

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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14-CR-227 (SJ)

3 UNITED STATES OF AMERICA,

United States Courthouse
Brooklyn, New York

5 -against-

October 24, 2018

11:00 a.m.

6 NAQUAN REYES,

7 Defendant.

8 -----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR RE-SENTENCING
10 BEFORE THE HONORABLE STERLING JOHNSON, JR.
UNITED STATES SENIOR DISTRICT JUDGE

11 APPEARANCES

12 For the Government:

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15 For the Defendant:

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18 Also Present:

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21 Proceedings recorded by mechanical stenography. Transcript
22 produced by computer-aided transcription.

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Rivka Teich CSR, RPR, RMR FCRR
Official Court Reporter

1 (In open court.)

2 THE COURTROOM DEPUTY: All Rise. United States
3 versus Naquan Reyes.

4 MS. GEDDES: Elizabeth Geddes for the Government.
5 Good morning, your Honor.

6 MS. MAIN: Victoria Main, Probation Department.

7 MS. NEWMAN: Good morning, your Honor. Donna Newman
8 on behalf of Mr. Reyes. Would you like Mr. Reyes to join
9 here? Can we take off his handcuffs?

10 THE COURT: No, the Marshals want it on; it will
11 stay on. Come on up.

12 MS. NEWMAN: Thank you, your Honor.

13 THE COURT: We're here for sentencing.

14 MS. NEWMAN: Yes.

15 MS. GEDDES: Yes, Judge.

16 THE COURT: Mr. Reyes, have you read and discussed
17 the presentence report with your lawyer?

18 THE WITNESS: Yes.

19 THE COURT: Are you ready for sentencing?

20 THE WITNESS: Yes, sir.

21 THE COURT: You want to say something? First of
22 all, before we do, let's have some administrative matters.
23 There are some objections to the presentence report, I'm going
24 to make a ruling on them.

25 MS. GEDDES: I don't know that there are any

1 objections.

2 MS. NEWMAN: I didn't object to any of the
3 calculations to the presentence report. Other than the, I
4 think there was, like we had agreed, the Government and the
5 defense agrees, that he should get three points for
6 acceptance.

7 THE COURT: He's going to get the three points.

8 MS. GEDDES: Thank you, Judge.

9 THE COURT: That guideline, instead of life it is
10 now 360 to life. The question before me is, where in the
11 guidelines or below the guidelines I'm going to sentence the
12 defendant.

13 MS. NEWMAN: That is correct, your Honor, and if I
14 may talk to that, but I'll wait.

15 THE COURT: I want to hear from the defendant first
16 then you can.

17 MS. NEWMAN: Thank you, your Honor.

18 THE COURT: Go ahead Mr. Reyes.

19 THE WITNESS: Thank you, your Honor, first I want to
20 start off by showing my deeply remorse my apologizing to the
21 Thompson family, her mother, her father, loved ones.

22 When this situation happened I was young and you
23 know I grew from this situation. I'm 34 years old now, my
24 mentality, my attitude is definitely different. I've been in
25 penitentiary going over two years now. I've had time to

1 reflect on a lot of things I did wrong in my life, including
2 Nicole's murder that I participated in.

3 What I do is pretty much have taken programs where I
4 was also doing victim impacting and became a mentor to other
5 inmates so they won't make the same mistake that I did.

6 Thank you for listening.

7 THE COURT: Okay. Ms. Newman.

8 MS. NEWMAN: Thank you, your Honor, for giving us
9 this opportunity.

10 Your Honor, I would like first to address the
11 Government's sentencing memo and an issue they raised. I
12 agree that this Court has to decide whether Mr. Reyes can get
13 a term of years as opposed to life. We're asking for the
14 bottom of the guideline range. And I think that what the
15 Government has suggested is that while they agree he should
16 get three points, they also say, you know what, he hasn't
17 learned his lesson, he's not rehabilitating.

18 Centering on the one thing that they center on,
19 which is a phone call in 2017 I just would like to briefly
20 explain it, because I listened it to four times, it's not a
21 very long call.

22 THE COURT: Is this the telephone call from the
23 defendant to this person?

24 MS. NEWMAN: The cousin.

25 MS. GEDDES: The confidential source.

1 MS. NEWMAN: We all know who it is, it's the cousin.
2 He's really a co-conspirator in the underlying bank fraud.

3 In any event, your Honor, it's important to
4 understand several things to get the context of the
5 conversation. I only bring it up because the Government seems
6 to suggest that this is evidence he's not rehabilitated. So
7 when we listen on the call, first thing to know -- I just
8 learned this -- is that actually he received the number
9 because his cousin wrote him a letter saying, I want to make
10 amends. He doesn't have the letter here. Obviously I
11 couldn't have gotten it because I listened last night to the
12 calls, I just got this. But if you really listen, as I did,
13 what do you hear, you hear Naquan begs, crying out, and
14 saying, why did you do this.

15 And frankly, you know what, it reminded, it really
16 reminded me, of the scene in Julius Caesar, where Caesar is
17 stabbed by Brutus. He says, "Et tu, Brute." I don't really
18 mean to compare them, but because to Caesar he had nurtured
19 Brutus, it was like his son. Well, Naquan looked to his
20 cousins as his mentors.

21 He didn't have a father. It was his cousins who
22 acted as his surrogate father. He looked to them for
23 approval, for guidance. And it is it is unquestionable that
24 it is the cousins, way back when, that got him involved in
25 bank fraud. It's not an excuse. We're not blaming the

1 cousins. He readily got involved, but it helps us explain the
2 call and the context of it.

3 He's saying, how can you do this? He's crying,
4 almost he's begging, what could you do? Why did you do this?
5 Why did you do this? It's the same, it's like your father
6 stabbed you in the heart.

7 You have to understand that Naquan, when he got
8 involved with his cousins when all this happened --

9 THE COURT: We're talking about the telephone from
10 the institution.

11 MS. NEWMAN: Right, yes. But I'm trying to give you
12 the context of it and why he feels so -- begging and crying,
13 why did you do this.

14 It is not a threat. He's crying out to him. It's
15 because Naquan when young was vulnerable. It's no question he
16 was slow. He was slow in school; his records demonstrate
17 this. He has the gift of gab, but academically he had to
18 repeat the fourth grade. He was learning disabled, led
19 poisoning. He had Attention Deficit Disorder, emotional
20 problems. He lived through 9/11 and was traumatized from
21 this. His father was killed when he was younger. We know
22 from the science, that effects the individual. In this case
23 it directly effected him and made him particularly vulnerable
24 to his cousin.

25 What he's saying, Why did you do this? Why did you

1 do this? That's what he's saying. It goes to, how could you
2 do this to me. It has nothing to do with his remorse for his
3 actions. This is not a threat.

4 The fact that he calls him a rat, well, that's the
5 vernacular. I'm sorry, in jail they don't call people who
6 cooperate, the euphonism used by the Government as anything
7 but rats, that's their language. It is just interesting, when
8 you look at the whole thing.

9 And they talk about papers, and that's one thing the
10 Government points out he asked him.

11 THE COURT: Is this a telephone call the defendant
12 made to the cousin?

13 MS. NEWMAN: Yes. He's saying to him, and the
14 cousin is talking about papers, well let me give you the back
15 drop of that, that's not a threat.

16 When you go to jail after you've been convicted,
17 every single one of my clients asks me for one thing -- they
18 ask for several things, but I must have my sentencing minutes,
19 I must have it. I must have any docket sheet. I must have
20 any sentencing submissions. Why? Because the gangs control
21 the prison, and if you don't have that you're labeled as a
22 cooperator. That's what he's saying. That's the papers.

23 I can remember about, 15 years ago, maybe more we're
24 going to say 15 for our sake, when Judge Chen was a
25 prosecutor, I had a cooperator with her. He called me from

1 prison terrified and he was going to be put in solitary.
2 Judge Chen and I wanted to avoid that. We felt that was extra
3 punishment. So we called the warden together to explain
4 that's not right, he's not the one that should be in solitary
5 and extra punishment. And the warden then said to us, there
6 is nothing I can do because the gangs control, and if I don't
7 put him in solitary he will be harmed because he can't prove
8 he didn't cooperate. That's the situation. Now it's 100
9 times worse than it was when Judge Chen and I made that call.

10 What is interesting is what Naquan said during this,
11 it's a brief conversation, he says when the word got out
12 someone wanted to hurt, you meaning the cousins, I said no.
13 What is the cousin's response about papers? He says, well,
14 don't worry about me in jail, I got paperwork. I don't know
15 if he got fraudulent paperwork. But, I circulated your
16 paperwork, he says. What does that mean? He says he's
17 circulated. That conversation, now that's the telephone call,
18 the other telephone call, that Naquan made to Ms. Tyson when
19 he was in jail initially, which forms the two points for
20 obstruction, which we don't object to. But that's that
21 telephone call.

22 He says, I put that out. What is he talking about?
23 In that call it suggests that Naquan is telling Ms. Tyson to
24 cooperate with the Government but to lie to say something
25 different and by putting that call out there he's suggesting

1 that Naquan is a cooperator. That's what the cousins is
2 saying.

3 So while Naquan is saying what paperwork, you don't
4 have paperwork. He's saying, the cousin -- I don't know if
5 it's true, I'm just saying -- I put out paperwork about you,
6 your paperwork, so you look like a cooperator. This whole
7 conversation has nothing at all to do with whether or not
8 Naquan is trying hard to make amends. It is him crying out
9 because he's so hurt that this mentor, his family member, has
10 been involved, was involved and yet cooperated.

11 He's not saying in any way that he was right in
12 doing what he's doing, what he did. That's not what is here.
13 There is no threat here. The only threat is really from the
14 cousin saying I put out the paperwork so you look like a
15 cooperator.

16 ~~And that he says that the real -- what we learn~~
17 from this is that the cousin is saying his motivation for
18 cooperating, whether it's true or not I don't know, I'm just
19 saying what the conversation says, and getting Naquan in so
20 much trouble, was not because he thought it was the right
21 thing to do, but because Naquan was going to cooperate against
22 him and his brother.

23 So the call is insightful but it doesn't have any
24 relevance to what the Court has to decide here; and that is,
25 the individual, Naquan Reyes, standing here before you. Is

1 this a man who has made efforts at rehabilitation? Is this a
2 man who now has the remorse that he needs that should get a
3 term and have hope as opposed to just plain life.

4 I want to point out some other things briefly, that
5 he has. It cannot be ignored, the efforts that he made. 53
6 certificates, the bible study, the comments that he had, the
7 tutoring that he's doing. I know it took Naquan a long time
8 to get his GED, and sometimes from my own experience when I
9 was a teacher those make the best teachers, the people who
10 work the hardest. So Naquan didn't join a gang in prison. He
11 took courses and courses and courses to better himself.

12 And, your Honor, a message that I think needs to be
13 said to the prison, to the inmates, you can have hope if you
14 do the right thing. That is, don't go with the gang but go
15 and take the courses, study the bible, cooperate with the jail
16 facility, work in the jail. That is what we need to send,
17 that's a message of deterrent, positive reinforcement is
18 important here. I can't stress that enough.

19 I end with similarly I gave the statistics about
20 similarly-situated defendants who have not received life. We
21 are not in any way mitigating the crime. We are not trying to
22 minimize the crime at all. What we are asking for in light of
23 Naquan Reyes, who stands here today, is to give him and to
24 filter down to the others, hope with a term of years.

25 I do want to go back to, now I remember what we may

1 have been talking about the guideline. I made an argument
2 that doesn't really effect the guidelines on a variance with
3 respect to double counting on the obstruction. But it was a
4 variance argument, it's not a guideline. We agree with the
5 guideline calculation. I just want to say that, so it's
6 clear.

7 Thank you, your Honor, for giving me that time.

8 THE COURT: Counsel.

9 MS. GEDDES: Your Honor, the Government here seeks a
10 sentence of life and we don't do this lightly. At the initial
11 sentencing proceeding Ms. Thompson's family was present and
12 they had the opportunity to speak about the magnitude of the
13 loss that they suffered. They are not here today. They
14 wanted to be here, but one of the Thompsons' has health
15 issues, that's what prevented them.

16 I can speak on their behalf and tell you about,
17 obviously, the great pain that they have because of the
18 actions of Mr. Reyes, and certainly that is the cause in any
19 murder. But I think the circumstances of this murder are
20 particularly --

21 THE COURT: This murder she was strangled; is that
22 right?

23 MS. GEDDES: That is what Mr. Reyes said on the
24 recording to his the cousin, who is the confidential source.
25 He said she was strangled.

1 Her body was found in a Dumpster in Landover,
2 Maryland. And there was evidence of strangulation, so that
3 seems to be an accurate portrayal by Mr. Reyes.

4 The conduct is just senseless. And Mr. Reyes'
5 comments about the murder, which were made four years after
6 the murder or almost four years after the murder, in
7 February 24, he said somewhat prophetically, "I would do it
8 again if my life were on the line."

9 What I think is so crucial about that statement is
10 Mr. Reyes' life was not on the line. She was cooperating in a
11 bank fraud case, a counterfeit check that had been deposited.
12 Maybe he faced a very short time in jail. Even if he faced a
13 long time in jail, which I submit he did not, his life wasn't
14 on the line. And he thought, even almost four years after the
15 murder, that the right thing to do was to kill her and he said
16 he would do it again.

17 I don't want to put too much emphasis on the call
18 that was made in September 2017, but I don't think it should
19 be discounted either. In that call Mr. Reyes, for whatever
20 reason, he reached out -- I'm not making any representation as
21 to why he reached out to the source -- but he called him and
22 he said, "You're never going to be able to come back to
23 Brooklyn." This is the same man that Naquan told, "I would do
24 it again if my life were on the line." The only
25 interpretation of that, "you're never going to be able to come

1 back to Brooklyn," is that harm is going to come to you if you
2 come back to Brooklyn.

3 This isn't about paperwork. First of all, there was
4 no paperwork in this case with respect to the source. The
5 source didn't -- there was no cooperation agreement with the
6 Government. There is no issue about having a clean plea
7 agreement or a clean judgment in this case. The paperwork I
8 believe that Ms. Newman is referencing that was discussed, was
9 paperwork that happened years earlier. What is critical and
10 what was discussed in that phone call was that Reyes said,
11 "they have the video." And video is not paperwork. Video is
12 not video of a judgment. The video is the video of the source
13 talking with Naquan Reyes in February 2014 in a hotel room,
14 the Marriott, just down the street from here, where Naquan
15 Reyes confessed to the murder. That is a reference to his
16 current cooperation or his -- his current cooperation. And
17 when he says, You're not going to survive in a penitentiary,
18 he doesn't use that word. He says, you can't go to a
19 penitentiary, the translation is, you're not going to survive
20 in a penitentiary. And more personally, you can't come back
21 to Brooklyn. It's a threat.

22 It's not indicative of an individual who has
23 rehabilitated himself and no longer agrees that the right
24 thing is to obstruct justice. It is evidence that the
25 defendant is a perpetual obstructor, if nothing else. He has

1 killed because somebody cooperated.

2 He came into this courtroom, not this courtroom but
3 Judge Towns' courtroom. He took the stand. And he told a
4 version of events that was completely belied by the evidence
5 in the case. It was not candid at all.

6 He called his ex-girlfriend and tried to get the
7 ex-girlfriend to feed a story to the Government to try to
8 support an effort of leniency for Mr. Reyes. And then just a
9 year ago he calls his cousins and says you can't go back to
10 Brooklyn. He obstructs justice. He has committed an
11 extraordinary crime and he did it with a really very
12 supportive family.

13 I don't want to undermine the circumstances of his
14 youth. I don't take issue with the fact that he may well have
15 learning problems and he certainly encountered tragedies along
16 the way, but what he did have was a very loving and supportive
17 family, many of whom are present today. He did have the gift
18 of gab. He had charisma. People liked him. They wanted to
19 spend time with him. And yet, his choice was to engage in a
20 bank fraud which obviously is a serious crime but is not the
21 reason why we're asking for the sentence that we're asking.

22 He engaged in obstruction and he killed a
23 24-year-old girl because she threatened his criminal
24 livelihood. She threatened his freedom for a short period of
25 time. Then he said, I'd do it again if my life were on the

1 line.

2 In the light of the seriousness of his conduct and
3 his statements during the February 2014 recording and all of
4 the other evidence in this case we ask your Honor to impose
5 the same sentence that Judge Townes imposed after hearing from
6 Naquan Reyes during the sentencing proceeding when he took an
7 oath testified. After hearing from the Thompson family about
8 the great and extraordinary loss --

9 THE COURT: Do we have the J&C from Judge Townes?

10 COURTROOM DEPUTY: It should be on ECF.

11 MS. NEWMAN: I ask you, your Honor, I just want to
12 while we're looking for the J & C, going back to Brooklyn, that
13 had nothing to do with a threat. Government would agree, he
14 doesn't belong to a gang, he has no ability. The truth of the
15 matter is, the people knew in Brooklyn and he wouldn't go
16 back. I have plenty of cooperators who are not going back to
17 where they are from. But indeed the cousin was involved in
18 Mr. Reyes's bringing the body where it was. He was part of
19 the, I guess you might say -- I don't know if -- the cousin --

20 MS. GEDDES: No, none of the cousins were involved
21 in transporting the body from Brooklyn to Landover, Maryland.
22 They were all in jail.

23 MS. NEWMAN: It's my understanding based on the
24 evidence that I have reviewed, that his brother, Jamal, was
25 out of jail. He made the call. I'm telling you what I

1 understand from the evidence that I've reviewed from telephone
2 calls, your Honor. I'm at a disadvantage, as your Honor
3 knows, because I only came in for resentencing. But my
4 understanding, regardless, is they had an input, that's why he
5 went to where he went to dispose of the body. That doesn't
6 excuse, I'm giving you, just again, the context.

7 This threat about paperwork is a non-threat if you
8 know the reality of jails. And for the Government to say that
9 it is, I know they can't be that naive. This is what it's
10 called, paperwork. I hear it every single e-mail after
11 sentencing. And I don't know what in reality what they know,
12 but I know if you don't come in with those documents, the
13 paperwork, you'll have problems. So that's what he was
14 talking about.

15 But the cousin says, not a problem, I got paperwork.
16 So this wasn't a threat to the cousin. The cousin invites the
17 call. The cousin doesn't get off the phone and say, oh, my
18 God. He's very calm, and certainly wants to make amends with
19 Mr. Reyes, so there is no threat. This is not relevant to
20 what he is today, and that's what we're looking at.

21 THE COURT: If this was an innocent call, why did he
22 use another inmate's PIN number to make the call?

23 MS. GEDDES: That was a different call. That was to
24 Randy Tyson while he was incarcerated at MDC prior to
25 sentencing, where he told Ms. Tyson to craft this story and

1 say what she knew when she didn't actually know those things.

2 This was a telephone call made from his own account
3 when he was incarcerated while his appeal was pending.

4 THE COURT: It's agreed this is a particularly
5 horrendous crime. It wasn't a knife. It wasn't a gun. It
6 was personal, the deceased was strangled.

7 Ms. Newman talks about the defendant is
8 rehabilitated. But I have here before me an incident report
9 from the institution, he's fighting with another person, phone
10 abuse, assaulting someone without body injury, and refusing to
11 obey an order. That really is a little different
12 rehabilitation that I'm concerned with.

13 MS. NEWMAN: Does it reflect that the second to last
14 was thrown out? He claims it was thrown out. I don't get the
15 reports, and I can't get hem.

16 THE COURT: I don't know. The addendum is from --

17 MS. NEWMAN: I got that addendum. I did discuss it
18 with my client. And they just don't give up these reports;
19 but his claim -- I can't get it, I tried in the past.

20 THE COURT: This is an addendum that I assume that
21 you got.

22 MS. NEWMAN: I did get it. I'm saying his
23 contention is that it was thrown out. So he did serve
24 sometime until they getting around, until they dismissed it.
25 I'm disputing the amount of time. You spend that time until

1 they throw it out. I'm not disputing what was here.

2 MS. GEDDES: Your Honor, the Probation Officer has a
3 copy of a record documenting the incident report.

4 MS. MAIN: It's the Sentry, the internal database
5 from the MDC. There is the incident, the charge, and the
6 sanction; but there is nothing noted under this case that the
7 charge was ever dismissed or modified. The sanction stood.
8 It doesn't say anything about pending good conduct, like I've
9 seen in the past.

10 THE COURT: Well that's one of several incidents
11 attributed to this defendant.

12 3553(a) says that I must impose a sentence that is
13 sufficient but not greater than necessary to comply with the
14 purposes of the statute. I must take into consideration the
15 nature of the circumstances of the offense. The offense, as I
16 said before, was personal and horrendous. I take into
17 consideration the history and the characteristics of this
18 defendant. I must also take into consideration the
19 seriousness to promote a respect for the law.

20 I listened to the argument of counsel. I read the
21 submissions and I think a sentence that is sufficient but not
22 greater than necessary is the following.

23 I'm going to sentence the defendant to life in
24 prison. I'm going to sentence the defendant to, how many
25 counts is it?

1 MS. GEDDES: Two counts, Count One and Count Seven.

2 THE COURT: \$100 special assessment on each count.

3 And there will be no supervised release -- make it five years
4 supervised release.

5 MS. GEDDES: Yes, Judge. I assume you're imposing
6 life on the obstruction count, and 30 years which is the
7 statutory maximum?

8 MS. NEWMAN: Same as Judge Townes.

9 THE COURT: Same thing that Judge Townes said.
10 Anything else? No open counts?

11 MS. GEDDES: I assume you're not -- there are
12 open -- I don't think there are open counts. We dismissed
13 them to the extent they exist.

14 Again, I'm assuming your Honor is not inflicting a
15 fine, as there is no ability to pay.

16 THE COURT: I said the special assessment.

17 You have the right to appeal this sentence and also
18 appeal this conviction.

19 MS. GEDDES: Your Honor, in the original sentence
20 there was a forfeiture order. I assume that that forfeiture
21 order --

22 THE COURT: That forfeiture stands.

23 MS. NEWMAN: What was the forfeiture order? I'm
24 sorry, I want to be sure.

25 MS. GEDDES: \$184,000.

1 MS. NEWMAN: From the bank fraud?

2 MS. GEDDES: Correct.

3 MS. NEWMAN: That's what he personally received?

4 Your Honor, what we're trying to decide -- I'm sorry, is the
5 forfeiture. As you know after Honeycut it has to be what he
6 personally received as opposed to the conspiracy in general.
7 I don't know that information. So I just ask the Government,
8 would it be okay if they handed that in this week so that they
9 could just check that this is what he personally received so
10 we don't have a Honeycut problem.

11 MS. GEDDES: We'll do that, your Honor. And ask
12 that your Honor attach that forfeiture order to the judgment.
13 I'll work with defense counsel because there is likely a
14 Honeycut issue.

15 THE COURT: Okay. All right

16 (Whereupon, the matter was concluded.)

17 * * * * *

18 I certify that the foregoing is a correct transcript from the
19 record of proceedings in the above-entitled matter.

20 Rivka Teich, CSR RPR RMR FCRR
21 Official Court Reporter
22 Eastern District of New York
23
24
25

Rivka Teich CSR, RPR, RMR FCRR
Official Court Reporter