation of Title 21, United States Code, Section 841(a)(1).

It is further alleged that the penalty provisions of Title 21, United States Code, Section 841(b)(1)(C) apply to the conduct described herein.

A TRUE BILL,

Signature Redacted. Original on File

FOREPERSON

Assistant U.S. Attorney  
Date: 11.15.16

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA )  
v. ) Crim. No. 2:16-cr-156-NT  
LUCAS HEINDENSTROM )

**PROSECUTION VERSION**

If this case were to proceed to trial, the government would prove beyond a reasonable doubt that on March 30, 2016, in the District of Maine, the defendant, Lucas Heindenstrom, knowingly and intentionally distributed a controlled substance, namely fentanyl. The government would prove the following facts through witness testimony, and other physical and documentary evidence:

On March 31, 2016, the York Police Department (YPD) responded to an unattended death that was suspected to be drug-related. A search of the decedent's room produced evidence of suspected drug use including a hypodermic apparatus (needle), a metal spoon with residue and a plastic baggie containing an off-white powdery substance. Investigators also recovered the decedent's cell phone (hereinafter "cell phone") and observed numerous drug-related text communications between the decedent and defendant on March 30, 2016 documenting two meetings.

During the evening hours of March 30, 2016, the decedent met with the defendant and provided him \$100 U.S. currency to purchase drugs for him/her. Defendant subsequently met with his source (hereinafter "source") in Lebanon, Maine, and used the \$100 to purchase approximately two grams of what he believed to be heroin. Defendant distributed approximately one gram of the substance to another acquaintance. Then, later in the evening, defendant met the decedent in Lebanon, Maine, and distributed approximately one gram of the substance to

him/her. The substance defendant distributed to the acquaintance was purchased from his source. A short time after distributing the substance, defendant texted the following to decedent: “U will like it for sure its a good rush.” After the decedent responded, “It taste like sit” and “sugar,” defendant replied, “Its not I promise wait till u try it bro its good man I swear I got u and someone else a g and they loved it I know u will like it,” adding “its gatta be the fet. U taste.”

On April 1, 2016, federal investigators, purporting to be the decedent, used the cell phone to arrange a meeting with the defendant under the pretense of wanting to purchase additional drugs from him. After the defendant arrived at the meet location, he was taken into custody. In a subsequent interview, the defendant admitted that he had traveled to the meet location to meet with the decedent and intended to facilitate another drug transaction between the decedent and his source. Defendant further admitted that he had distributed one gram of what he believed to be heroin to the decedent on “Wednesday” (March 30, 2016), consistent with text message communications recovered from decedent’s phone.

The plastic baggie containing an off-white powdery substance, recovered from the decedent's residence on March 31, 2016, was later transferred to the custody of the U.S. Drug Enforcement Administration (DEA) and submitted to the DEA Northeast Regional Laboratory, where it was tested by a senior forensic chemist and confirmed to contain fentanyl.

Dated: January 25, 2017

Thomas E. Delahanty II  
United States Attorney

/s/Jamie R. Guerrette  
Assistant United States Attorney  
U.S. Attorney's Office  
100 Middle Street Plaza, East Tower  
Portland, ME 04101  
(207) 780-3257  
Jamie.guerrette@usdoj.gov

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2017, I filed the foregoing Prosecution Version via ECF which will cause a copy to be sent to defendant's attorney:

Robert Andrews, Esq.

Thomas E. Delahanty II  
United States Attorney

/s/Jamie R. Guerrette  
Assistant United States Attorney  
U.S. Attorney's Office  
100 Middle Street Plaza, East Tower  
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York Police Department  
NARRATIVE FOR RANCE L MILLS

Page: 1

Ref: 16531-175-OF

Entered: 03/31/2016 @ 2244 Entry ID: YRLM  
Modified: 04/05/2016 @ 2246 Modified ID: YLME  
Approved: 04/05/2016 @ 1215 Approval ID: YTSC

On 3/31/16, I was operating unit 88 and wearing a full York Police uniform. At approximately 1720 hours, dispatch received a call from Christopher Jones who stated that he found his friend, Kyle Gavin, in his bedroom unconscious and cold to the touch. I responded to the scene.

When I arrived on scene at 8 Sewalls Pasture Road, I was met outside by Christopher Jones and Alicia Lavita. Chris said that he went into Kyle's room right before he called us to check on him. Chris said that he had last seen Kyle the night before, sometime around 2300 hours. Chris said Kyle had gone on a date the night before and met up with a friend named Luke. Chris said he did not know Luke's last name and had never met him.

Chris said when Kyle came home around 2300 hours, he seemed to be in a good mood. Chris said that Kyle admitted he had been drinking that night, but Chris said that Kyle's pupils "looked weird" and thought he seemed to be on something else as well.

I asked Chris if Kyle had any medical conditions and if he took any medications. Chris said that Kyle suffered from PTSD, as he was in the Army and served three tours as a gunner. Chris said that Kyle also suffered from multiple concussions and broken bones from his tours of duty. Chris said that Kyle did suffer from a drug problem but thought he had been clean since moving in with him.

I asked Chris if Kyle had any family nearby. Chris said that Kyle's mother, Kathy Gavin, father, Jim Gavin, and sister, Jenna Gavin, all lived in Kennebunk. Chris was unsure of their contact information but did provide me with a phone number for Kathy that he believed was outdated.

Alicia took me into the residence to show me the body. Once walking through the front door, there is a small flight of stairs that leads to the kitchen and living room area. Directly to the left, once up the stairs, is the hallway that consists of three bedroom and one bathroom door. At the very end of the hallway was Kyle's room. Alicia took me into Kyle's room, which consisted of a bed, dresser, coffee table, and full size couch.

Kyle was sitting on the coffee table facing the couch. Kyle was hunched over and his head was resting face down on the couch. It was evident that Kyle was deceased for an extended amount of time. Kyle was cold to the touch and full rigor mortis had set in. Liver mortis was also present in Kyle's arms and face.

I went back outside to speak with Chris and Alicia again. I confirmed to them that it appeared Kyle was deceased. At this time, Sgt. Lizzanecz arrived on scene to assist. Sgt. Lizzanecz and I returned inside to take photographs of the scene. Upon further investigation in Kyle's room, heroin, as well as an empty needle and metal spoon with residue were located in the top right drawer of Kyle's dresser. On top of the dresser was a "one hitter" which is a small wooden box that consists of a cigarette-shaped pipe that allows the user to take one hit of marijuana. Other marijuana paraphernalia was located in the room inside of a "DieHard" boot box. All of the heroin/heroin paraphernalia and marijuana/marijuana paraphernalia was collected for evidence.

Detective Sgt. Cryan was notified of the death and arrived on scene to assist.

I spoke with Cindy from the Medical Examiner's Office and notified her of what was going on. Cindy asked what Kyle takes for medications, who his primary care doctor is, and what funeral home was going to be contacted. This information had not yet been attained. Cindy asked for a call back once this information had been gathered.

With all of the drug evidence attained from Kyle's bedroom, it was now believed that the death was overdose related. I attempted to check for track marks on Kyle's arms, but because of the way the body was positioned, and because of the

## York Police Department

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## SUPPLEMENTAL NARRATIVE FOR PATROL CHRISTOPHER C GOSELIN

Ref: 16531-175-OF

Entered: 04/04/2016 @ 0838	Entry ID: YCCG
Modified: 04/05/2016 @ 1439	Modified ID: YVMA
Approved: 04/05/2016 @ 1215	Approval ID: YTSC

pick up some clothes for a date Kyle had on 03/30/2016. Chris states that when he arrived home on 03/31/2016 that Kyle had already left for his date. Chris told me that Kyle called him after his date and told him he was on his way back home. Chris stated he thought Kyle arrived home around 2330 hours and Chris heard Kyle talking to what sounded like a girl on the phone. He told me that Kyle was making a lot of noise and Chris got up to check on him and use the bathroom. Chris told me that they talked about how the night had gone for a bit then Chris then went back to bed. He stated that he could hear Kyle for a little longer and then he heard a loud crash. Chris told me that he thought about checking on Kyle but stayed in bed.

Chris told me that on 03/31/2016 he came home in the afternoon and saw that Kyle's truck was still parked in the driveway. He told me that he thought it might have been broken down or something. He then checked with his girlfriend who told Chris she hadn't seen him either. They went to check on Kyle in his room and found him on the ground. Chris told Ali to call 911 and he ended up speaking with the dispatcher.

On 04/04/2016 I spoke to Meghan Metropolis on the phone. When I called Meghan my intention was to set up a time for her to come in and give me a statement about the time she spent on her date with Kyle on 03/30/2016. Meghan stated that she would need to check on child care and was unable to give me an exact time but she felt that Wednesday would probably be best, as she is going to be in town for Kyle Gavin's funeral that day.

I asked Megan about the date that she went on with Kyle. Meghan stated that she met with Kyle around 1830 hours on 03/30/2016 at Revolutions, a bar in Rochester, NH. She stated that they were there for about an hour and then went to a cigar bar that was right across the way. Meghan stated that they were there for about an hour, and then Kyle told her he had to go to the ATM. Meghan stated they went to the Citizen Bank that was on the main street in Rochester, NH. Meghan told me that they went to a third restaurant/bar but she didn't remember the name of it. She told me that while they were there Kyle made a statement about thinking he had left his ATM Card in the ATM they had just been to, and told her he was going to check on it. Kyle left for a few minutes and returned to tell Meghan that he thought the ATM had kept his card, and he couldn't get it back. Meghan offered to give Kyle cash, but he refused to accept it. Meghan stated that Kyle told her that she wouldn't like what the money was for. He then stated that he had a friend that was addicted to Heroin, and every time he stops using he gets sick. Kyle told her that he knew he was an enabler but he couldn't stand to see his friend sick. Meghan told Kyle that he should tell his friend that Heroin will end up killing him.

Meghan did tell me that Kyle had been texting someone towards the end of their date and that she thought he had used the name of his friend as, "Lucas." Meghan stated that she didn't know a "Lucas" and had no idea who it was.

I thanked Meghan for talking with me and she told me that she would let me know about what time on Wednesday worked for her.

04/05/2016 1438 Proofread by VMA

York Police Department  
SUPPLEMENTAL NARRATIVE FOR PATROL CHRISTOPHER C GOSSELIN  
Ref: 16531-175-OF  
Entered: 04/04/2016 @ 0838 Entry ID: YCCG  
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Approved: 04/05/2016 @ 1215 Approval ID: YTSC

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I believe that Lucas is talking about the Fentanyl when he refers to "fet."

At 2244 hours Kyle writes I trust u.... I'll hit u up when I'm home

At 2245 Lucas writes "Ok bro"

Kyle responds twenty seconds later "Thx"

On 04/01/2016 at just before 1600 hours with the use of Kyle's phone The York Police Department along with the assistance of the DEA, we were able to communicate with Lucas Heidenstrom with Kyle Gavin's cell phone, to set up a meeting at the same location Lucas and Kyle met at on 03/30/2016. We were able to text back and forth to arrange a meeting with Lucas. Lucas arrived at the Cumberland Farms and was directed inside the store. He was taken into custody without incident for the drug investigation by DEA. Lucas was interviewed and his vehicle and person were searched for drugs. Lucas told us that he was coming to meet Kyle to pick up money, he was then going to facilitate the drug transfer after he met with his supplier.



On 04/04/2016 I received a call from Kyle Gavin's mother, Kathleen Gavin. Kathleen wanted me to know that a note had been found in Kyle's room. The note is on a yellow piece of lined paper and is in Kyle's hand writing. The note reads "Owes List" at the top and continues;

Luke: \$150 (zip)  
\$20 (previous zip)  
Joe the shithead: \$ 20 (narcan)  
Kevin: \$30 (loan till Friday)

I asked Kathleen if I could have the note. She stated that was fine and that she had it with her in Kennebunk. Kathleen told me that her daughter, Jenna Gavin would be headed to York today and could drop the note off. I met with Jenna Gavin in the lobby of the York Police Department at about 1030 hours. Jenna handed me that note and I took it from her.

On 04/04/2016 I placed a call to Chris Jones and asked that he could come in and meet with me so that I could take a written statement from him. Chris Jones arrived at the York Police Department at about 1100 hours and agreed to give a written statement. I had Chris sit in the interview room of the York Police Department to write out the statement. I asked him to give a detailed account about the time leading up to when he discovered Kyle in his room. Chris Jones completed a 4 page handwritten statement. He signed the statement while I was with him, and I took it to be included with this report.

In the statement Chris Jones talks about how he and his girlfriend Ali went shopping with Kyle on 03/29/2016 to

## York Police Department

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SUPPLEMENTAL NARRATIVE FOR PATROL CHRISTOPHER C GOSSELIN  
Ref: 16531-175-OFEntered: 04/04/2016 @ 0838 Entry ID: YCCG  
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Detective Sergeant Tom Cryan advised me that he spoke with Taylor at the Medical Examiner's office, and was advised that the urine test came back with a positive response for Fentanyl, however that there may be additional drugs detected in the blood sample when it comes back in 3-4 weeks.

I was advised by Detective Calcina during the afternoon of 04/01/2016 that the phone was able to be opened with the correct code, and he was in the process of downloading the information on the phone. Once the phone had been unlocked we were able to look at text messages between Kyle Gavin and a male we identified as Lucas Heidenstrom. Lucas is Facebook friends with Kyle, he lives in Lebanon Maine, and was listed in Kyle's phone as, "Lucas H." Lucas and Kyle are both former employees of Straw-hat Landscaping in York, Maine.

Kyle and Lucas exchanged several text messages on 03/30/2016 in reference to Kyle picking up drugs from him. Kyle initiates the text conversation at 2142 hours and asks Lucas, "U Around" Lucas responds about 28 seconds later, "Yeah my dude is gonna be home soon whats up." Kyle responds about 5 minutes later and tells Lucas, "I'm in Rochester on a date and it's gonna end soon." About 8 seconds later Lucas calls Kyle and they have a conversation that lasts approximately one minute and twelve seconds.

At 2152 hours Lucas messages Kyle saying, "Im heading that way just let me know were im meeting u." Lucas places two phone calls to Kyle and Kyle responds at approximately 2214 hours by text message saying, "Text me ur address."

Kyle responds 30 seconds later saying, "Okay driving give me a couple of minutes."

Kyle writes, "Ya I didn't give u my card accidentally."

Kyle responds, "no I only have cash." and "I Promise"

Kyle writes, "Damn I left it at the atm."

Kyle asks, "What ATM did you go to."

Kyle - "Citizens"

Lucas - "X I got that"

Kyle - "send me your address"

Lucas - "oh year haha (77 Blaisdell Corner rd Lebanon M.E. 04027)

At 2315 hours Kyle writes to Lucas "I'm tring to head ur way"

Lucas responds "okay buddy take your time."

Kyle responds immediately "Haha"

Kyle writes back within a minute "seriously bro no rush you know do what you gotta do."

Kyle writes at 2247 hours Kyle writes "five min" then two minutes later Kyle writes, "At cumbys"

It is at this point that Kyle and Lucas meet at the Cumberland Farms in East Rochester, NH. Lucas sells Kyle a gram of heroin.

At 2230 hours Kyle calls Lucas and the call lasts for 22 seconds

At 2241 hours there is a text message from Lucas to Kyle, "U will like it for sure its a good rush."

At 2242 hours Kyle writes, "It taste like sit" then 12 seconds later "Sugar"

Lucas responds with a text message at 2243 hours "Its not I promise wait till u try it bro its good man I swear I got u and someone else a g and they loved it I know u will like it" 9 seconds later "Take Take word for it bro" 32 seconds later Lucas writes to Kyle "its gatta be the fet. U taste"

1 (Open court. Defendant present.)

2 THE COURT: Good afternoon. All right. The  
3 Court has before it for determination and imposition of  
4 sentence United States versus Lucas Heindenstrom. The  
5 docket number is 16-cr-156-NT. Would counsel please  
6 enter your appearances.

7 MR. GUERRETTE: Jamie Guerrette for the United  
8 States, Your Honor.

9 THE COURT: Mr. Guerrette.

10 MR. ANDREWS: Robert Andrews for Lucas  
11 Heindenstrom, Your Honor.

12 THE COURT: Mr. Andrews. And, Mr. Guerrette, as  
13 far as victim notification.

14                   MR. GUERRETTE: That has been done, Your Honor,  
15 and I should alert the Court that the Gavin family is  
16 present in the courtroom today. Mr. Gavin's father,  
17 mother and sister. And Ms. Gavin, Kyle's mother, is  
18 going to want to be heard.

19 THE COURT: All right. Good. Thank you. All  
20 right. Sir, if you would stand. Are you Lucas  
21 Heindenstrom?

22 THE DEFENDANT: Yes.

23 THE COURT: And are you the defendant named in  
24 the indictment before the Court?

25 THE DEFENDANT: Yes.

1                   THE COURT: How far did you go in school?

2                   THE DEFENDANT: I -- I got kicked out of school  
3 my junior year.

4                   THE COURT: Mm-hmm. And you ended up getting  
5 your GED; is that right?

6                   THE DEFENDANT: Yes. Yes, ma'am.

7                   THE COURT: Have you used any alcohol or drugs  
8 within the last 24 hours?

9                   THE DEFENDANT: No.

10                  THE COURT: Do you understand why you are here  
11 today?

12                  THE DEFENDANT: Yes, ma'am.

13                  THE COURT: All right. I find the defendant  
14 competent to be sentenced today. You are here in court  
15 with your counsel, Mr. Andrews. Do you authorize Mr.  
16 Andrews to speak and act on your behalf today?

17                  THE DEFENDANT: Yes.

18                  THE COURT: Mr. Andrews, has the defendant  
19 received a copy of the written presentence investigation  
20 report that was last revised on November 26th of 2018?

21                  MR. ANDREWS: Your Honor, I have not been able  
22 to get him a copy of the second revised; although, I  
23 have discussed the changes made with him in some detail.

24                  THE COURT: All right. All right. Then let me  
25 take it from the first revised report. Have you had a

1 chance to go over that report carefully with him?

2 MR. ANDREWS: Yes, Your Honor.

3 THE COURT: Okay. I understand there have been  
4 a few last minute changes that were made to the report,  
5 mostly having to do with some of the accomplishments  
6 that Mr. Heindenstrom has achieved at CCJ.

7 Were there any other significant changes that you  
8 can think of?

9 PROBATION OFFICER: Your Honor, the only other  
10 changes were I updated two of the pending cases. One  
11 that's -- the one -- the state -- underlying state  
12 charge that was related to this case has since been  
13 dismissed, I reflected that change. I updated the  
14 pending date for the other charge. And the only other  
15 change was to basically say that the 2018 manual was  
16 used which has no impact on the guideline calculation.

17 THE COURT: Okay. All right. So it is a very  
18 similar report, so I am going to ask Mr. Heindenstrom  
19 questions about the -- the report that you did review  
20 with him. I take it you did review the first  
21 presentence investigation report with him?

22 MR. ANDREWS: I reviewed the unamended  
23 version --

24 THE COURT: Okay.

25 MR. ANDREWS: -- and the amended version.

1                   THE COURT: Okay. And that -- by the amended  
2 version you are referring to the one that was identified  
3 as the --

4                   MR. ANDREWS: 4/18/17, Your Honor.

5                   THE COURT: Okay. Yep. So you have reviewed  
6 that with him?

7                   MR. ANDREWS: I have, Your Honor.

8                   THE COURT: All right. So let me ask you about  
9 that report because but for a few changes that the  
10 probation officer just described it is essentially the  
11 same report. Is there -- what I -- what I want you to  
12 know is that I use the report to help me decide what an  
13 appropriate sentence is going to be. So I want know if  
14 you have had enough time to review the report with your  
15 counsel.

16                  THE DEFENDANT: Yes, Your Honor.

17                  THE COURT: And knowing that I use that report  
18 to form the basis for my sentence, is there anything  
19 that's contained in the report that you believe is  
20 factually incorrect?

21                  THE DEFENDANT: No.

22                  THE COURT: All right. So you can have a seat.

23                  MR. ANDREWS: Your Honor, if I might address one  
24 particular issue.

25                  THE COURT: Okay.

1                   MR. ANDREWS: On the second revised report, Your  
2 Honor, the cover page did not update his GED, and I  
3 asked that that be updated and the language that says no  
4 high -- no HS diploma be stricken.

5                   THE COURT: Okay. That education would need to  
6 be changed, right, because he does have his GED now?

7                   PROBATION OFFICER: I believe they would look in  
8 the body of the report, but I can certainly change that.

9                   THE COURT: Yeah, let's just do that, because  
10 that makes a difference once you get into the BOP.

11                  PROBATION OFFICER: Correct.

12                  THE COURT: Okay. All right. We'll -- we'll  
13 have that change reflected.

14                  MR. ANDREWS: Thank you, Your Honor.

15                  THE COURT: Okay. So I want to start to dig in  
16 on the areas that are in dispute. You can have a seat,  
17 Mr. Heindenstrom. So there were three objections that  
18 were noted in the presentence report. The first -- I  
19 should ask you, Mr. Andrews, I mean the big issue here  
20 is this upward departure issue; but I want to know which  
21 of these objections you are still pursuing, if you are  
22 still pursuing any of them.

23                  MR. ANDREWS: We are not pursuing any of the  
24 objections that go into the guideline calculation other  
25 than whether there is a upward departure available in

1 this case.

2 THE COURT: Okay. So we're -- we're only  
3 dealing with the question of the departure then.

4 MR. ANDREWS: That's correct.

5 THE COURT: And how do you want to proceed on  
6 that?

7 MR. ANDREWS: Well, Your Honor, what I think  
8 makes some sense is if we did the presentation with  
9 respect to Dr. Arden, and then we argued whether -- and  
10 the Court perhaps gave us a ruling about what it was  
11 thinking in terms of the upward departure, and then  
12 allowing us to address the variant sentence issue.

13 THE COURT: Okay. All right. I see you have --  
14 I see you have the doctor on the -- on the line.

15 MR. ANDREWS: The -- I want to make a slightly  
16 unusual request, Your Honor. Given the seriousness of  
17 why we're here, I would like to take a second to  
18 directly address the Gavin family, with the Court's  
19 permission.

20 THE COURT: Do you want to do that now?

21 MR. ANDREWS: Yes, Your Honor.

22 THE COURT: All right.

23 MR. ANDREWS: My name is Robert Andrews, and I  
24 represent Lucas in this matter. I have been doing this  
25 for about 18 years, and I have never had occasion to

1 address a victim's family directly. Mostly because I  
2 worry that it won't be productive and it may cause more  
3 harm than good.

4 I read your victim impact statement. I find it very  
5 moving, and an appropriate tribute to Kyle, your son.  
6 I'm sorry that it is your son's loss that brings us all  
7 here today.

8 I am going to have to make some arguments that might  
9 be unwelcome, but I want you to know that I admire the  
10 sacrifices your son has made, and that whatever happens  
11 here today, or whatever I say, none of that changes. I  
12 appreciate you giving me this moment to talk to you.

13 UNIDENTIFIED: Thank you.

14 MR. ANDREWS: Your Honor, our first witness is  
15 Dr. Arden.

16 THE CLERK: Please raise your right hand. Do  
17 you solemnly swear that the testimony you shall give in  
18 the cause now in hearing shall be the truth, the whole  
19 truth, and nothing but the truth so help you God.

20 THE WITNESS: I do.

21 THE CLERK: Please state your name and spell  
22 your last name for the record.

23 THE WITNESS: I am Dr. Jonathan, middle initial  
24 L, last name is Arden. It is A-r-d-e-n.

25 DIRECT EXAMINATION

1 BY MR. ANDREWS:

2 Q. Good morning, Dr. Arden. My name is Robert Andrews.  
3 I don't think that we have ever seen each other either  
4 video or in person, so I wanted to introduce myself. I  
5 am here to ask you some questions about your role in  
6 reviewing some of the materials related to the passing  
7 of Kyle Gavin. Do you understand my purpose?

8 A. Yes, I do, sir.

9 MR. ANDREWS: Okay. At the onset, Your Honor,  
10 the Government and I have stipulated both to his  
11 qualifications and his ability to be an expert and the  
12 admissibility of Defendant's Exhibit 1 and Defendant's  
13 Exhibit 2. Defendant's Exhibit 1 is Dr. Arden's CV, and  
14 Defendant's Exhibit 2 is Dr. Arden's report generated  
15 for the purpose of this hearing.

16 THE COURT: Are you moving those now?

17 MR. ANDREWS: I am, Your Honor.

18 THE COURT: Any objection?

19 MR. GUERRETTE: No, Your Honor.

20 THE COURT: Okay. Defendant's 1 and 2 are  
21 admitted.

22 BY MR. ANDREWS:

23 Q. Dr. Arden, what materials did you review for the  
24 purpose of your letter that you wrote on August 28 of  
25 2017?

1 A. Materials I reviewed are listed under the -- the  
2 heading of materials reviewed at the bottom of the first  
3 page of that document, now Defendant's 2, and in summary  
4 the York Police Department documents including reports  
5 and statements and their probable cause memo;  
6 photographs taken of the death scene and some of the  
7 items of evidence; the documents from the office of the  
8 -- the office of chief medical examiner for the State of  
9 Maine which consisted of an investigative report and  
10 examination report; the toxicology report which was  
11 performed by an outside laboratory called NMS  
12 Laboratories, particularly the postmortem toxicology  
13 from the samples taken from Mr. Gavin; and then finally  
14 the death certificate issued for Mr. Gavin.

15 Q. Are these materials the kinds of materials that an  
16 expert would -- in your field would customarily rely on  
17 to form his opinions about the cause of death and the  
18 circumstances of death?

19 A. Yes, they are.

20 Q. Okay. And were these materials that you reviewed  
21 sufficient for you to form an opinion?

22 A. They were, sir.

23 Q. Okay. Now, I want to talk first about the cause and  
24 -- of death in this matter. What was the formal cause  
25 of death listed in the certificate of death in -- for

1 Mr. Gavin?

2 A. The precise wording for the cause of death that was  
3 entered into the death certificate for Mr. Gavin was  
4 acute intoxication due to the combined effects of  
5 ethenol, methanol, and fentanyl.

6 Q. Would it be a -- would it be a -- would it be a --.  
7 an accurate characterization to call this a combined  
8 theory of intoxication?

9 A. Yes, sir. It is both as an accurate representation  
10 and in fact reflective of the words used by the medical  
11 examiner on the death certificate that indeed this is an  
12 intoxication that was a combination of effects of three  
13 different substances.

14 Q. Now, is it possible for -- from the facts that you  
15 reviewed to separate any of these substances out as a  
16 cause -- or a cause, in fact, of death?

17 A. No, exactly the opposite is the case in my opinion.  
18 That it is not reasonable to separate any one of these  
19 three substances in this instance, in this death, to be  
20 the cause of death or the cause of death in fact. In my  
21 opinion it is indeed the combination of all three which  
22 must be included to explain adequately his death.

23 Q. Okay. Now, can you explain the mech -- the -- the  
24 -- the body process that these three combined substances  
25 create to result in death?

1 A. Yes. There is one primary mechanism and one  
2 secondary mechanism related to one of the three drugs in  
3 his system. Primarily -- ethanol and methanol, by the  
4 way, are alcohols. Ethanol being the type of alcohol  
5 that is found in drinking beverages. Methanol is a  
6 solvent that is commonly referred to as wood alcohol not  
7 intended for drinking. And then the third substance was  
8 fentanyl which is a particular type of an opioid drug or  
9 medication.

10 All three of these substances, the two alcohols and  
11 the fentanyl opioid, primarily act by a mechanism of  
12 central nervous system depression so they lessen or  
13 depress the functioning of the central nervous system,  
14 or in plain language the brain. And those effects may  
15 go on in many different parts of the brain having  
16 various effects; but primarily they act to lessen one's  
17 degree of consciousness, they act to lessen one's degree  
18 of responsiveness, and ultimately in the more severe  
19 instance, such as a fatality, they act to cause  
20 respiratory depression.

21 In other words, the drive to breathe generated by  
22 the brain is lessened or diminished to the point where  
23 the person does not breathe adequately or rapidly  
24 enough, and the potential there being that sufficient  
25 respiratory depression and brain function depression can

1 lead to death.

2       The only other point, as I said a secondary  
3 mechanism, is that methanol, the wood alcohol, also has  
4 a metabolism such that it is broken down into a  
5 different chemical called formic acid which in and of  
6 itself is toxic and can cause acidification of the blood  
7 or the system of the person which in and of itself is a  
8 harmful mechanism in addition to the primary mechanism  
9 of central nervous system and respiratory depression.

10 Q.    You mentioned a term there that I -- I am going to  
11 ask you to explain a little bit. You mentioned  
12 metabolism. Could you explain what is important about  
13 metabolism?

14 A.    Metabolism in general is the process by which the  
15 body chemically processes any foreign chemicals  
16 introduced into it. That was a kind of obtuse way of --  
17 of indicating if you -- if you take a substance like a  
18 drug or a medicine and it gets absorbed into your  
19 bloodstream, in addition to circulating around the body  
20 and being distributed by the bloodstream the body then  
21 starts to act on that chemical and to break it down.  
22 And so that is the process of metabolism, and it is  
23 important for a number of reasons. In part because it  
24 is the way that the body processes -- processes and  
25 breaks down chemicals such that you don't want to have

1 the -- you know, the ultimate blood concentration to  
2 stay that way forever. Sometimes that is a detoxifying  
3 process. Metabolism also therefore limits the -- the  
4 effect and the time frame of effect of something that is  
5 put into your system. And, again, it doesn't  
6 necessarily matter if we're talking about something good  
7 or something bad. It could be a therapeutic medication;  
8 it could be a toxic poison.

9 The other aspects of metabolism include that  
10 sometimes metabolism will break a drug or a medicine  
11 down into another product that itself may still be  
12 active or may still be toxic.

13 And, finally, just to be complete, metabolism is  
14 also related to the process of excreting drugs or the  
15 byproducts of the drugs.

16 Q. So -- and I just want to -- to sort of summarize, it  
17 is -- it is a way that the body processes substances  
18 that are introduced into it and some of those substances  
19 produce metabolites which are either changed chemicals  
20 that come from the original substance and may have an  
21 effect or may result in being excreted from the body?

22 A. Yes, sir.

23 Q. Okay. And is it also possible to get a sense of  
24 timing based on the amount of metabolism of a  
25 particular substance?

1 A. Sometimes one can make some inferences about timing  
2 depending upon what substance it is, how much is  
3 present, and how much metabolite is or is not present,  
4 yes, sometimes that can be used to make a judgment as to  
5 range of timing. Perhaps not a very precise, you know,  
6 down to the minute or second thing; but, yes, that is  
7 one of the -- one of the potential uses of the analysis  
8 including the metabolites.

9 Q. Okay. So when you introduce something into your  
10 body, that metabolism begins almost as soon as it is  
11 absorbed?

12 A. Yes, you -- the -- the metabolism does begin  
13 essentially as soon as the -- the -- the substance is in  
14 the bloodstream and circulating. Of course it will take  
15 some time to get a substantial amount of metabolism, but  
16 the process should begin pretty much at the beginning of  
17 the absorption of the pros -- of the substance.

18 Q. Now, you reviewed the toxicology report from NMS in  
19 this matter; correct?

20 A. Yes, sir.

21 Q. Okay. Was there evidence of metabolites in the NMS  
22 report?

23 A. Yes, there was.

24 Q. Okay. And what evidence of metabolites were found,  
25 or was found?

1 A. Actually there are two substances represented in the  
2 report. One which was not related to his cause of death  
3 which is called delta-9 THC. That is the active  
4 component of marijuana products. And, in fact, there  
5 was indeed also delta-9 carboxy THC present which is an  
6 example of showing metabolism.

7 More germane to the cause of death, Mr. Gavin had  
8 fentanyl at a certain concentration, it is actually 5.7  
9 nanograms per milliliter, in his blood. This is  
10 postmortem blood sample. And he also had norfentanyl  
11 which is the first major metabolite of fentanyl --  
12 fentanyl, excuse me, and that was present at a much  
13 lower concentration 0.23 nanograms per milliliter.

14 Q. Okay. So there is evidence of metabolism of  
15 fentanyl; correct?

16 A. Yes, sir.

17 Q. Okay. Is there evidence of metabolism of  
18 methanol?

19 A. We have no evidence concerning metabolism of  
20 methanol because the primary metabolite, formic acid,  
21 was not tested for.

22 Q. Okay. So that doesn't mean that it wasn't present,  
23 that just means that we don't have any data that  
24 demonstrates at what point the process of metabolism  
25 was occurring for methanol?

1 A. That is correct, sir.

2 Q. Okay. So then the inference or the theory from that  
3 would be that we wouldn't know if methanol had a higher  
4 concentration because it had been metabolizing for a  
5 period of time or whether there was formic acid in the  
6 blood that was a secondary cause -- or potential cause  
7 of death; is that correct?

8 A. That is correct.

9 Q. Okay. Now, you reviewed the medical examiner's  
10 report for this matter; right?

11 A. Yes, sir.

12 Q. Okay. In your opinion was that investigation  
13 adequate enough to make a determination about what point  
14 -- or about the methanol ingestion or at what point it  
15 would have been in the process of metabolism?

16 A. No, sir, it was not.

17 Q. Okay. And why wasn't it?

18 A. Well, I have two concerns. One is that no autopsy  
19 was performed which really would have been the more  
20 appropriate approach to the investigation and  
21 certification of the cause and manner of this death  
22 which would have in part related to your question as to  
23 trying to determine source of methanol, when it was  
24 taken, at what stage we were at as far as absorption and  
25 -- and -- ingestion versus absorption I should say.

1       Even more importantly, though, the investigation,  
2 per se, was not adequate because the presence of  
3 methanol in the system of a person is highly unusual.  
4 Methanol is not commonly ingested, certainly not  
5 intentionally, and so this is a very unusual really a  
6 striking finding in the toxicology results.

7       And because it is so unusual, and because we rarely  
8 see it as a cause of death or a contributing factor to a  
9 cause of death, and because it is outside of the realm  
10 of what people commonly do take either for recreational  
11 purposes or abuse purposes, we have really no  
12 investigation that indicates the source of the methanol,  
13 when it was taken, why it was taken.

14       It is -- it is a highly unusual finding that really  
15 demands an explanation, and we have no investigation to  
16 try to provide that explanation.

17       Q. Now, are there professional guidelines that would  
18 suggest that an investigation was necessary here?

19       A. Oh, yes, there are -- there are various forms of  
20 guidelines and standards that very strongly suggest. I  
21 can tell you from experience of having practiced  
22 forensic pathology for about 35 years that investigation  
23 into the circumstances of death is the very root of what  
24 we do in the field of medical-legal death investigation.

25       You cannot determine cause and manner of death

1 adequately or appropriately without a thorough  
2 investigation, and the generality that pertains to that  
3 is that whatever is most pertinent and certainly  
4 whatever is most unusual needs to be explained.

5 There are guidelines for medical-legal death  
6 investigation some of which have been codified by the  
7 National Association of Medical Examiners, some have  
8 been published in other venues including some -- some  
9 investigative guidelines by the United States Department  
10 of Justice.

11 The National Association of Medical Examiners has a  
12 set of accreditation procedures that we call it the  
13 checklist by which offices, medical examiner offices,  
14 get accredited. That's the -- that is -- those are the  
15 criteria by which they are judged. They include issues  
16 about investigation.

17 The National Association of Medical Examiners has  
18 issued and promulgated forensic autopsy performance  
19 standards that relate to issues such as performing  
20 autopsies on deaths that appear to be due to  
21 intoxications. So, yes, there are -- there are  
22 guidelines and standards in publications that reflect  
23 what I have just offered you.

24 Q. And is it your opinion that those guidelines were  
25 not followed here?

1 A. Yes, sir, it is my opinion, my judgment, that many  
2 of those guidelines were not followed here.

3 Q. Okay. Now, there were blood samples taken, though;  
4 correct?

5 A. Yes, sir.

6 Q. Okay. And under what circumstances were those blood  
7 samples taken?

8 A. The circumstances were that the medical examiner  
9 performed a -- an external examination of the body, and  
10 based upon the circumstances and the external  
11 examination, and a very rapid screening type of test on  
12 a urine sample that was taken from the body, the belief  
13 was that they were dealing with a death due to a drug  
14 overdose, and so then in the -- in the context of an  
15 external examination blood samples were drawn from the  
16 body and sent to the laboratory. The distinction being  
17 here that this is not in the context of an autopsy.

18 Q. Okay. And I just want to make it clear, but in none  
19 of these tests that were performed was any indication of  
20 -- or any testing other than the toxicology report for  
21 methanol resulted in the discovery of any metabolites of  
22 methanol?

23 A. That is correct.

24 MR. ANDREWS: I have nothing further, Your  
25 Honor.

1                   THE COURT:  Cross-examination?

2                   CROSS-EXAMINATION

3                   BY MR. GUERRETTE:

4                   Q.  Good afternoon, Mr. Arden.

5                   A.  Good afternoon, sir.

6                   Q.  My name is Jamie Guerrette.  I am the Assistant U.S.  
7                   Attorney who is prosecuting this case.  I know it is  
8                   somewhat clunky sometimes when we're dealing with remote  
9                   connections like this, so if you don't understand a  
10                  question or need me to repeat something just ask; okay?

11                  A.  Yes, sir.

12                  Q.  I appreciate you being here.  You touched on this a  
13                  bit in your direct examination, but in rendering your  
14                  opinion you had an opportunity to review a number of  
15                  different materials; correct?

16                  A.  Yes, sir.

17                  Q.  That included police reports from the York Maine  
18                  Police Department?

19                  A.  Yes, sir.

20                  Q.  And also photographs of the death scene essentially  
21                  that was taken by the York Police Department?

22                  A.  Correct, sir.

23                  Q.  And that included overviews of room -- of a room,  
24                  items of evidence, and also photographs of the  
25                  decedent's body; is that correct?

1 A. Yes, sir.

2 Q. And you also noted -- I think based on those  
3 photographs -- in your report that Mr. Gavin was found  
4 deceased sitting on a coffee table slumped over a couch;  
5 is that right?

6 A. That is correct, sir.

7 Q. Based on your professional opinion, sir, would you  
8 agree that the death appeared to be sudden based on the  
9 posture of how the body was found?

10 A. The posture and positioning of how he was found is  
11 consistent with a sudden death, but it is not strictly  
12 indicative of that. He could have been sitting in that  
13 position and had a sudden death and then slumped over  
14 and would have been found that way. He could also have  
15 had a combined intoxication by three central nervous  
16 system depressants which in essence put him to sleep,  
17 into a coma, at which point he has slumped down into  
18 that position and never awoken, never -- he didn't  
19 survive.

20 So given the nature and the mechanism of the three  
21 substances that did actually cause his death, those  
22 don't typically cause a sudden death. And the posture  
23 in which he was found, although it is consistent with a  
24 sudden death, is also consistent with somebody who  
25 simply lost consciousness while sitting there and

1 slumped. So I wouldn't call it -- call the latter a  
2 sudden death.

3 Q. So either way he would have lost consciousness while  
4 seated on a coffee table and just slumped over and  
5 eventually passed away; correct?

6 A. Yes, sir.

7 Q. And it is common, based on your experience, for  
8 medical examiners and investigators to consider how a  
9 body is found in determining cause of death?

10 A. Yes, it is.

11 Q. It is -- it is clear, Dr. Arden, from your -- your  
12 CV that you have a wealth of experience and you were  
13 previously a medical examiner. Specifically focusing on  
14 overdose-related deaths, is it common in your  
15 experience, or uncommon, for death to occur suddenly?

16 A. It depends entirely upon what type of overdose we  
17 are dealing with. As two examples, two different  
18 examples, stimulant drug-related deaths, the prototype  
19 being cocaine, very frequently do occur quite suddenly.  
20 People can be active and conscious and have cardiac  
21 arrest and basically die very quickly. Opioid-related  
22 deaths, or other deaths related to central nervous  
23 system and respiratory depressants, typically I would  
24 not consider sudden deaths because those people tend to  
25 become comatose, stay in a comatose condition for some

1 period of time, and then not recover.

2 Q. And in the range of opiate-related deaths that would  
3 include substances such as heroin or fentanyl; right?

4 A. Yes, sir.

5 Q. In your work do you keep up with the latest drug  
6 trends either through conferences, trainings,  
7 literature, or the like?

8 A. Yes, I keep up with drug trends -- current drug  
9 trends in part from conferences, in part from  
10 literature, in part from my work with the National  
11 Association of Medical Examiners where we're on the  
12 national front of -- of trying to promote medical-legal  
13 death investigation and so on, so, yes, sir.

14 Q. So based on your experience can you offer any  
15 insight to the Court with regard to the spike in  
16 overdoses that have resulted from the emergence of  
17 fentanyl use and distribution of fentanyl? Have you  
18 seen that?

19 A. Yes, I have, sir. There has been a growing opioid  
20 problem -- it is usually these days referred to as a  
21 crisis or epidemic -- that's been going on for a number  
22 of years now. And although the opioid crisis began with  
23 other opioids rather than fentanyl, in more recent years  
24 fentanyl has been seen with increasing frequency. It  
25 has been seen as a substitute or -- or a -- an

1      adulterant in -- in what is marketed as heroin.  Various  
2      fentanyl analogs have also come on the scene especially  
3      in the -- in more recent years.  These are slightly  
4      modified molecules of fentanyl.  So this has indeed  
5      become one of the latest waves of the opioid crisis and  
6      it has assumed great importance in terms of causing  
7      toxicity and deaths.

8      Q.  And have you personally seen an increase in the  
9      number of cases you have been asked to consult in that  
10     involve fentanyl?

11     A.  Both the cases I have consulted on and although I --  
12     I am primarily a consultant in this phase of my career I  
13     still do part-time medical examiner work in West  
14     Virginia, and West Virginia is really the epicenter of  
15     the opioid crisis.  So I have seen it both in the case  
16     work that I have done for medical examiner and in my  
17     consulting work.

18     Q.  Okay.  I want to turn to your report for a minute.

19     A.  Yes.

20     Q.  Do you have that handy?

21     A.  Yes, sir.

22     Q.  In your report you concur with the conclusion of the  
23     Maine medical examiner that death was caused by the  
24     combined effects of three toxins, ethanol, methanol, and  
25     fentanyl; is that right?

1 A. Yes, sir.

2 Q. And this conclusion was rendered by the medical  
3 examiner after they received results of a blood test  
4 that was performed by NMS Laboratory in Pennsylvania; is  
5 that also right?

6 A. Yes, sir.

7 Q. And in your report you note that the toxicology  
8 report issued around May 2nd, 2016; is that correct?

9       Or the cause of death was -- was issued around  
10 May 2nd, 2016?

11 A. The cause of death, yes, sir.

12 Q. And that would have been based on the report that  
13 was issued on April 26th of 2016; right?

14 A. Yes, sir.

15 Q. And that was your --

16 A. That is correct.

17 Q. That was nearly a month after the overdose death in  
18 this case?

19 A. Correct, sir.

20 Q. And was that the first time, in the various reports  
21 and information you reviewed, that methanol was observed  
22 as a toxin in Mr. Gavin's system?

23 A. Yes, it was.

24 Q. So the -- that information was not available when  
25 the ME performed their examination on April 1st of 2016;

1 correct?

2 A. That is correct.

3 Q. And their preliminary presumptive urine test was  
4 only positive for fentanyl and I believe THC, marijuana?

5 A. That is correct.

6 Q. You testified earlier that all three of these  
7 substances are central nervous system and respiratory  
8 depressants; right?

9 A. Yes, sir.

10 Q. And they acted basically together to cause the  
11 primary mech -- or to -- acting together they were the  
12 primary mechanism of death?

13 A. Yes, they did act together, and that was the -- the  
14 primary mechanism of death the fact that they are all  
15 central nervous system and respiratory depressants.

16 Q. I know in your report, sir, that you -- you mention  
17 that it is -- it is difficult to examine the substances  
18 in isolation because they were really acting together in  
19 concert; but if you would entertain me, I would like to  
20 ask you questions about each of the substances that were  
21 found in Mr. Gavin's blood. Is that fair?

22 A. Yes, sir.

23 Q. I want to first talk to you about the ethanol. That  
24 was reported to be a .12 blood alcohol content; correct?

25 A. Yes, sir.

1 Q. And I believe you note in your report that Mr. Gavin  
2 had drinks with an acquaintance the evening before so  
3 that would have been explained.

4 A. That is correct.

5 Q. And a .12 BAC for alcohol is not an extraordinarily  
6 high amount, correct, it is just slightly over the limit  
7 of .08?

8 A. It is.

9 Q. And --

10 A. Well, that's 50 percent over the legal limit of --  
11 of .08.

12 Q. Right.

13 A. And it is significantly elevated, but it is  
14 typically not in the realm -- in the range that would be  
15 considered fatal.

16 Q. And you did note that it is not independently lethal  
17 at that range?

18 A. Yes, sir.

19 Q. And you talked a little earlier, too, during your  
20 direct examination about metabolism and being able to  
21 look at the metabolites in someone's system and try to  
22 determine time of death; right?

23 A. Not so much time of death but time frame of use of  
24 the -- of the substance.

25 Q. Would the .12 in his system, Dr. Arden, suggest that

1 Mr. Gavin had not yet had a chance to metabolize the  
2 alcohol that he consumed in his system?

3 A. It indicates that he had not had enough time to  
4 metabolize all of it, but it did -- it would not  
5 indicate that he was not metabolizing. He undoubtedly  
6 was metabolizing until he died, but he clearly did not  
7 metabolize all of it.

8 Q. I guess what I am -- what I am trying to get at, if  
9 the death had occurred the following morning -- so he  
10 has drinks on the evening on March 30th. If the death  
11 had occurred sometime in the morning of March 31st, is  
12 it fair to say that the -- the alcohol in his system at  
13 that time would have metabolized through his body?

14 A. It is fair to say that a substantial amount would  
15 have metabolized. It is not fair to say, based on that  
16 information, that he would have been down to a zero  
17 blood alcohol. That would depend upon how high his  
18 blood alcohol concentration had peaked initially.

19 Q. Okay. Can we look at the fentanyl for a minute as  
20 well?

21 A. Yes, sir.

22 Q. And on the NMS lab's toxicology report, referring to  
23 page one of that report, the lab determined that  
24 Mr. Gavin had 5.7 is it nanograms per milliliter in his  
25 system?

1 A. Yes, it is, sir.

2 Q. In your experience -- I think you touched on it  
3 earlier -- but have you had occasion to conduct  
4 examinations on individuals who have died of fentanyl  
5 overdoses?

6 A. I have.

7 Q. And also I think your testimony is you have had an  
8 opportunity to consult in those types of cases?

9 A. Yes, sir.

10 Q. And in both instances have you either performed  
11 examinations or consulted in cases where death has  
12 resulted from a fentanyl overdose where the amounts were  
13 less than 5.7 nanograms per milliliter?

14 A. I cannot independently recall the specific  
15 toxicology results and blood concentrations of prior  
16 cases that I have either worked on primarily or  
17 consulted on.

18 I can tell you with fairness -- I am not trying to  
19 duck your question entirely. In fairness, based on  
20 experience and the literature, 5.7 nanograms per  
21 milliliter is within the very broad range of  
22 concentrations that have been associated with fatality.  
23 It is not at the upper end of that range, it is closer  
24 to the lower end. But I am sure there are examples of  
25 people who have died from that concentration or lower;

1 but there are many more examples of people who died at  
2 higher concentrations.

3 And -- and, to be fair, the -- the blood  
4 concentration ranges for opioids that relate to  
5 therapeutic, toxic, and lethal are very highly  
6 overlapping. It is the nature of opioids and -- and  
7 physiologic tolerance that people develop to them.

8 Q. Referring back to that report, the toxicology  
9 report, I direct your attention to page three. In the  
10 comment section of that report the lab noted that  
11 fentanyl is reported to be 80 to 200 times as potent as  
12 morphine and has a rapid onset of action.

13 Based on your professional experience, sir, would  
14 you agree with that?

15 A. Yes, sir.

16 Q. Including the rapid onset of action?

17 A. Yes, sir.

18 Q. What would that mean?

19 A. It means that the opioid effect occurs quickly once  
20 you get the drug into your system. It depends, of  
21 course, upon how you deliver the drug. If you deliver  
22 it intravenously, it will be particularly rapid. If you  
23 deliver it by a patch, for instance, trans -- cutaneous  
24 patches that they do use for fentanyl, it takes a longer  
25 time for absorption; but once you absorb it, it -- it

1 begins to act rapidly.

2 Q. If it was delivered intravenously, could that occur  
3 within seconds?

4 A. Physiologic or pharmacologic effects could occur  
5 within seconds. You are unlikely to die within seconds,  
6 but the effect of it could begin within seconds, yes,  
7 sir.

8 Q. Is that including unconsciousness?

9 A. Unconsciousness can occur very rapidly with  
10 fentanyl. I -- I don't personally administer it to  
11 people, I am not an anesthesiologist; but within --  
12 within relatively short period of time, seconds or  
13 multiple seconds, I think that could indeed occur.

14 Q. Again referring to the report, sir, it continues  
15 that in fatalities from fentanyl blood concentrations  
16 are variable -- and I believe you referenced this a  
17 short time ago -- and have been reported as low as three  
18 nanograms per milliliter. Would you also agree with  
19 that?

20 A. I have no -- I have no reason to doubt that this is  
21 correct. I will note for you that fatalities at as low  
22 as three nanograms per milliliter may or may not be  
23 fatalities purely from fentanyl. We would have to go to  
24 the primary literature to see if there are reported  
25 cases of fatality from fentanyl at that low a

1 concentration without the additive effect of other  
2 drugs.

3 Q. Would you agree, however, that Mr. Gavin's blood  
4 concentration was nearly two times the amount where  
5 fatalities have at least been observed?

6 A. It is -- it is nearly two times that three nanograms  
7 per milliliter that has been quoted here as -- as a low  
8 end of -- of the spectrum.

9 Q. So would the amount of fentanyl in his system  
10 possibly be sufficient to cause death independently of  
11 any other substance?

12 A. If you are asking me a hypothetical, yes, it is  
13 within the realm of possibility. That is different from  
14 my opinion about Mr. Gavin, per se, but within the realm  
15 of all possibilities. Not necessarily probabilities,  
16 but, yes, it is within the realm of possibilities.

17 Q. At the very least in this case the report -- or the  
18 medical examiner concluded, and I believe your  
19 conclusion is this as well, that each of the substances  
20 was a factor in the cause of death?

21 A. Correct, in combination each was a factor.

22 Q. So fentanyl, in your opinion, was -- was  
23 unquestionably a factor in the cause of death? It  
24 played a role?

25 A. Right, it -- it was unquestionably a factor among

1 three of which I cannot separate in -- in the actual  
2 example of Mr. Gavin.

3 Q. Before I -- I conclude my questions, sir, I just  
4 want to ask you a few questions about methanol. You  
5 testified earlier that it is highly unexpected to find  
6 that result in Mr. Gavin's blood; correct?

7 A. Yes, sir.

8 Q. It is not ordinarily a substance that someone  
9 consumes, that's also correct?

10 A. That is -- sorry. That is correct.

11 Q. I would like to ask you a few questions again  
12 referring to page -- I believe it is page three of that  
13 toxicology report. The lab reported back or commented  
14 that signs and symptoms associated with methanol  
15 ingestion includes severe metabolic acidosis and CNS,  
16 ocular and gastrointestinal disturbances.

17 Would you agree that those are effects of ingesting  
18 methanol?

19 A. Yes, sir.

20 Q. What's metabolic acidosis?

21 A. Excuse me. That relates to what I was referencing  
22 earlier. Acidosis is the condition where your -- your  
23 bloodstream and -- and in essence your -- your bodily  
24 fluids, your -- your bodily -- your system, if you will,  
25 is at a level of excessive acidity. We normally

1 maintain our blood at a pH of about 7.2 to 7.4.

2 pH is a -- a measurement of how -- how -- where on  
3 the spectrum something is from strongly acidic to  
4 strongly basic, being the opposite, or in the middle is  
5 neutral. So 7.2 to 7.4 is very close to neutral between  
6 acid and base. 7.0 is the -- the perfectly neutral  
7 level of that.

8 And so if, for instance, your blood pH goes down to  
9 6.9 or 6.8, as examples, that's a significantly  
10 excessive degree of acidity and that's called acidosis.

11 Q. What would the signs and symptoms of that  
12 potentially be if someone was experiencing that?

13 A. Well, in part it depends upon the reason for  
14 acidosis, but acidosis -- and it depends also on the  
15 severity, but acidosis can cause you to breathe more  
16 rapidly because your respiratory system can also affect  
17 your acid-based balance.

18 And so if the -- if you are chemically becoming too  
19 acidotic, if you breathe more rapidly it is a way of  
20 trying to blow off carbon dioxide which then should  
21 alleviate to some degree the acidosis. So -- so  
22 breathing more or less rapidly, depending upon which  
23 direction your acidity has gone, is part of it. At some  
24 point people may just have kind of the general malaise  
25 tiredness.

1        If you become very severely acidotic your body's  
2 systems start to shut down, and your level of  
3 consciousness may decline, your cardiovascular system  
4 may shut down. So you can have anywhere from mildly  
5 feeling bad and maybe breathing too fast all the way to  
6 death.

7 Q. And would that take some time to -- to progress or  
8 develop in someone's system?

9 A. Again it very much depends upon the reason for  
10 becoming acidotic; but I think in general, yes, that's  
11 true.

12 Q. And how would you describe, sir, CNS, ocular, and  
13 gastrointestinal disturbances?

14 A. Well, CNS is central nervous system, and I think  
15 that's much more germane to his situation because that  
16 includes lessening consciousness, eventually becoming  
17 comatose, and that also includes respiratory depression.

18        Ocular toxicity of methanol is something that was  
19 much better known and much more common many decades ago  
20 where people who would either accidentally drink  
21 methanol or there was a time -- we're going at least a  
22 generation or so before my time -- where when people had  
23 difficulty getting drinking alcohol they would drink  
24 methanol and people would end up being blind from it.

25 Q. I guess what I am driving at, if someone consumed

1 methanol would you expect them to start feeling sick,  
2 potentially vomit, have blurred vision, stuff of that  
3 nature?

4 A. That is very likely, yes, sir.

5 Q. And like metabolic acidosis would that generally  
6 take time as the body metabolizes or processes the  
7 methanol and it becomes more toxic in someone's system?

8 A. It does take some time. I really can't put a good  
9 time frame on it for you as far -- because, you know,  
10 the metabolism will start essentially immediately upon  
11 absorption. In order for the metabolic acidosis to  
12 become very severe, yes, it would take more time than a  
13 -- than a less severe example.

14 But I mean, in fairness, Mr. Gavin does have a  
15 substantial blood methanol concentration, so would it  
16 take him more time to become more toxic or have more  
17 effects, certainly. Would it be reasonable to say that  
18 at a 120 methanol concentration he had no effects or  
19 minimal effects, no, sir.

20 Q. And then again referring to that report page three  
21 it noted in the comment section that fatalities in 20,  
22 quote, untreated patients were reported to occur at  
23 concentrations between 20 and 630 milligrams per  
24 deciliter?

25 A. Yes, sir.

1 Q. And I believe Mr. Gavin's was 120 milligrams per  
2 deciliter; correct?

3 A. That is correct.

4 Q. And the mean that was reported in that comments  
5 section, or the average, is 190 milligrams --

6 A. That is correct.

7 Q. -- per deciliter?

8 A. That is correct.

9 Q. And that's in those 20 unique rare cases of  
10 untreated patients; right?

11 A. That is -- that is in -- that is citing to a  
12 particular study 20 untreated patients, and, again, we  
13 don't know for sure. My inference here is that this is  
14 methanol alone as opposed to in combination with other  
15 intoxicants.

16 Q. And does the fact that only 20 cases are noted in  
17 that study, as opposed to what the report was for  
18 fentanyl, suggest to you that fatalities from methanol  
19 consumption are exceedingly rare?

20 A. That factor of only 20 cases in that report is not  
21 what suggests that to me. In fairness, in the current  
22 day methanol fatalities are indeed quite rare whether  
23 alone or in concert with any other intoxicant, but I  
24 don't think that's the reason why; but I agree that they  
25 are now quite rare.

1 Q. And there would be a window, unlike potentially an  
2 overdose from an opiate such as fentanyl or heroin, to  
3 seek medical attention once you start to experience the  
4 symptoms of that toxicity in your system; right?

5 A. You say there would be. I -- I would prefer to say  
6 there might be.

7 Q. Okay.

8 A. Again, depending upon the circumstances, the  
9 concentration, the amount, yes, there might be, but not  
10 always.

11 MR. GUERRETTE: Okay. Thank you, sir.  
12 Appreciate your time.

13 THE WITNESS: Thank you.

14 THE COURT: Any redirect?

15 MR. ANDREWS: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. ANDREWS:

18 Q. You were asked some questions about the role of  
19 methanol and most of those questions were focused on  
20 what would be the secondary toxicity of methanol, is  
21 that -- would you -- would that be a fair  
22 characterization?

23 A. Yes. Regarding the acidosis, yeah, that is correct.

24 Q. Okay. But there is another way that methanol  
25 affects the body; right?

1 A. Yes, it is also a central nervous system depressant  
2 similar to ethanol.

3 Q. And that doesn't require the kind of time that  
4 causing acidosis would require; correct?

5 A. Correct.

6 Q. In fact, the intoxication effect would be almost  
7 immediate?

8 A. It would be rapid. Similar to the intoxication  
9 effect of ethanol in terms of timing.

10 Q. And -- and doesn't that give the presence of  
11 methanol's metabolite a particular importance if someone  
12 were trying to figure out which substance he took last  
13 or say which substance was going to break the camel's  
14 back?

15 A. That would certainly be a very helpful factor if you  
16 were trying to sort out those issues, yes, sir.

17 Q. Okay. But we don't have any evidence in this case;  
18 correct?

19 A. Correct.

20 Q. Okay. Now, you were also asked some questions about  
21 the level of methanol in Mr. Gavin's blood; right?

22 Now, the level itself, right, by itself is not -- is  
23 not fatal in the sense that it might not cause a  
24 fatality from secondary toxicity; correct?

25 A. Correct. It is -- it is not necessarily fatal;

1 although, it is within the realm of what has been  
2 reported as fatal.

3 Q. If you took it last, right, in conjunction with  
4 ethanol and fentanyl, could that in fact be the -- the  
5 -- I am using the characterization or the -- the straw  
6 that broke the camel's back?

7 A. It could be, yes.

8 Q. Okay. So the strict but for cause of death in this  
9 matter could in fact be methanol and not fentanyl?

10 A. Well, it could be -- it could be methanol in the  
11 context of already having ethanol and fentanyl onboard,  
12 yes, it could have been the straw that broke the camel's  
13 back, as we're saying, and it could have been the -- the  
14 factor that pushed him over the edge.

15 Q. Okay. And in this case the urine sample either  
16 wasn't tested for formic acid or it was in such a low  
17 amount in the urine that it didn't create a result; is  
18 that correct?

19 A. It -- it wasn't tested for at any point.

20 Q. And -- well, let me ask you, did you -- did you do  
21 some -- some work into trying to discover if there was a  
22 way to determine whether there was formic acid?

23 A. I did.

24 Q. Okay. And what were the -- what was the result of  
25 that?

1 A. I called the NMS laboratory and spoke to one of  
2 their toxicologists, and I specifically asked whether  
3 formic acid would have been detected in the testing  
4 system that they used for volatiles. Volatiles is the  
5 very, very broad category that includes ethanol and  
6 methanol. And I was informed by NMS that the testing  
7 system that they use -- that was indeed used to detect  
8 methanol and ethanol in this case would not have  
9 detected formic acid, and furthermore that they would  
10 only test for formic acid in urine, not in blood, and it  
11 would have to be a specifically requested examination  
12 done by a different method.

13 Q. All right. And do you have any information that any  
14 of that was done in Mr. Gavin's case?

15 A. Based on the toxicology report that I have, that was  
16 not done.

17 MR. ANDREWS: Thank you, Your Honor. Thank you,  
18 Dr. Arden. That's all I have, Your Honor.

19 THE COURT: All right. Any recross?

20 MR. GUERRETTE: No, Your Honor.

21 THE COURT: All right. I'd just ask a couple of  
22 questions if I could.

23 What I hear you saying, Doctor, is that you can't  
24 tease out which of these substance actually --  
25 substances actually caused the death, that they -- they

1       acted in concert; is that fair?

2           THE WITNESS: That is correct. That is correct.  
3       Your Honor.

4           THE COURT: And are you able to tell me -- in  
5       the legal language what we're aiming at here is what  
6       level of causation has to be shown, and I guess I would.  
7       ask this: Would you be able to say that the fentanyl  
8       was a concurrent cause of Sergeant Gavin's death?

9           THE WITNESS: I am not entirely sure I -- I  
10      would use or even understand the -- the term concurrent.

11           THE COURT: Mm-hmm. Would it --

12           THE WITNESS: It clearly --

13           THE COURT: Would it have played a meaningful  
14      role in his death, could you say that?

15           THE WITNESS: In my opinion all three of those  
16      substances played a meaningful role in his death. I --  
17      I am not able with reasonable medical certainty to -- as  
18      you said to tease out any one or more of them and say  
19      this one alone did it, these two together did it to the  
20      exclusion of the third. All three are present. Given  
21      the circumstances, their concentrations, and what we  
22      know about those substances, I think they are all  
23      significant, they are all contributory; but I cannot  
24      identify any one among the three that is the one or the  
25      -- the sole cause.

1                   THE COURT: All right. Thank you very much. I  
2 have no further questions. Does anyone want to follow  
3 up?

4                   MR. ANDREWS: No, Your Honor.

5                   THE COURT: No.

6                   MR. GUERRETTE: No.

7                   THE COURT: All right. May we let the doctor go  
8 then?

9                   MR. GUERRETTE: Yes.

10                  THE COURT: All right. Thank you for helping us  
11 today and we're going to disconnect you now. Thanks for  
12 joining us.

13                  THE WITNESS: Thank you, Your Honor.

14                  MR. ANDREWS: Your Honor, there has been some  
15 reference to the NMS report. I know the Government has  
16 marked it is an exhibit. I don't think it was --

17                  THE COURT: Would you get near a microphone,  
18 please, so the court reporter doesn't struggle.

19                  MR. ANDREWS: I'm sorry. There was some mention  
20 of the NMS toxicity report.

21                  THE COURT: Right.

22                  MR. ANDREWS: I know the Government has marked  
23 it. They didn't formally enter it. I would like it to  
24 be formally entered.

25                  MR. GUERRETTE: I would offer it now, Your

1 Honor.

2 THE COURT: All right. Government 1 is  
3 admitted.

4 MR. GUERRETTE: And --

5 THE COURT: I noticed that it was under seal,  
6 and we will keep under that seal then --

7 MR. GUERRETTE: Thank you.

8 THE COURT: -- based on the fact that it  
9 contains information about Sergeant Gavin.

10 MR. ANDREWS: Your Honor, I guess I would also  
11 ask that Defendant's Exhibit 2 similarly be sealed based  
12 on the information contained in the report.

13 THE COURT: I can't remember what 2 is.

14 MR. ANDREWS: Two is the opinion.

15 THE COURT: Oh, the report. Yeah, all right.  
16 Any objection to that?

17 MR. GUERRETTE: No, Your Honor.

18 THE COURT: All right. And then also based on  
19 the sensitive medical information contained in there I  
20 am going to seal Defendant's Exhibit No. 2.

21 MR. ANDREWS: Thank you.

22 THE COURT: All right. Thank you. Any more  
23 evidence to be offered on this question?

24 MR. ANDREWS: No, Your Honor.

25 THE COURT: All right. Actually, this would be

1                   THE COURT: Have you had enough time to talk to  
2 your counsel about them?

3                   THE DEFENDANT: Yes.

4                   THE COURT: All right. Those -- are there any  
5 objections to any of those?

6                   THE DEFENDANT: No, Your Honor.

7                   THE COURT: All right. Thank you. Does counsel  
8 want to see me at sidebar?

9                   MR. ANDREWS: I do, Your Honor. I was just  
10 going to ask.

11                  THE COURT: Yeah, why don't you ask.

12                  MR. ANDREWS: Your Honor, I would like to have a  
13 sidebar to discuss a confidential matter.

14                  THE COURT: All right.

15                  (Sealed sidebar conference.)

16                  (Open court.)

17                  THE COURT: All right. Let me just state for  
18 the record the documents that I have reviewed and -- and  
19 relied on. First of all was the victim impact statement  
20 from Sergeant Gavin's mother, Kathleen; the Government's  
21 sentencing memo; the Government's Exhibit 1; defendant's  
22 sentencing memo memorandum; the defendant's attachments  
23 which included a letter from Keith and Diane Reynolds; a  
24 letter from James Prescott, III; a letter from Mark  
25 Tanner; a letter from Robert Webber; a letter from

1 someone named Tyler who didn't give a last name; a  
2 letter from Jim Horowitz and the attendance sheets that  
3 are associated with that; a letter from Lieutenant  
4 George Panenka; a letter from Steven Pyles; a letter --  
5 documentation relating to the GED, or the HiSET as it is  
6 now called; a letter from Rebecca Miller; and  
7 certificates of completion of programs at the CCJ, I  
8 think 12 of those; and some other documents that were in  
9 -- in that as well but pertaining to those course --  
10 that course work that you have been doing at the jail.  
11 I have also considered Defendant's Exhibit 1 which was  
12 the CV of Dr. Arden, and Defendant's Exhibit 2 which is  
13 the letter from Dr. Arden, and of course Dr. Arden's  
14 testimony here today.

15 Does counsel wish to comment on any of that  
16 material?

17 MR. GUERRETTE: No, Your Honor.

18 MR. ANDREWS: No, Your Honor.

19 THE COURT: All right. And then I think I would  
20 begin with hearing from Ms. Gavin. I think I would like  
21 to hear from her, and then I would like to hear from  
22 anybody who wants to speak on behalf of the defendant.

23 MS. GAVIN: I just have a photograph I would  
24 like to. That's all.

25 THE COURT: Well, you wrote a very powerful

1 victim impact statement so.

2 MS. GAVIN: Thank you.

3 THE COURT: I am very sorry for your loss.

4 MS. GAVIN: Do I give this to anybody?

5 THE COURT: Sure, yeah. Can we have it?

6 MS. GAVIN: Yeah.

7 THE COURT: Mark it as an exhibit?

8 MS. GAVIN: Thank you.

9 THE COURT: You don't want to mark it?

10 MR. GUERRETTE: We talked about that earlier,  
11 Your Honor. We just didn't want it to be part of the  
12 public file.

13 THE COURT: Well -- okay. Actually, I went  
14 online and saw it anyway, but.

15 MS. GAVIN: Thank you.

16 THE COURT: Mm-hmm. Okay. Do you want to go?

17 MR. ANDREWS: I do, Your Honor. I would like to  
18 call Lucas's mother to the stand. Or not to the stand  
19 but to the podium --

20 THE COURT: Mm-hmm.

21 MR. ANDREWS: -- to provide the Court with some  
22 information.

23 THE COURT: Good afternoon.

24 MS. HEINDENSTROM: Good afternoon. First, I  
25 would like to say to the Gavin family I am so terribly

1 sorry for your loss and your pain, and I can't even  
2 imagine, and it is such a terrible thing, and I hope  
3 some day you find peace. I truly do.

4 UNIDENTIFIED: Thank you.

5 MS. HEINDENSTROM: And -- I will control myself.  
6 Lucas, my son that you see before you today, is not the  
7 same person that he was those few years ago. He was  
8 lost back then, unfortunately, due to mistakes that his  
9 father and I made. We were so consumed in our own  
10 problems that we didn't see that Lucas was lost, and he  
11 felt unloved and unwanted, and that led him down his  
12 path of drug use. And I was so blind to it, I didn't  
13 even know.

14 I didn't even know until one day I went to his house  
15 and I said I want you to tell me right now what's wrong  
16 with you, you don't look right, and then finally he told  
17 me he was using heroin. And of course I begged him to  
18 stop, but that obviously doesn't work.

19 I spent the next, oh, several months every day  
20 calling him on the phone to make sure he was alive and  
21 every day telling him how much I loved him just in case  
22 it was the last day. And one time in the middle of the  
23 night I got the phone call that I didn't want to get, I  
24 was so afraid of getting, that he was unconscious on the  
25 bathroom floor. Fortunately he did wake up, and I spent

1 the next four days at his house afraid to leave him.

2 My son has made some terrible, terrible choices, and  
3 some terrible mistakes, but I truly, honestly believe  
4 that he is a different person. He is not that person  
5 anymore, and he accepts responsibility for his actions,  
6 and I think that that's going to carry him through his  
7 life to be able to live a better life and not go back  
8 and make those same choices again. And I ask you to  
9 please just consider all of those things.

10 He has a very large support system and everyone that  
11 is willing to help him and to support him in staying  
12 clean, and living a better life, and being able to maybe  
13 someday help someone through his own experiences and  
14 thank you.

15 THE COURT: Thank you.

16 MR. ANDREWS: Your Honor, what I would like to  
17 do is I would like to make some statements now that you  
18 heard from Mrs. Heindenstrom. In my sentencing  
19 memorandum I structured this under the fact that Lucas  
20 has been living in the darkness for some time. A  
21 darkness that first started out as a shadow --

22 THE COURT: Mr. Andrews, is this going to be  
23 your recommendation?

24 MR. ANDREWS: No, not quite yet.

25 THE COURT: Because I don't really want theater

1 in the way that --

2 MR. ANDREWS: No.

3 THE COURT: You know.

4 MR. ANDREWS: I'm sorry.

5 THE COURT: I want to take this the way we do a  
6 sentencing every time.

7 MR. ANDREWS: I -- I under --

8 THE COURT: If you want to put that in part of .  
9 your -- your recommendation to me, I am happy to hear  
10 you out on that; but I don't -- you know, it is feeling  
11 a little staged, and I don't want to -- I don't want it  
12 to be that way, all right? There is a lot of  
13 considerations here.

14 MR. ANDREWS: And I am -- I am not trying to be  
15 theatrical. I am trying to structure it in a narrative  
16 that will help the Court.

17 THE COURT: I will get it. I am pretty smart,  
18 and I can get it when you give me your recommendation.

19 Is there anyone else who would like to speak on .  
20 behalf of the defendant?

21 MR. ANDREWS: There is, Mr. Horowitz, Your  
22 Honor.

23 THE COURT: All right. Good afternoon, sir.  
24 Will you state your name and spell your last name for  
25 the record.

1                   MR. HOROWITZ: Certainly. James Horowitz,  
2 H-o-r-o-w-i-t-z.

3                   THE COURT: Mm-hmm. Mr. Horowitz, I read your  
4 letter.

5                   MR. HOROWITZ: Thank you.

6                   THE COURT: Mm-hmm.

7                   MR. HOROWITZ: And I have been a SMART Recovery  
8 instructor and facilitator for the past five years. I  
9 work five days a week at Cumberland County Jail and  
10 Maine Correctional Center in Windham. I have met with  
11 thousands of inmates. I have conducted these meetings.  
12 I have provided certificates of attendance, and  
13 occasionally, rare occasions, submitted a personal  
14 letter, and normally I would not be inclined to come to  
15 a hearing for someone in that capacity. And, in fact,  
16 this is the first and only time I have.

17                  And I have done that really just to try to relay the  
18 serious -- the real conscientious and seriousness that  
19 Lucas has taken towards his recovery, and even more  
20 significantly to helping others.

21                  So he has attended virtually every meeting -- I  
22 don't know anyone else that's done that -- that I have  
23 conducted at CCJ. And in addition to really  
24 understanding the material. SMART is a science-based,  
25 evidence-based protocol. So he has absorbed that

1 information. And he has also really become a leader for  
2 other inmates in the -- in the jail, and I think that's  
3 really, you know, telling.

4 In fact, I really do believe that Lucas will go on  
5 to use the experiences, and the suffering he has done,  
6 and the things he has learned, not only for his own good  
7 and -- and -- and, you know, living a healthy, sober,  
8 and balanced life but also in helping others, too.

9 That's pretty much what I wanted to say though.

10 THE COURT: Thank you. I appreciate it. And I  
11 understand that it means a lot for you to come here  
12 because you don't generally do that and --

13 MR. HOROWITZ: The only time.

14 THE COURT: -- it must mean -- it must mean  
15 something. Thank you.

16 MR. HOROWITZ: Thank you.

17 MR. ANDREWS: Your Honor, Lucas would like to  
18 speak.

19 THE COURT: All right. I am going to give the  
20 chance to recommendations first and then I am going to  
21 hear from the defendant, all right? Mr. Guerrette.

22 MR. GUERRETTE: This -- it is a tragic case. It  
23 is one that resulted in the premature death of a  
24 29-year-old veteran who served tours in Iraq and  
25 Afghanistan. He was awarded the Purple Heart for valor.

1       But more importantly he was a son, he was a brother, he  
2       was a father.

3           The Court has found that the defendant's actions on  
4       March 30, 2016, contributed to Kyle's death. It was  
5       unquestionably part of a cocktail that resulted in that  
6       death.

7           In many case, Your Honor, this case is  
8       representative of tragedy that we're seeing across the  
9       State of Maine, across the nation, from the distribution  
10      and use of these illicit controlled substances including  
11      fentanyl and its analogs. Daily families are losing  
12      loved ones to this epidemic. And unfortunately the  
13      sober reality that we're -- we're dealing with, there is  
14      probably no end in sight when you are dealing with a  
15      substance as toxic, as addictive, and as lethal as  
16      fentanyl, and we're going to continue to see fatalities  
17      and tragedies.

18           In many ways, the defendant himself is a casualty of  
19       this epidemic. We don't dispute that he was an addict.  
20       We don't dispute that he was distributing to his  
21       acquaintances to support his own addiction.

22           The presentence report outlines a lengthy history of  
23       addiction again that the Government does not dispute.  
24       His arrest history appears to be related to his  
25       substance abuse issues.

1           So his addiction to opiates has likewise had some  
2 pretty severe consequences in his life including the  
3 current legal predicament that he is now facing and the  
4 chance that he is going to serve some additional terms  
5 of years in imprisonment.

6           But fortunately for him, Your Honor, and his family,  
7 the consequences pale in comparison to what the Gavin  
8 family has experienced in this case.

9           It is -- it is a hard case. My office has struggled  
10 with the recommendation in this case. How do you place  
11 a number on this? You know, before this case, though he  
12 had a number of brushes with the law, he had never --  
13 the defendant's never served a term of imprisonment. It  
14 has been mostly just fines and suspended sentences.

15           So after discussion I know internally with our  
16 office, looking at his history, looking at the facts and  
17 circumstances of this case, discussions with the Gavin  
18 family, in his plea agreement we ultimately believed and  
19 agreed that a sentence of no more than 96 months was --  
20 was appropriate for a total punishment in this case, and  
21 we still do. I mean that would be the -- the position  
22 of the office, Your Honor.

23           Here clearly and I think the Court has -- has found  
24 that a sentence in the current guideline range would not  
25 accomplish the goals set forth in the sentencing statute

1 because it would dilute the consequences of the crime of  
2 distribution.

3 So we would ask the Court to consider the facts and  
4 circumstances of the case, the fact that the offense had  
5 a meaningful impact on -- on the cause of death in this  
6 case, and all the other information that's before the  
7 Court in the presentence report and otherwise, in  
8 determining a just sentence. And ultimately we would  
9 ask that whatever sentence the Court impose also be  
10 structured to give the defendant an opportunity to -- to  
11 pursue rehabilitative treatment when he is incarcerated.

12 THE COURT: All right.

13 MR. GUERRETTE: Thank you.

14 THE COURT: Thank you, Mr. Guerrette. Mr.  
15 Andrews.

16 MR. ANDREWS: Your Honor, the recommendation  
17 that I am going to make is for 30 months in this case.  
18 I am going to do that based on all of the 33 -- 3553  
19 factors. In particular, Your Honor, a sentence that is  
20 not more than necessary.

21 Mr. Heindenstrom has -- has accomplished a  
22 significant amount of personal growth since turning  
23 himself in. When I first got this case what was  
24 remarkable to me was the lack of insight that my client  
25 had both into himself and to what he had done. It took

1 me a while to learn, as I started to say earlier, about  
2 the shadow that had overcast his youth and which  
3 eventually turned in to complete darkness.

4 He was at a -- a particular point, and as his lawyer  
5 I have done what a lawyer does to -- to get someone like  
6 him who is addicted to drugs treatment and on the right  
7 path, and while that didn't occur immediately it has  
8 occurred.

9 The other day we were talking about what was -- what  
10 was different, and for the first time I realized that --  
11 that Lucas did understand.

12 The story that -- that he tells is that when he  
13 turned himself in for a while he was bitter, right. For  
14 a while he -- he kept thinking to himself, oh, why is  
15 everything so terrible? Why am I so terrible? And --  
16 and one day he had had enough.

17 And I -- I can sort of relate to it based on his  
18 story about, you know, how often he heard that he wasn't  
19 a good person, and that he wasn't successful, and that  
20 he was sort of going to live a miserable existence, I  
21 can sort of understand that. And what he said is I had  
22 enough of that and so I applied to -- to get my GED.

23 And I think it was around the early part of March,  
24 maybe March 3rd, and -- that he did this, and he took  
25 the test, and -- and for the first time, as he explained

1 it, he had had some success. Some success that -- that  
2 made him feel like all of that stuff maybe wasn't true.  
3 And so he started participating in more programs, and he  
4 started getting the treatment, and -- and I have  
5 detailed it all in the -- in the sentencing memorandum.

6 And while things aren't perfect right now, and, you  
7 know, maybe at sentencing we -- we tend to -- to present  
8 the picture of everything is going to be perfect, I am  
9 not saying that we're there yet, right. What I am  
10 saying is that we have made substantial gains. He at  
11 least understands what happened and why. And he has at  
12 least begun the process of working to ensuring, as he  
13 likes to say, that he is never a part of anything like  
14 this again.

15 And that, Your Honor, is why I think which is -- and  
16 the 30 months is basically time served for Mr.  
17 Heindenstrom -- why I think that is not more than  
18 necessary, right. I think -- I think he has achieved  
19 what it is that we hope to do with respect to the  
20 purposes of sentencing. And I would also like to  
21 indicate that a 30-month sentence is a substantial  
22 enhancement over the eight to 14 that his guideline  
23 range is, right, and I think that's important.

24 I think that's important because whatever sentence  
25 this Court imposes, it must be reasonable. And without

1 diminishing respect for the law or the seriousness of  
2 this crime, I think 30 months does that. Thank you.

3 THE COURT: Thank you, Mr. Andrews.

4 Mr. Heindenstrom, you have a constitutional right to  
5 address the Court. Is there anything you want to say?  
6 You can say it at this time.

7 THE DEFENDANT: Yes, Your Honor. First of all,  
8 I would like to -- I would like to tell you how terribly  
9 sorry I am. I am sorry for my actions and the  
10 selfishness and my addiction that played a role in the  
11 loss of Kyle. I can't imagine the pain that I have  
12 caused your family, and there is nothing I can do to  
13 ease that pain, and I will carry that weight for the  
14 rest of my life, and I deserve to carry that weight. I  
15 truly am sorry.

16 I wrote a speech for today, I prepared a speech, and  
17 I have decided -- although I would like you to have it,  
18 I decided not to read it. Instead I would like to talk  
19 to you about who I am today and the man that stands here  
20 rather than the boy that stood in front of you two years  
21 ago.

22 When I was first arrested on the federal warrant, I  
23 was at my absolute lowest, and I was only getting worse  
24 by the day. I spent two -- two months detoxing in  
25 Cumberland County before I was approved a bed at

1 St. Francis. And St. Francis was a great experience and  
2 I did learn a lot, but it didn't change the years of  
3 damage that were already done.

4 When I was released on bail, all those emotions that  
5 I suppressed and -- and I buried with drugs and alcohol  
6 came out, and I was scared, and I did what I always do,  
7 and that's use. In this case I was drinking.

8 After -- after a couple months, a short time, I was  
9 -- I turned myself in on bail violation for drinking,  
10 and I was back in jail. And I was mad. I was mad at  
11 the world. I was mad at everybody for -- for me being  
12 there. And I was -- I was depressed. And I started --  
13 instead of using drugs and alcohol, I was -- I was  
14 eating, I was sleeping, I was hiding, and I got  
15 unhealthy, and people started to notice, and they'd tell  
16 me how unhealthy I was. And then I noticed. And I took  
17 -- I took a day and I -- I went -- I was in my cell and  
18 I cried. And like when I say I cried, I mean like I --  
19 I really cried. I cried for Kyle. I cried for his  
20 family. I cried for my family. And I cried for  
21 everything that I was burying for all those years. And  
22 I let everything out. And I decided that I was going to  
23 do something different.

24 The next day I signed up for my high school diploma.  
25 And I was terrified. People were going to laugh at me.

1 I was going to look stupid. I wasn't going to be good  
2 enough. And to my surprise I -- I did very well. Like  
3 very well. I tested out. And I fed off of that  
4 accomplishment, and I took that experience to try -- try  
5 to better myself.

6 I -- I signed up for every program possible. I  
7 started eating right. I started exercising. Not only  
8 did I complete every program, but I pushed myself. I  
9 asked questions. I helped others.

10 I made a terrible mistake, and I'm sorry for that  
11 mistake. I can't change what I have done, but I can  
12 make sure that I am never involved with anything like  
13 this ever again. And I know that I am not a bad person,  
14 and I am early in my recovery, but I am trying my best,  
15 and I am proud of who I am today. Thank you.

16 THE COURT: Thank you.

17 MR. ANDREWS: Your Honor, in a -- in a practical  
18 sense, sort of to end my recommendation, in -- in my  
19 view it is important that we preserve the right of  
20 appeal, and I just want to let the Court know that there  
21 is an appeal waiver for a sentence that is 48 months or  
22 less, and we're asking that if the Court thinks that  
23 sentence is a departure beyond what my recommendation is  
24 that it at least be 49 months so that I can have that  
25 right -- or that Mr. Heindenstrom can have that right to

1 appeal. Thank you.

2 THE COURT: All right.

3 MR. ANDREWS: Oh, Your Honor, I'm sorry. Mr.  
4 Heindenstrom does ask that this be given to the Court.

5 THE COURT: All right. I will mark it as a  
6 defendant's exhibit.

7 MR. ANDREWS: Thank you.

8 THE COURT: Any objection?

9 MR. GUERRETTE: No, Your Honor.

10 THE COURT: All right. All right. I have  
11 decided to accept the plea agreement in this case. I  
12 have carefully reviewed the contents of the written pre  
13 -- presentence report. I take those contents into  
14 account. I consider what I have heard from counsel both  
15 in today's proceedings and as well as the presentence  
16 conference. I consider the evidence that was presented  
17 at this hearing. And I consider the allocution of the  
18 defendant.

19 Under the law, I am required to impose a sentence  
20 that's sufficient but not greater than necessary to  
21 serve essentially the four purposes of sentencing, and  
22 those purposes are just punishment, deterrence,  
23 protection of the public, and your rehabilitation.

24 I take into account the nature and circumstances of  
25 every offense. I take into account the defendant's

1 history and the defendant's characteristics. I consider  
2 the sentencing guidelines. I consider the need to avoid  
3 unwarranted sentencing disparities. And I have  
4 considered all of those factors.

5 Before I actually impose sentence, I want to explain  
6 what I am thinking a little bit. First of all, with  
7 regard to the nature and circumstances of this offense,  
8 you have pled guilty now to distributing fentanyl. And  
9 it is clear that you are not a major drug dealer, but  
10 you sold drugs to support your habit. And you thought  
11 you were selling heroin, but you were aware that the  
12 substance that you had contained fentanyl, and I think  
13 it turned out to be pure fentanyl.

14 Am I right about that? No.

15 MR. GUERRETTE: No.

16 THE COURT: It was both, mixed?

17 MR. GUERRETTE: Contained fentanyl.

18 THE COURT: Just contained fentanyl.

19 MR. GUERRETTE: Yes.

20 THE COURT: Okay. I don't know where I got  
21 that, but anyway. I will strike it from my brain.

22 In my view, the guideline range for this charge is  
23 woefully insufficient for what happened here, and what  
24 happened here was that your customer, Sergeant Gavin,  
25 who had a distinguished military career, and who was no

1 doubt struggling himself with the horrors that he saw on  
2 his tours of duty, he bought and consumed that fentanyl,  
3 or that heroin with fentanyl. And we certainly can't .  
4 say that that was the cause of death, but it contributed  
5 to his death. And the fact of his death just has to  
6 take this case out of the guideline range in my view.

7 When I see your crime I have to see not just what  
8 you did but the effects that it had, and it had a  
9 terrible effect obviously on Sergeant Gavin, and it had  
10 a terrible effect on his family, and it had a terrible  
11 effect on our community. He was a great guy. He was  
12 helping people selflessly. It was a loss all the way  
13 around. So that's the nature and circumstances of the  
14 offense.

15 When I look at your history and your  
16 characteristics, I see someone now 20 -- are you 28 now?

17 THE DEFENDANT: Mm-hmm.

18 THE COURT: 28 years old. Your childhood was  
19 somewhat dysfunctional. You had ADHD as a kid. You  
20 were also diagnosed with oppositional defiant disorder.  
21 There was a lot of turmoil -- turmoil in your home. And  
22 your mom described it very well that, you know, they  
23 were dealing -- your parents were dealing with their own  
24 issues and they didn't really see -- they were really  
25 absorbed there and didn't see that you were kind of .

1 falling through the cracks.

2 And when you -- when they divorced and you went with  
3 your father, you know, you were -- it really seems like  
4 you were essentially on your own, and you were out there  
5 getting beaten up by other kids and bullies in school.  
6 It is a terrible situation for any kid to be in, no  
7 question.

8 You finally went back to live with your mom and you  
9 became close with her, and that was one very good thing.

10 We see you starting to use drugs at a very young  
11 age, which is quite common for someone sitting in that  
12 chair. You started marijuana at 13, experimented with  
13 benzos and molly, used alcohol, Percocet, Vicodin. In  
14 2014 you started heroin and you became hooked on that.

15 When you are using, you are a danger to this  
16 community. You ran into somebody's house when you were  
17 intoxicated driving a car. There was an arrest for  
18 leaving the scene of an accident and an arrest for an  
19 OUI that didn't result in a charge but in which you  
20 admitted that you had been drinking. That was the one  
21 where -- that brought you back into federal court for --  
22 and we revoked your bail. So you were on pretrial  
23 release at the time of that.

24 Those are real markers to me of serious substance  
25 use disorder, and the only way you will ever not be a

1 danger to the community is if you really beat your  
2 addiction.

3 You did try IOP for a short time immediately after  
4 this incident occurred, it looks like from the  
5 presentence report, but you left that program. Your mom  
6 says you ran out of insurance money. Then you had the  
7 six-week stint at St. Francis for inpatient residential  
8 treatment. That ended in October of 2016. That  
9 probably wasn't long enough either.

10 I was so disappointed to read in the presentence  
11 report that after St. Francis while you were still out  
12 on pretrial release you failed to attend a substance  
13 abuse IOP program. And, quite predictably, failing to  
14 attend that program you ended up relapsing and being  
15 brought into custody at the end of -- of January of  
16 2017.

17 I think the point I want to make about that -- and I  
18 am sure Mr. Horowitz will agree with me -- treatment for  
19 you is absolutely essential, and you can't get enough  
20 treatment.

21 And I applaud your efforts to take advantage of  
22 every resource that the jail has, and I am definitely  
23 going to support your request to get into the 500-hour  
24 treatment program in the federal Bureau of Prisons; but  
25 the sad reality is that if you have substance use

1 disorder going in to prison, you are going to have .  
2 substance use disorder coming out of prison. It is just  
3 not something you can cure in prison, and the challenges  
4 are very different in prison.

5 So you might be able to abstain in prison, but when  
6 you get out -- kind of like you said with getting out of  
7 St. Francis -- you face a wave of emotion, you face  
8 challenges that you didn't have, and you have  
9 temptations. You have got drugs more easily accessible.  
10 So the real -- the rubber is really going to hit the  
11 road when you get out of prison and you get into  
12 supervised release. At that point you are going to have  
13 to double down and really focus on making sure you get  
14 the level of treatment that you need, and that you go,  
15 and that you attend every -- every one. Because without  
16 treatment -- it has been proven you will need at least  
17 300 hours of treatment once you get out, that's after  
18 all of that other stuff, just to re-enter and be  
19 successful, because you have got high risk and high  
20 needs written all over you. And you have got to deal  
21 with your mental health issues, and you have got to deal  
22 with those substance abuse issues, or you are going to  
23 be returning to become a danger to the community.

24 I think you get that. I think your allocution was  
25 very good. I -- I hear you, and I understand that you

1 have thought very deeply about this.

2 The fact that Mr. Horowitz is here to speak on your  
3 behalf is significant because those people see it all  
4 and they -- they see jailhouse conversions every day.

5 The fact that he came in here to speak on your behalf is  
6 significant.

7 A lot is going to be dependent on your attitude when  
8 you come out because the Bureau of Prisons is not a walk  
9 in the park, and there will be a lot of people there  
10 that would take you down a road that you do not want to  
11 go down. And if you can get through that and come out  
12 with a positive attitude, I think you can turn it  
13 around. I -- I believe you have it in you to do what  
14 you say you want to do: to help other people, to become  
15 educated in that field, to use your experiences to -- to  
16 try to remedy some of the wrong that you have -- that  
17 you have done on this case.

18 What I would advise you is to see your probation  
19 officer as a support and not an enemy. They are going  
20 to be trying to make sure you get what you need, that  
21 you get the treatment that you need, that you go to the  
22 treatment. They are going to be randomly frequently  
23 observing drug tests. They are going to be holding your  
24 feet to the fire. And you should be thanking them every  
25 day for doing it.

1       If you mess up and you relapse, they are going to  
2       get you a higher level of treatment. If you keep  
3       messing up, they are going to bring you before me. If  
4       you tamper with a drug test, you are going to be coming  
5       before me. If you fail to attend treatment, you are  
6       going to be coming before me. And that won't be pretty.  
7       I can assure you of that.

8       What I am going to do with regard to extent of the  
9       departure -- this is under 2K2.1 -- that depends on the  
10      dangerousness of the defendant's conduct, the extent to  
11      which death was intended or knowingly risked, the extent to  
12      which the guideline reflects the risk of personal  
13      injury. Those are the -- the factors.

14      Clearly the defendant's conduct of distributing a  
15      substance known to contain fentanyl was extremely  
16      dangerous. Fentanyl is extremely potent. As we  
17      learned, it can be far more potent than heroin. There  
18      is no knowing what the -- the purity of anything is  
19      anymore. I mean we're -- they're putting it in things  
20      as an additive. We don't even know what we're dealing  
21      with.

22      In March of 2016, as I said, it was widely known  
23      that heroin and fentanyl were responsible for a  
24      significant uptick in the number of overdose deaths, so  
25      it is very dangerous conduct.

1       As for the defendant's state of the mind, the  
2 defendant clearly did not intend to cause Sergeant  
3 Gavin's death. He had mentioned that the substance --  
4 that -- that somebody else had already tried that same  
5 -- from that same batch, and that they had loved it, so  
6 he was not aware that it would -- could cause death; but  
7 he was aware that it was fentanyl, that's clear from the  
8 texts that you sent. And, as I said, there was just  
9 this buzz in the press that fentanyl was causing  
10 overdose deaths. I can infer from the text that you saw  
11 the fentanyl as being whatever it was that gave the kick  
12 to what you were providing.

13       So I think you knew you were playing with fire, and  
14 so as far as your state of mind I would say that there  
15 is -- it is -- it is not that you intended to cause  
16 death -- death, but it was something that you were  
17 knowingly risking.

18       I think that the same factors that support the 5K2.1  
19 fact -- upward departure would also support the  
20 variance. I would also note that I think that an eight  
21 to 14-month guideline range for distribution of a small  
22 amount of fentanyl just does not capture the seriousness  
23 of a crime where death results at least in part from the  
24 drug that was distributed.

25       I also would say that I don't think that a guideline

1 sentence would provide an adequate deterrent to other  
2 people who are distributing fentanyl, so I -- that would  
3 be another basis on which I would either vary upward or  
4 do a 5K2.1 departure.

5 All right. If you would stand, I will impose the  
6 sentence. The defendant is hereby committed to the  
7 custody of the United States Bureau of Prisons to be  
8 imprisoned for a total term of 60 months. I am going to  
9 recommend to the Bureau of Prisons that they consider  
10 you for enrollment in the 500-hour comprehensive drug  
11 treatment program.

12 I am going to impose a period of supervised release  
13 for a term of three years.

14 I will impose all of the conditions, mandatory,  
15 standard and special, that have been recommended by the  
16 probation office for your supervised release.

17 I am imposing a \$100 assessment. I find that the  
18 defendant does not have the ability to pay a fine, I am  
19 going to waive the fine in this case. The assessment is  
20 due in full immediately. If you can't pay it  
21 immediately, you can pay it over the term of your  
22 incarceration. If you can't pay it over the term of  
23 your incarceration, you can pay it over the term of your  
24 supervised release in monthly payments set by the  
25 probation officer. If you can't afford those payments,

1 then you can come back to the Court and -- and seek an  
2 adjustment.

3 So, in your plea agreement you waived your right to  
4 appeal any sentence of 48 months or less, so since this  
5 is over that you have the right to an appeal. In order  
6 to appeal, you have to cause to be filed with the clerk  
7 of this court within 14 days of today, and not after  
8 that, a written notice of appeal. Do you understand?  
9 You have to say yes or no.

10 THE DEFENDANT: Yes.

11 THE COURT: I advise that if you fail to timely  
12 file the written notice of appeal, you will have given  
13 up your right to appeal the sentence and conviction. Do  
14 you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And if you can't afford to file the  
17 appeal, you can appeal without cost to you. On your  
18 request, the clerk of the Court will immediately prepare  
19 and file a notice of appeal on your behalf. Do you  
20 understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Anything from probation? Did I --  
23 nothing?

24 PROBATION OFFICER: Nothing, Your Honor.

25 THE COURT: Anything more for the Government?

1                   MR. GUERRETTE: Your Honor, may I ask a  
2 clarifying question? I think the Court alluded to it on  
3 a couple of different occasions, but would the Court  
4 have nevertheless imposed a 60-month sentence pursuant  
5 to an upward variance and -- in the event that there is  
6 -- there is an issue with the upward departure?

7                   THE COURT: Yeah, I would have based it either  
8 on the 5K2.1 and if I couldn't have done that I would  
9 have based it at -- I would have given it as an upward  
10 variance.

11                  MR. GUERRETTE: Thank you, Your Honor.

12                  THE COURT: I am not even sure what -- if I  
13 didn't just do both, but that's what it is based on.

14                  MR. GUERRETTE: I think you did. I just wanted  
15 to be sure.

16                  THE COURT: Yep. Okay. Anything further for  
17 you, Mr. Andrews?

18                  MR. ANDREWS: To the extent that this is  
19 justified as an upward variance, I just want to make  
20 sure that the Court is aware and that we preserve the  
21 objection to that sentence.

22                  THE COURT: Yep. You are -- your objections I  
23 think are adequately preserved.

24                  MR. ANDREWS: Thank you, Your Honor.

25                  THE COURT: And I would just like to apologize

1 for my comment to you about the theater. I didn't mean  
2 to disparage you in any way, but I just wanted to do it  
3 the same way I always do it in every case.

4 MR. ANDREWS: I -- I understand, Your Honor, and  
5 I --

6 THE COURT: Yeah. All right. I want to wish  
7 you luck, Mr. Heindenstrom. I -- I really do believe  
8 that you can -- you can do this, and I think you owe it  
9 to yourself, and I think you owe it to your family, and  
10 I think you owe it to everybody in this courtroom. And  
11 I also want to say that I am very, very sorry for the  
12 victim's loss here. The Court will be in recess.

13 (TIME NOTED: 3:25 p.m.)

14

15

16 C E R T I F I C A T I O N

17 I, Tammy L. Martell, Registered Professional  
18 Reporter, Certified Realtime Reporter, and Official  
19 Court Reporter for the United States District Court,  
20 District of Maine, certify that the foregoing is a  
21 correct transcript from the record of proceedings in the  
22 above-entitled matter.

23 Dated: March 11, 2019

24 /s/ Tammy L. Martell

25 Official Court Reporter

**ADDENDUM**  
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**United States District Court**  
**District of Maine**

UNITED STATES OF AMERICA JUDGMENT IN A CRIMINAL CASE  
v. 11/28 P 3:52

LUCAS HEINDENSTROM

Case Number: 2:16-cr-00156-001

USM Number: 12616-036

Robert C. Andrews, Esq.

Defendant's Attorney

**THE DEFENDANT:**

- pleaded guilty to Count One of the Indictment.  
 pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.  
 was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Distribution of Fentanyl	March 30, 2016	One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_.  
 Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of material changes in economic circumstances.

November 28, 2018  
 Date of Imposition of Judgment

Nancy Torresen  
 Signature of Judge

Nancy Torresen, U.S. Chief District Judge  
 Name and Title of Judge

11/28/2018  
 Date Signed

DEFENDANT: LUCAS HEINDENSTROM  
CASE NUMBER: 2:16-cr-00156-001

Judgment Page 2 of 7

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 60 Months.

- The court makes the following recommendations to the Bureau of Prisons:  
The defendant be considered for enrollment in the 500 Hour Comprehensive Drug Treatment Program.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:  
 at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.  
 as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.  
 before 2 p.m. on \_\_\_\_\_.  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
**UNITED STATES MARSHAL**

By \_\_\_\_\_  
**DEPUTY UNITED STATES MARSHAL**

DEFENDANT: LUCAS HEINDENSTROM  
CASE NUMBER: 2:16-cr-00156-001

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of 3 Years.

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two additional drug tests during the term of supervision, but not more than 120 drug tests per year thereafter, as directed by the probation officer.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5.  You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7.  You must participate in an approved program for domestic violence. (check if applicable)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments of this judgment.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: LUCAS HEINDENSTROM  
CASE NUMBER: 2:16-cr-00156-001**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

DEFENDANT: LUCAS HEINDENSTROM  
CASE NUMBER: 2:16-cr-00156-001

**SPECIAL CONDITIONS OF SUPERVISION**

1. Defendant shall participate in mental health treatment, as directed by the supervising officer, until released from the program by the supervising officer. Defendant shall pay/co-pay for services during such treatment, to the supervising officer's satisfaction.
2. The defendant shall participate in workforce development programs and services as directed by the supervising officer, and, if not employed, shall perform up to 20 hours of community service per week. Workforce development programming may include assessment and testing; educational instructions; training classes; career guidance; and job search and retention services.
3. Defendant shall not use or possess any controlled substance, alcohol or other intoxicant; and shall participate in a program of drug and alcohol abuse therapy to the supervising officer's satisfaction. This shall include testing to determine if Defendant has used drugs or intoxicants. Defendant shall pay/co-pay for services during such treatment to the supervising officer's satisfaction. Defendant shall not obstruct or tamper, or try to obstruct or tamper, in any way, with any tests.
4. A United States probation officer may conduct a search of the defendant and of anything the defendant owns, uses, or possesses if the officer reasonably suspects that the defendant has violated a condition of supervised release and reasonably suspects that evidence of the violation will be found in the areas to be searched. Searches must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release.
5. Defendant shall comply with the medication program prescribed by a licensed medical practitioner.

DEFENDANT: LUCAS HEINDENSTROM  
CASE NUMBER: 2:16-cr-00156-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>Count</u>	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
One	\$100.00		\$0	\$0

- The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____	\$ _____	

- Restitution amount ordered pursuant to plea agreement \$
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- the interest requirement is waived for the  fine  restitution.
- the interest requirement for the  fine  restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LUCAS HEINDENSTROM  
CASE NUMBER: 2:16-cr-00156-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$100.00 due immediately, balance due
  - Any amount that the defendant is unable to pay now is due and payable during the term of incarceration. Upon release from incarceration, any remaining balance shall be paid in monthly installments, to be initially determined in amount by the supervising officer. Said payments are to be made during the period of supervised release, subject always to review by the sentencing judge on request, by either the defendant or the government.
    - not later than \_\_\_\_\_, or
    - in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

1                   THE COURT: All right.

2                   MR. ANDREWS: Thank you.

3                   THE COURT: Well, let me make some rulings on  
4 the upward departure and variance situation. I think it  
5 is an interesting argument that you are raising, and I  
6 will try to be clear to give you a record that you can  
7 take to the First Circuit on this so that they can make  
8 the ultimate determination.

9                   So the relevant statutes and guidelines that are  
10 sort of in play here are 21 United States Code  
11 Section 841(b)(1)(c) which states that if death results  
12 from the use of a particular substance then a 20-year  
13 mandatory minimum applies and the maximum term of  
14 imprisonment is life.

15                  And the Government did not charge the defendant  
16 under the death resulting language of the statute,  
17 instead it just charged straight distribution under  
18 841(a)(1), and I would imagine that the choice of that  
19 charge was largely driven by United States versus  
20 Burrage which is a 2014 case in which the Supreme Court  
21 held that the results from language in  
22 Section 841(b)(1)(c) requires the Government to prove  
23 that the decedent would not have died had it not been  
24 for the substance provided by the defendant. So that's  
25 essentially what I will call strict but for causation.

1        And then the second relevant guideline or --  
2        statutes or guidelines, this is a guideline, is found in  
3        the sentencing guidelines at 2D1.1(a)(2). That's what  
4        Mr. Andrews is referring to. That would set an offense  
5        level of 38 if, quote, the offense of conviction  
6        establishes that death resulted from the use of the  
7        substance.

8        Now, the Government is not arguing that this  
9        guideline should apply, and that may be based on the  
10       fact that some circuits -- though as far as I know the  
11       First Circuit has not weighed in on this, but some  
12       circuits have held that this guideline does not apply  
13       unless the indictment charged a death resulting case.  
14       And there is a circuit split on this. United States  
15       versus Greenough at 669 F.3d 567, which is out of the  
16       Fifth Circuit, cites the split, cites the cases that are  
17       involved. And the Greenough point -- court makes the  
18       point that 2D1.2(a)(2) of the guidelines really mirrors  
19       the language found at 21 United States Code  
20       841(b)(1)(C), and that's definitely true, and it is  
21       perhaps enough to use the Burrage causation requirement  
22       for 2D1.1(a)(2). But I actually think Greenough is  
23       distinguishable from this case because I think the death  
24       here is much closer to being intrinsic to the charge as  
25       opposed to what was the case in Greenough, but the

1     Government is not pressing on this and I am not going to  
2     weigh in on that.

3           Then there is the issue of 5K2.1 which is the  
4     sentencing guideline provision that says if death  
5     resulted the Court may increase the sentence above the  
6     authorized guideline range.

7           Now, the Government is arguing that I should depart  
8     upward under this guideline, and they are arguing that a  
9     strict but for causation standard is not necessary and a  
10    looser standard should apply, and they are citing me to  
11    the case of United States versus Pacheco, and cases  
12    cited therein, where it -- in Pacheco it was held that  
13    the substance that was distributed by the defendant was  
14    a contributing cause of the victim's injuries under the  
15    sister guideline 5K2.2. There was not a death in that  
16    case but serious bodily injury.

17           And the First Circuit used this what it described as  
18    a but for causation but which appears to be a much  
19    looser standard which would be that if the substance  
20    that was distributed by the defendant was at least a  
21    concurrent cause or a meaningful cause of death,  
22    meaningful factor in the cause of death, then an upward  
23    departure would be permissible under 5K2.2.

24           And you are also citing -- the Government is also  
25    citing cases which suggest that a 5K2.1 departure is

1       permitted even when the defendant is not the direct  
2       cause of the victim's death where a defendant puts into  
3       motion a chain of events that run -- that raises a  
4       cognizable risk of death then the upward departure is  
5       allowed.

6       So the Government -- or the defendant is arguing, in  
7       response to that, that Pacheco has really been abrogated  
8       by Burrage, and the defendant claims that I should read  
9       the language of the guideline, which after all is very  
10      similar to the statutory language construed in Burrage,  
11      to require strict but for causation.

12      The fourth relevant guideline was pointed out by the  
13      probation office, and that's 5K2.21 of the sentencing  
14      guidelines which provides that a court may depart upward  
15      to reflect the actual seriousness of the offense based  
16      on conduct underlying a potential charge not pursued in  
17      the case as part of the plea agreement or for any other  
18      reason and that did not enter into the determination of  
19      the applicable guideline range.

20      So having heard the doctor, and having read the  
21      exhibits that -- before I came in here that the parties  
22      offered during the evidentiary portion of the hearing, I  
23      am going to make some factual findings.

24      First of all, I find that the defendant provided  
25      Sergeant Gavin with the fentanyl that was found in the

1 decedent's system. I think that's -- I conclude -- can  
2 conclude that both from the prosecution version and from  
3 the toxicology report.

4 I find that the defendant knew that the substance he  
5 was providing, although identified as heroin, contained  
6 fentanyl, and the defendant's own admission suggests me  
7 -- leads me to that conclusion, and also the text that  
8 he sent referring to the fet which he himself admits was  
9 a reference to the fentanyl.

10 I find that Sergeant Gavin's death was caused by the  
11 combined effects of three toxins; ethanol, methanol, and  
12 fentanyl.

13 I find that the fentanyl found in Sergeant Gavin's  
14 blood was in an amount of 5.7-nanograms per milliliter.

15 I find that fatalities from fentanyl have been  
16 reported with concentrations as low as three-nanograms  
17 per milliliter.

18 The amount of fentanyl in Sergeant Gavin's system  
19 could possibly have been an independent cause of his  
20 death. I would note that possible is not enough to take  
21 you to a preponderance of the evidence, so I don't think  
22 the Government has established that the fentanyl in his  
23 system could have been an independent cause of his death  
24 to a level of a preponderance.

25 The methanol found in Sergeant Gavin's blood was in

1 an amount of 120-milligrams per deciliter. Fatalities  
2 from methanol have been reported with concentrations as  
3 low as 20-milligrams per deciliter. Again, the amount  
4 of methanol in Sergeant Gavin's system could have been  
5 an independent cause of death. I can't tell you  
6 anything about possibility or probability.

7 It is impossible to say, on the evidence before me,  
8 that but for the fentanyl Sergeant Gavin would have  
9 lived. It is impossible to say that the fentanyl was  
10 the straw that broke the camel's back.

11 You have got your setup for Burrage.

12 But I can say that fentanyl was a contributing cause  
13 of Sergeant Gavin's death. The expert agreed that it  
14 was a meaningful cause, and that's the standard that is  
15 set forth in Pacheco.

16 I don't find that the position of the body and the  
17 -- really adds a whole lot to it. I think the  
18 Government is putting a lot of weight on that. I think  
19 that's pretty speculative.

20 I would take judicial notice of the fact that the  
21 dangers caused by fentanyl was widely known in the state  
22 even in March of 2016.

23 I would note and take judicial notice of the fact  
24 that the Attorney General had just reported, and it was  
25 all over the news, that the 2015 overdoses were

1 dramatically increased and that they were blaming  
2 fentanyl and heroin for those additional -- the increase  
3 in overdose deaths.

4 So with regard to my legal conclusions, I am going  
5 to conclude that a departure under 5K2.1 for death  
6 resulting is appropriate on these findings.

7 I do not believe that just because nearly identical  
8 language is found in the statute 21 U.S.C. 841 that I am  
9 constrained to only depart under 5K2.1 if I can find  
10 strict but for causation that is called for by the  
11 statute.

12 Here I would note that the Supreme Court has at  
13 least once taken identical language, and I am thinking  
14 of the residual cause under ACCA, and said that it is  
15 not unconstitutionally vague for purposes of the  
16 guidelines, it is unconstitutionally vague for purpose  
17 of the statute.

18 I think the point of that, and some of the most  
19 recent cases out of the Supreme Court on these kinds of  
20 issues, is that context matters, and I think that it --  
21 5K2.1 is -- presents a different context to me than  
22 either the statute or 2D1.1.

23 I think it would be an anomalous result if the  
24 guidelines prevented me from considering that the  
25 substance provided by the defendant was a contributing

1 factor in the death of Sergeant Gavin, and I would say  
2 that at the -- the state of the law, as it exists before  
3 me now, I -- I think Pacheco is -- is more germane to  
4 the -- to this case than Burrage.

5 That leaves the question of the extent of the  
6 departure under a 5K2.1. I may wish to hear a little  
7 bit more from you with regard to -- I think maybe it  
8 makes some sense, knowing that I find I am not  
9 constrained from doing an upward departure under 5K2.1,  
10 to let you argue your recommendations before I talk  
11 really about any extent of the departure.

12 I will say that I don't think that this case would  
13 support an upward departure under 5K2.21 in light of  
14 Burrage. I don't think the Government really had a  
15 possible case it could have charged under 21 841 death  
16 resulting. So that would be a requirement under 5K2.21  
17 that there would be a possible charge that was dropped,  
18 and I don't -- I don't see that here. Because I don't  
19 think they could have ever proved but for causation.

20 With regard to the variance, I think I have the  
21 freedom to -- to give an upward variance based on  
22 essentially the same things that would support the  
23 departure under 5K2.1, and I will go through those more  
24 carefully as -- after I hear your recommendations.

25 All right. I think maybe what I will do at this

1 point is put guideline calculations on the record. So  
2 this is a base offense level of 12. Three points -- two  
3 points are taken off for acceptance of responsibility  
4 for a total offense level of 10. Defendant was in a  
5 criminal II history -- criminal history category, and  
6 that gives us a guideline range of eight to 14 months.

7 Are there any objections to those findings?

8 MR. GUERRETTE: No, Your Honor.

9 MR. ANDREWS: No, Your Honor.

10 THE COURT: All right. And while I am on the  
11 presentence investigation report, have you reviewed the  
12 conditions of release with your client?

13 MR. ANDREWS: I have, Your Honor.

14 THE COURT: Are there any objections to any of  
15 those?

16 MR. ANDREWS: No, Your Honor, there are not.

17 THE COURT: Okay. Just let me talk to Mr.  
18 Heindenstrom about that. After any term of imprisonment  
19 there will be a term of supervised release, and the  
20 probation office has recommended certain conditions of  
21 supervised release. Those were contained in the  
22 presentence report. Do you remember those?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand them?

25 THE DEFENDANT: Yes, ma'am.