

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals

Fifth Circuit

FILED

March 9, 2021

Lyle W. Cayce
Clerk

No. 19-11079

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MICHAEL DASEAN ROBINSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-98-1

Before JONES, CLEMENT, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Michael Dasean Robinson appeals the 340-month sentence imposed following his conviction for conspiring to possess with intent to distribute 100 grams or more of a mixture and substance containing a detectable amount of heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), and 846. He argues that his sentence was substantively unreasonable because the court applied

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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what Robinson argues is an unreasonable factor: a man's (R.B.) suicide months after his girlfriend (B.F.) died from heroin Robinson had supplied. We agree that the man's suicide was improperly considered as a sentencing factor here, but because the judge expressly stated he would render the same sentence even without considering it, the error was harmless, and we AFFIRM Robinson's sentence.

After Robinson pled guilty to the charged offense, the district court moved to sentencing. The presentence report (PSR) calculated an advisory guidelines sentencing range of 151 to 188 months of imprisonment. The PSR also noted Robinson's various criminal acts that were not used to determine his guidelines range. In November 2017, R.B. and his girlfriend, B.F., obtained heroin and cocaine from Robinson. After using the heroin, B.F. immediately experienced blurred vision and ringing in her ears, and she needed R.B.'s assistance to get to and from the bathroom. They both fell asleep, and the next morning, R.B. awoke to find B.F. dead from an overdose. After an unsuccessful stint in rehab, R.B. continued to obtain drugs from Robinson until July 2018, when R.B. committed suicide with a firearm. B.F.'s mother provided a written statement in which she said she believed that B.F. had not tried heroin until the night she died. The PSR noted that B.F.'s heroin overdose death could be a basis for an upward departure under U.S.S.G. § 5K2.21 or an upward variance.

The district court explained in a lengthy and thorough recitation that it had considered various documents in sentencing Robinson. In particular, the court explained how statements included in several of those documents, which included victim impact statements and investigative reports, linked Robinson to R.B.'s death by suicide.

The district court then adopted the facts set forth in the PSR, as modified by the PSR addenda and the court's own conclusions, including

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additional findings, which the court indicated were also reasons for an upward departure or variance. The district court determined that Robinson was “running a virtual supermarket of different kinds of drugs” and that the offense charged seriously understated his criminal activities. Additionally, the court noted that the conspiracy charged in the information had lasted more than one year and that Robinson had employed unusual methods to distribute drugs by enlisting the help of his victims, who received free drugs for referrals of new customers. He also encouraged others to recruit clients for him by passing out his phone number to recovering addicts outside methadone clinics. The district court further noted that Robinson had enlisted the help of his half-brother to distribute drugs and that Robinson was also involved in the distribution of firearms. Finally, the district court noted Robinson’s violent tendencies, such as threatening an assault victim and brutally beating a pregnant woman who then suffered a miscarriage. Robinson declined to make a statement, and his attorney asked only for a sentence within the guidelines range.

Importantly, when he sentenced Robinson to 340-months in prison, the judge stated that he would impose the same sentence even if he “had not made the definitive finding about the causation between [R.B.’s] suicide and the heroin that the defendant supplied to [R.B.] and [B.F.].”

When determining whether a non-guidelines sentence is substantively unreasonable, this court considers “the totality of the circumstances, including the extent of any variance from the Guidelines range, to determine whether, as a matter of substance, the sentencing factors in section 3553(a) support the sentence.” *United States v. Gerezano-Rosales*, 692 F.3d 393, 400 (5th Cir. 2012) (internal quotation marks and citations omitted). A non-guidelines sentence will be found substantively unreasonable when it “(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or

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(3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006). “In making this determination, [this court] must give due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.” *Gerezano-Rosales*, 692 F.3d at 401 (internal quotation marks and citation omitted).

We agree with Robinson that in considering R.B.’s suicide, the district court used an irrelevant and improper factor. *Smith*, 440 F.3d at 708. Certainly, R.B. was distraught after his girlfriend’s death. However, as Robinson argues, suicide is a complicated phenomenon that may be caused by any number of preceding events. When R.B. committed suicide months after B.F.’s death, he left no note suggesting his motivations. After an unsuccessful stint in rehab after B.F.’s death, he had started using drugs again and had come into conflict with his father. Indeed, a police officer working with the DEA testified that: “[T]here were some messages that were sent between [R.B.] and his father. His father was pretty upset in regards to some money issues. And obviously, his . . . drug addiction had pushed him to do things that his father wasn’t happy with. And I believe, based on some of those messages, that he probably killed himself because of that.” There was an insufficient basis to attribute R.B.’s death to that of his girlfriend, and thus the causal relationship was too attenuated to provide a basis for enhancing Robinson’s sentence.

This error, however, was harmless, in the entire context of the sentencing. First, the court considered a broad range of § 3553(a) factors involving the defendant’s history and characteristics, which included Robinson’s extensive criminal history and his running of “a superstore of drugs”; the nature and circumstances of the offense and the seriousness of the offense; the kinds of sentences available; his history of violence; the guidelines range; the need to promote respect for the law, to provide just

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punishment, to deter future similar criminal conduct by the defendant, and to protect the public; and the death of B.F., which Robinson does not dispute was the result of an overdose of heroin he supplied. *See* 18 U.S.C. § 3553(a)(1), (2)(A)–(C), (3), (4)(A).

Second, and critically, the court affirmed that he would have “imposed the same sentence, even if [he] had not made the definitive finding about the causation between [R.B.’s] suicide and the heroin that the defendant supplied to [R.B.] and [B.F.].” In *United States v. Valdez*, 726 F.3d 684, 698 (5th Cir. 2013), this court concluded that the district court’s statement that it would impose the same sentence on remand, even if reversed on its interpretation of the guidelines, is evidence of harmless error.¹

Even without consideration of R.B.’s suicide, the extensive array of evidence pertinent to the § 3553(a) factors supports the reasonableness of the sentence imposed by the district court. When combined with the court’s unequivocal statement that it would have imposed the same sentence even without considering R.B.’s suicide, we conclude that the error was harmless.

¹ *See also United States v. Jones*, 833 F. App’x 528, 550 (5th Cir. 2020) (The “district court’s statements at trial establish that it would have imposed the same sentence even if it had not applied” an enhancement, so the enhancement was harmless.); *United States v. Halverson*, 897 F.3d 645, 652 (5th Cir. 2018) (“The crux of the harmless-error inquiry is whether the district court *would* have imposed the same sentence . . . The record must show clarity of intent expressed by the district court, but such statements do not require magic words.”) (internal citations and quotations omitted); *United States v. Ham-Molina*, 630 F. App’x 243, 245 (5th Cir. 2015) (“Because the district court’s statements indicate that it would have imposed the same sentence without the alleged error for the same reasons, any error in imposing [an enhancement] is harmless.”); *United States v. Gutierrez-Mendez*, 752 F.3d 418, 430 (5th Cir. 2014) (District court statement that it would have given the defendant the same sentence even if it was mistaken in its application of the guidelines renders any error harmless.); *United States v. Richardson*, 713 F.3d 232, 237 (5th Cir. 2013) (“[A]ny error in calculating the total offense level was harmless, given the district court’s clear statements that it would have imposed the same sentence regardless of the correctness in the calculation.”).

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Accordingly, the sentence imposed by the district court is
AFFIRMED.

1 there.

2 Q. Is there anything -- any other drug that comes close
3 to the percentage of heroin in the county?

4 A. There is not, no.

5 MR. SMITH: No further questions, Your Honor.

6 THE COURT: Do you have any questions you want to
7 ask him?

8 MS. SERRANO: No, Your Honor. Thank you.

9 THE COURT: Okay. You can step down.

10 And can he be excused?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: You're excused as a witness.

13 THE WITNESS: Thank you, sir.

14 THE COURT: Thank you.

15 Did you have any other evidence that you wanted to
16 offer on the objection issue?

17 MR. SMITH: No other evidence on the objection, and
18 the government just wanted to point out that Ms. Flood's
19 family is not here, but the parents of Mr. Reed Bartosh are
20 here.

21 THE COURT: Okay. Well, let me finish dealing with
22 the objection issue.

23 I repeat what I said earlier. I'm denying the
24 objection. I'm finding it without merit. I find that the
25 evidence establishes beyond a reasonable doubt -- though

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1 that's not the government's burden of proof at a sentencing
2 hearing, the evidence does establish beyond a reasonable doubt
3 that but for the heroin in her system, Brianna Flood would not
4 have died when she did.

5 In other words, the heroin was a but-for, to use the
6 terminology that the cases use, the death -- the cause of the
7 death of Brianna Flood. Had she not been injected with
8 heroin, she would not have died when she did. I think that's
9 clearly established by all of the evidence that I've heard.

10 Another issue that is a related issue, and that is
11 the cause of the death of the young man, Dean -- I think
12 it's -- is it Bostic?

13 MR. SMITH: It's Reed Bartosh, Your Honor.

14 THE COURT: Pardon?

15 MR. SMITH: Reed Bartosh.

16 THE COURT: Reed Bartosh. I also find that the
17 heroin that killed Brianna is what led to his death because
18 I'm satisfied from the record that her death led to his death
19 and his involvement in it.

20 I'm going to at this time cause the record to
21 reflect the existence of the items that I listed in an order
22 recently -- actually, two different orders -- the Court was
23 considering, and that's Court Exhibit 1, the autopsy report;
24 Court Exhibit 2A, a letter from the mother of Brianna Flood;
25 Court Exhibit 2B, a letter from the mother of Reed Bartosh;

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1 Court Exhibit 2C, a letter from the father of Reed Bartosh;
2 the criminal complaint that was filed in this case on
3 January 7, 2015; the documentation from the Southlake Police
4 Department, which includes a copy of the statement that was
5 received in evidence as Government's Exhibit 9, I believe it
6 was; plus, the Southlake Police Department investigation
7 report, and the three supplements to that report.

8 And then Reports of Investigation by the -- on the
9 DEA Department of Justice forms, I think most of them are made
10 by Officer Smith, and those are marked Court's Exhibits 5
11 through 11; and then I'm taking judicial notice of the
12 information shown on Government's Exhibits 12, 13, 14, and 15,
13 and I'm offering all of those exhibits or I'm considering all
14 of those exhibits -- I'm not offering, I'm considering all of
15 those exhibits as part of the record of this case.

16 The reason I'm going ahead and being sure that the
17 record clearly reflects what's being offered, I'm going to
18 explain why I reached the conclusion that the injection by
19 Brianna Flood led to the death of Reed Bartosh.

20 I start with what Brianna's mother said in her
21 victim impact statement. Reed told her how sorry he was and
22 that he was not going to live after doing this to her,
23 referring to Brianna. And also referring to Brianna, he said,
24 "she is the only person he truly loved. She was always like a
25 mother trying to fix things."

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1 And Brianna's mother also said that she knew that
2 Reed loved Brianna as much as he was able to love anyone, and
3 he told her that he wished he had never gone to get heroin
4 that day, and he also told her that -- well, she said that she
5 knew Reed's guilt and that no matter what she said, it would
6 not have made a difference in his decision.

7 And I interpret that to be that the overall
8 knowledge she had led her to conclude that his decision was
9 made because of guilt he felt related to -- his decision to
10 kill himself was related to guilt he felt over the death of
11 Brianna.

12 And I think it's significant that his visit with
13 Ms. Flood, Lana Flood, was something that he requested because
14 he wanted to, in effect, confess to her what had really
15 happened. He had previously told the law enforcement
16 persons -- and that's reflected by these exhibits -- that he
17 had injected Brianna with the -- I'm sorry, he had previously
18 told the law enforcement people that Brianna had injected
19 herself with the heroin, and he explained to Brianna's mother
20 that he's the one that did the injecting because he knew how
21 afraid she was of needles and would not inject herself.

22 Ms. Flood concluded her letter by saying that, "two
23 young 18-year-old kids died at the hands of Michael" --
24 referring to the defendant -- "selling heroin to Reed."

25 Another thing the Court has considered is statements

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1 made in the victim impact statement the Court received from
2 Melissa Page, who is Reed's mother. She starts out by
3 pleading that the Court give the defendant the longest
4 possible sentence for the death of Brianna and her son, Reed
5 Bartosh.

6 I take what she said in her letter as that she,
7 based on the information she had, including whatever Reed may
8 have said, caused her to conclude that his death was the
9 result of the death of Brianna caused by the heroin.

10 She added -- this is Reed's mother. She added that,
11 quote, my son witnessed the unimaginable tragedy of her,
12 Brianna's death, and could not recover, and that was a letter
13 that was written after he had committed suicide, and I
14 interpret that to mean that the knowledge she had of her son
15 and the reason for his death caused her reasonably to believe
16 that his death was caused by Brianna's death resulting from
17 the heroin use.

18 His mother also said that a few months after
19 Brianna's death, "Reed deteriorated drastically with
20 depression and heroin and then took his own life."

21 In the final paragraph of the letter, she said that
22 "Michael took her only child away from her and her entire
23 family." Again, putting in the letter the conclusion she
24 reached from the firsthand information she had relative to the
25 activities and attitudes of her son that led to his death.

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1 Of course, in the criminal complaint that's in
2 evidence now, the statement was made that on July 22, 2018,
3 R.B., which is Reed Bartosh, committed suicide using a
4 firearm, establishing the date of the death.

5 In the handwritten statement Reed Bartosh wrote on
6 December 1, 2017, is when the boy said that Brianna injected
7 herself with the heroin, and then the narrative part of the
8 police report by the Southlake investigators says that both of
9 them injected the heroin, and I'm satisfied from the
10 information I have that that was one of the things that was
11 bothering Reed Bartosh, the fact that he had been the one that
12 had made the injection into Brianna, and that that was
13 something that weighed on his mind.

14 In the supplemental report by the Southlake Police
15 Department -- well, I've already covered that.

16 In a November 7, 2018 supplement to the Southlake
17 Police Department report, Reed's attorney, a Bob Gill, stated
18 that, quote, Reed checked himself into an inpatient rehab
19 facility immediately following Brianna's overdose. I think
20 that's a significant fact as to the things that were preying
21 on his mind.

22 On page 2 of the Exhibit 5 Report of Interview that
23 is now a part of the record -- and that was an interview with
24 Reed Bartosh's father -- the father said that, quote, after
25 Reed's (sic) death, Reed was extremely upset with Tite,

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1 T-I-T-E, and that's the nickname of the defendant.

2 That same report mentions on its page 2 that the
3 investigator located a Fort Worth police offense report from
4 February 1, 2018 related to Reed Bartosh and an individual by
5 the name of Josh Albrektsen. Apparently that relates to an
6 arrest of Reed relative to drugs.

7 The thought has occurred to the Court that that is a
8 factor that could have entered into the decision of Reed
9 Bartosh to commit suicide, but when I consider all of the
10 evidence that bears on that subject, I'm satisfied that that
11 was an insignificant factor compared to the guilt Reed Bartosh
12 felt because of the death of Brianna.

13 That same Exhibit 7 Report of Investigation said
14 that the -- it was an interview with a person Reed Bartosh was
15 with when the police stopped him on February 1, and that
16 person told the interviewer that, quote, Bartosh told him/her
17 that his girlfriend had overdosed on heroin, and the source of
18 information stated that Bartosh appeared depressed about this,
19 and this is something that happened sometime after the first
20 of 2018.

21 And then the Court Exhibit 9, which is an interview
22 pertaining -- a report of an interview with another source of
23 information, who apparently was someone Reed Bartosh worked
24 with at the restaurant where he was employed at the time of
25 Brianna's death. That was one of the persons that Reed had

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1 inquired about, if he or she knew of a heroin source that led
2 to them purchasing the heroin that killed Brianna on
3 November 30, I believe it was.

4 Now, Exhibit 10 is another report of an
5 investigation, an interview with a source of information, who
6 was someone that Reed Bartosh had met when he went to work for
7 the restaurant where he was working at the time of his death,
8 and she was one of the workers he had asked about where he
9 could obtain drugs.

10 That source of information is the one who told of
11 going to a room where Bartosh was staying at a Travelodge
12 Hotel about a month after November 30, 2017, the date of her
13 death, or the date when they took the heroin, and that when
14 he -- when he/she, the source of information, entered
15 Bartosh's room, he/she observed a shrine that consisted of a
16 photo of who the person thought was Brianna Flood and several
17 candles on one of the tables in the room.

18 The report also said that the source of information
19 stated that he/she barely recognized Bartosh, and that he
20 looked really bad, and that it was at this time that Bartosh
21 informed her, him/her, that Flood had died, again, verifying
22 the state of mind of Reed Bartosh, somewhat, after Brianna's
23 death.

24 Then on page 9 of the Report of Investigation, that
25 was an interview with Reed Bartosh's mother on November -- in

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1 November 2018. The mother said, quote, Bartosh stopped
2 working at Johnny Carino's restaurant after Flood's death,
3 after Flood died, again, showing the impact that her death had
4 on him.

5 And I'm mentioning all of that because I've
6 concluded that his death, as well as the death of Brianna, was
7 the result of the purchase from the defendant of the heroin
8 that Reed purchased on November 30, 2017.

9 Okay. There being no further objections to the
10 Presentence Report -- and I believe that's correct.

11 Have I covered all the objections?

12 *MS. SERRANO:* Yes, Your Honor.

13 *THE COURT:* There being no further objections to the
14 Presentence Report, the Court adopts as the fact findings of
15 the Court the facts set forth in the Presentence Report as
16 modified or supplemented by the addendum and any facts I find
17 from the bench -- or either addendum and any facts I find from
18 the bench.

19 The Court adopts as the conclusions of the Court the
20 conclusions expressed in the Presentence Report as modified or
21 supplemented by any of the -- either of the addendums and any
22 conclusions I've expressed from the bench.

23 I do have a conclusion that might be somewhat at
24 variance with the Presentence Report concerning the failure to
25 mention the causation between the heroin purchased by Reed on

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1 November 30, 2017 from the defendant, and his death, and I
2 think that the report could accurately put that in the section
3 under Offense Behavior Not a Part of the Relevant Conduct. I
4 think it would appropriately fit there.

5 And also something else that would appropriately fit
6 there was the information that is contained in other parts of
7 the Presentence Report of the large variety of drugs that the
8 defendant was in the process of selling from time to time.

9 The offense of conviction is a conspiracy to -- let
10 me find the exact -- let me see if I can find that.

11 It was a conspiracy that started in November 2017
12 and ended in or around January 2019 to engage in conduct in
13 violation of 21 United States Code Sections 841(a)(1) and
14 (b)(1)(B), namely, to possess with intent to distribute
15 100 grams or more of a mixture or substance containing a
16 detectable amount of heroin, a Schedule I controlled
17 substance.

18 The Presentence Report in paragraph 15 explains that
19 that is a serious understatement of the defendant's criminal
20 activities. That paragraph says that the defendant served
21 customers -- saved customers' names in his phones with
22 notation after each name, such as, black, white, hard, and
23 cream. Those notations referred to common street names for
24 heroin, black; powder cocaine, white; crack cocaine, hard; and
25 methamphetamine, cream, and were saved in this fashion so that

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1 when each customer requested a quantity of drugs, the
2 defendant knew what type of drug they were asking for due to
3 his large customer base.

4 Based on those notations, Robinson maintained and
5 had 25 methamphetamine customers -- no, 25 crack cocaine
6 customers, 25 methamphetamine customers, and 100 heroin
7 customers. The investigation did not include quantitative
8 data regarding marijuana customers. He was also involved in
9 the sale of high-grade marijuana. So he was running a virtual
10 supermarket of different kinds of drugs, and all of that was
11 criminal activity on his part.

12 The complaint itself to which he -- I mean, the
13 information itself, to which he pleaded guilty, established
14 that he had been engaged in that activity well over a year.
15 It was from November 2017 to January 2019.

16 He had unusual methods of distributing his drugs and
17 encouraging people to bring him new customers. He had told
18 Reed Bartosh that if he would bring him a -- refer somebody to
19 him, he would give Reed a dub, whatever that means, of
20 marijuana.

21 The defendant instructed others, and that included
22 his girlfriend, to distribute drugs on his behalf, and he
23 instructed others how to cultivate new drug customers for him.
24 And he instructed one of his heroin customers to visit local
25 methadone clinics, where recovering addicts received

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1 treatment, and pass out Robinson's telephone number in an
2 effort to establish new and/or returning drug customers.

3 In approximately 2018, his half-brother, McLendon,
4 began working for Robinson in the distribution of drugs, which
5 included the drug-trafficking activity at the Marshall Street
6 address.

7 In other words, Robinson not only was doing his own
8 drug distribution, but he was enlisting other people to,
9 including his victims, to assist him in that drug distribution
10 project.

11 Another factor that the Court thinks needs -- could
12 have been put in more focus was the -- it's mentioned, but it
13 wasn't mentioned -- I don't think it was mentioned in
14 the -- well, it was mentioned, paragraph 43 of the offense
15 behavior, that he was also involved in distributing weapons,
16 firearms, as part of his drug activities. He participated in
17 not only distributing drugs, but distributing guns that could
18 be involved in the drug trade by other persons.

19 So in making the Court's findings, I add, to
20 whatever extent those aren't fully covered in the Presentence
21 Report, those additional findings. And those additional
22 findings, to whatever extent they are not already covered in
23 the Presentence Report, are other reasons why there should be
24 an upward departure or a variance, and the Court's already
25 made known that the Court has tentatively concluded that there

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1 should be a significant variance above the top of the advisory
2 guideline range.

3 In paragraph 45 of the Presentence Report, the
4 finding is expressed that the defendant's earliest offense
5 date including relevant conduct was November 30, 2015, but
6 that was based on the investigation related to the instant
7 offense, and he had been distributing heroin and cocaine at
8 least 3 years prior to his arrest in January 2019.

9 In case I haven't already said so, I adopt as the
10 conclusions of the Court the conclusions expressed in the
11 Presentence Report as modified or supplemented by either
12 addenda and any I've expressed from the bench.

13 The Court concludes that the total offense level is
14 31; that the Criminal History Category is IV; that the
15 guideline calculated imprisonment range is 151 to 188 months;
16 that the guideline provision, I think it's 5K2 -- let me see
17 which one it is -- 5K2.1 authorizes the Court to increase the
18 sentence above the authorized guideline range if death
19 resulted.

20 A death did result. Two deaths did result from the
21 defendant's conduct. Thus, the guideline range could be
22 significantly above the -- the top of the range could be
23 significantly above the 188 months. Of course, there is
24 availability of a variance, and the Court has tentatively
25 concluded that there should be such a variance.

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1 Okay. I'm going to let you make whatever statement
2 you would like to make on behalf of your client at this time.

3 We're going to take another 10-minute recess before
4 we get started.

5 (Off-the-record conference with courtroom deputy)

6 *THE COURT:* I failed to mention that the supervised
7 release range is 4 to 5 years; the fine range is \$30,000 to
8 \$5 million; and that a special assessment of \$100 is
9 mandatory.

10 *COURT SECURITY OFFICER:* All rise.

11 *(Recess)*

12 *COURT SECURITY OFFICER:* All rise.

13 *(Judge enters)*

14 *COURT SECURITY OFFICER:* Please be seated.

15 *THE COURT:* Mr. Smith, before Ms. Serrano starts
16 making her statement, do any of the victims wish to make a
17 statement, the parents of the victims?

18 *MR. SMITH:* I'll ask them, Your Honor.

19 *THE COURT:* Okay.

20 *(Conferring)*

21 *MR. BILL BARTOSH:* Yes, sir, Your Honor. My name is
22 Bill --

23 *THE COURT:* If you want to make a statement, I'll
24 invite you to come to the podium.

25 Okay. Why don't you identify who you are, and you

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1 can make whatever statement you would like to make.

2 *MR. BILL BARTOSH:* My name is Bill Bartosh. I'm
3 Reed Bartosh's father.

4 *THE COURT:* Okay.

5 *MR. BILL BARTOSH:* This is Reed Bartosh's mother.

6 *MS. MELISSA PAGE:* Melissa Page.

7 *THE COURT:* Okay.

8 *MR. BILL BARTOSH:* Reed was the only grandchild on
9 both sides of the family, and he was our only child. We'll
10 never get him back, and you're correct, he never got over
11 Brianna's death, and we miss him and we pray for him every
12 day.

13 And anything that you can give to this animal here,
14 we want you to, because he deserves it, so he cannot hurt
15 another family the way that we've been hurt. That's all I
16 have.

17 *THE COURT:* Okay. Thank you very much.

18 Did you want to say something separately?

19 *MS. MELISSA PAGE:* The only thing that I want to say
20 is that it's just such a tragedy of how drugs are affecting
21 every area of our life, and if -- everyone's lives.
22 Everyone's lives are affected. There's not anyone that I
23 know.

24 I've been a teacher for over 20 years, and I can't
25 tell you how many families and friends that I have. Everyone

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1 is affected, and their family, by drugs. Every single person
2 that I know. Every walk of life.

3 And so I hope that you realize from selling drugs to
4 people what it does in the end. So I hope, for you, that you
5 take this and you never do that again, and share the word with
6 the people that you try to get to do things, to sell drugs for
7 you, tell them to quit. Okay.

8 *THE COURT:* Okay. Well, thank you.

9 *MS. MELISSA PAGE:* Thank you.

10 *THE COURT:* Okay. You can go ahead at this time,
11 Ms. Serrano, and make whatever statement you would like to
12 make for your client, and have your client come to the podium
13 with you.

14 *MS. SERRANO:* Your Honor, at this time we only ask
15 for a within guideline sentence. We have nothing else to say.

16 *THE COURT:* Okay. Okay. Mr. Robinson, you have the
17 right to make any statement or presentation you would like to
18 make on the subject of mitigation, that is, the things you
19 think the Court should take into account in determining what
20 sentence to impose, or on the subject of sentencing more
21 generally, and at this time I'll invite you to do that.

22 *THE DEFENDANT:* No, sir, Your Honor.

23 *THE COURT:* You don't have anything you wish to say?

24 *THE DEFENDANT:* No, sir, Your Honor.

25 *THE COURT:* Okay. By the way, I'm told that I may

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1 have misspoke the last time I identified the Court exhibits
2 that are part of the record.

3 I should have said they are exhibits -- Court
4 Exhibits 1, 2A, 2B, 2C, and 3 through 15. I think I may have
5 said 14 or 13 before, but it's 3 through 15. Those are the
6 exhibits that are considered by the Court to be a part of the
7 record.

8 Okay. When I consider all of the factors the Court
9 should consider in sentencing under 18 United States Code
10 Section 3553(a), I've concluded that a sentence -- the
11 sentencing range could be as much as 480 months. The facts
12 are such that a sentence at the very top of the statutory
13 maximum would be appropriate in this case, but I've decided
14 not to go quite that far.

15 I've decided a sentence of 340 months imprisonment,
16 a variance, combined with a service of a term of supervised
17 release of 7 years, and that would be combined with an
18 obligation to pay a special assessment of \$100.

19 I've concluded that a such a sentence would be
20 absolutely necessary to properly and adequately address all
21 the factors the Court should consider in sentencing in this
22 case.

23 One of the things the Court should consider is the
24 history and characteristics of the defendant. When I consider
25 that, I am reminded of what we went over earlier, that he has

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1 been operating a superstore of drugs, and he's been
2 encouraging people to refer other people to him, and he's been
3 doing it for years. And those drugs, as the information that
4 I've taken judicial notice of, have the potential to cause
5 death in almost every instance.

6 It's a very serious activity he's been engaged in.
7 He's been engaged in it for quite a period of time, and the
8 concern I have is he would be continuing to engage in it if he
9 didn't receive a very significant sentence of imprisonment.

10 I'm also concerned about his criminal history, and
11 that's in the Presentence Report, if I can find that. I have
12 so many documents in front of me that I'm losing track of
13 things.

14 He has prior drug convictions. He has one
15 conviction for possession with intent to distribute, as I
16 recall. It's a state court conviction. He has --

17 It started at age 19. He was convicted at that time
18 of possession of a controlled substance. It was cocaine.
19 That was on a plea of guilty. He was -- the officers observed
20 the defendant holding brass knuckles while displaying gang
21 signs -- he was a member of gangs, criminal gangs -- with his
22 hands. He was approached by the officers and arrested, and
23 when they arrested him, they found a baggie containing crack
24 cocaine in his pocket. He got a light sentence. He got 4
25 years deferred adjudication, which, in effect, was probation,

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1 and a \$400 fine.

2 After that, he violated his conditions of probation
3 by a new offense of possession of a controlled substance, and
4 he admitted to using cocaine on more than one occasion in
5 violation of his conditions of probation, and he failed to
6 submit to drug testing as directed on a number of dates.

7 Then at age 19 again -- the one I've already told
8 you about was at 19. This is, again, at 19. He was again
9 convicted of possession of a controlled substance, and again
10 it was cocaine. Again, he pleaded guilty and got deferred
11 adjudication again. In other words, he was again put on
12 probation. And then, again, his probation was revoked, and it
13 was apparently revoked for the same reasons the last probation
14 was revoked.

15 And on that occasion, his residence was searched and
16 they found 35.79 grams of marijuana, 2.17 grams of cocaine,
17 and 95.89 grams of another illegal controlled substance.

18 Then at age 23, he was convicted on a plea of guilty
19 of possession with intent to deliver a controlled substance,
20 and that time it was heroin. The officers had received
21 information from an informant that the defendant was
22 distributing crack cocaine and heroin from his residence here
23 in Fort Worth.

24 A search warrant was executed on the residence, and
25 the search revealed 2.48 grams of heroin, 1.13 grams of crack

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1 cocaine, and some money in the defendant's pocket, and the
2 officers learned that the defendant had allowed others to sell
3 heroin from his residence.

4 Then on May 23, 2013, a violation report was filed
5 alleging that the defendant had violated his conditions of
6 parole -- he was given parole then -- for not reporting to his
7 parole officer as directed on two different occasions, that he
8 had committed new offenses of failure to identify, fugitive
9 giving false information, and possession of marijuana, and
10 that he did not pay his parole supervision fees as he was
11 obligated to do.

12 A new arrest warrant was issued, and on November 5,
13 2013 a revocation hearing was held and the probation -- the
14 parole board -- he was released on parole in that case, the
15 last one I mentioned. The parole board sustained the
16 allegations of his violations and recommended that he be
17 placed in the Intermediate Sanction Facility Program. The
18 probation officer was not able to get information as to what
19 happened beyond that.

20 Then at age 25, he pleaded guilty to possession of
21 marijuana. That was here in Fort Worth. He had -- he
22 admitted to the officers that he had just been released from
23 prison approximately one week prior, which is an indication
24 that he's not too impressed with the fact that he's punished
25 for his offenses. He continues to engage in them.

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1 At age 27, he was convicted on a plea of guilty to
2 failure to identify. He gave false information. He told a
3 police officer who stopped him that his name was Marcus
4 Williams.

5 And then going back to age 19, he admitted his guilt
6 to possession of a prohibited weapon. That was a plea in bar.

7 At age 22, he admitted his guilt to possession of a
8 controlled substance, and that was crack cocaine and ecstasy
9 pills. That was a plea in bar where he admitted his guilt to
10 that.

11 Then at age 26, he admitted his guilt to possession
12 of marijuana. That was another plea in bar.

13 The records of the law enforcement agencies reveal
14 that the defendant is a member of the criminal gang known as
15 the Truman Street Bloods, is the name of the gang.

16 There's an offense report that reveals that on
17 March 13, 2013 officers went to a residence where an
18 aggravated assault had been claimed, and the victim had
19 sustained injuries to his head and body from an altercation
20 with the defendant. The victim stated that the defendant
21 pointed a handgun at him and threatened to kill him.

22 Officers then, unrelated to the offense
23 report -- through unrelated offense reports, determined that
24 Tite Mike was an alias name for the defendant, and the
25 defendant's vehicle was located at the scene of that

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1 altercation. However, the victim refused to cooperate, and
2 those charges were not pursued further. The reason the victim
3 said he refused to cooperate was because he feared for his
4 life if he did.

5 Then in paragraph 58 of the Presentence Report, it
6 mentions an incident when officers were dispatched to a
7 hospital and met with a Latasha Cole, who informed officers
8 that on April 10, 2014, she and the defendant were having a
9 verbal altercation and that the defendant struck her in the
10 face two times with a closed fist, then spat on her, struck
11 her in her stomach with a closed fist, choked her, and
12 threatened to shoot her.

13 The victim's mother had contacted the police. At
14 the time of the assault, the victim was pregnant, and the
15 following day, according to the victim or the victim's mother,
16 the victim suffered a miscarriage as a result of the assault.

17 The officers prepared a complaint citation and
18 mailed it to the defendant, however, the citation was returned
19 to the family officer violence because they were unable to
20 forward the mail to the defendant.

21 And then there are some pending charges. They are
22 mentioned in paragraphs 59 and 60 of the presentence report.
23 They refer back to paragraph 9 of the Presentence Report, and
24 the Court can tell from the narrative information in each of
25 those paragraphs that the defendant engaged in the conduct

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1 described in those paragraphs, and the Court so finds by a
2 preponderance of the evidence.

3 I believe I've already made known on the record that
4 I find that the drugs that the defendant provided to Reed
5 Bartosh, the heroin, caused Brianna Flood's death. I make the
6 same finding as to the suicide or death of Reed Bartosh.

7 Even if I had not made that finding about Reed
8 Bartosh, even if I had not made that finding, I would have
9 concluded that the death of Brianna Flood was at least a
10 factor in the decision of Reed Bartosh to kill himself, and I
11 would have imposed the same sentence I've indicated I'm going
12 to impose under those circumstances, even if I had not made a
13 finding that it was a but-for cause of his death, that is, the
14 death of Brianna Flood as a result of the use of the heroin
15 supplied by the defendant to Reed Bartosh and Brianna Flood.

16 I would have imposed the same sentence, even if I
17 had not made the definitive finding about the causation
18 between Reed Bartosh's suicide and the heroin that the
19 defendant supplied to Reed Bartosh and Brianna.

20 In addition to the term of imprisonment of 340
21 months, I'm also ordering that the defendant serve a term of
22 supervised release that will commence once he's completed his
23 sentence of imprisonment.

24 By the way, that sentence of imprisonment will run
25 concurrently with any future sentence that may be imposed in

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1 Case Number 1569722 in the Tarrant County Criminal Court
2 Number 2 and Case Number 1569723D in the Tarrant County
3 Criminal District Court Number 1.

4 Now, the conditions of that supervised release will
5 be the standard conditions that will be set forth in the
6 judgment of conviction and sentence, and the following
7 additional conditions:

8 The defendant shall not commit another federal,
9 state, or local crime.

10 The defendant shall not unlawfully possess a
11 controlled substance.

12 The defendant shall cooperate in the collection of
13 DNA as directed by the probation officer as authorized by the
14 Justice for All Act of 2004.

15 He shall refrain from any unlawful use of a
16 controlled substance and shall submit to one drug test within
17 15 days of release from imprisonment and at least two periodic
18 drug tests thereafter as directed by the probation officer.

19 He shall participate in a program approved by the
20 probation officer for treatment of narcotic or drug or alcohol
21 dependency that will include testing for the detection of
22 substance use, and he shall abstain from the use of alcohol
23 and all other intoxicants during and after completion of that
24 treatment, and he'll contribute to the cost of those services
25 at the rate of at least \$25 a month.

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1 The Court orders that the defendant pay a special
2 assessment of \$100. That's payable immediately to the United
3 States of America through the office of the clerk of court
4 here in Fort Worth.

5 Let me mention, specifically, some of the other
6 factors contemplated by Section 3553(a) of Title 18 that are
7 pertinent here.

8 The nature and circumstances of the offense in this
9 case. There's no question in my mind, and I have found beyond
10 a reasonable doubt, that the death of Brianna Flood was caused
11 or resulted from the drug that she and Dean (sic) Bartosh
12 purchased from the defendant, and I've also indicated my
13 belief that Reed Bartosh's suicide was -- that her death from
14 that drug was a factor in the suicide of Reed Bartosh.

15 That goes to the seriousness of the offense, another
16 factor the Court should consider.

17 I think a sentence of the kind I've imposed is
18 absolutely necessary in the hope that it will promote respect
19 for the law by others who might be inclined to engage in the
20 same kind of conduct that the defendant has been engaged in,
21 and I'm satisfied that the sentence I've imposed does what the
22 Court can do, within reason, to provide just punishment for
23 the offense, and I hope that the sentence I've imposed will
24 prevent future criminal conduct by the defendant of a similar
25 nature.

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1 In other words, I'm hoping that the sentence will
2 afford adequate deterrence of criminal conduct, at least by
3 the defendant, and perhaps others, and the sentence I've
4 imposed will protect the public from further crimes of the
5 defendant.

6 The kinds of sentences available and the sentence
7 I've imposed is somewhat below the sentence that could be
8 imposed by statute, which would be 480 months. And as I've
9 indicated, I have some misgivings as to whether a sentence
10 below that would be appropriate, but I have sentenced somewhat
11 below that, and I've considered the sentencing range
12 established by the guidelines.

13 I've also taken into account the fact that one of
14 the guidelines would authorize the Court to sentence above the
15 sentencing range called for by the guidelines, and I'm
16 satisfied that I've been required to do so to impose an
17 appropriate sentence in this case. I would have gone above
18 the top of the guideline range pursuant to that guideline
19 provision.

20 Mr. Robinson, you have the right to appeal from the
21 sentence I've imposed, if you're dissatisfied with it. That
22 appeal would be to the United States Court of Appeals for the
23 Fifth Circuit.

24 You have the right to appeal in forma pauperis, that
25 means without any cost to you, if you qualify for it. You

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1 have the right to have the clerk of court file a notice of
2 appeal for you, and the clerk would do that forthwith, if you
3 were to specifically request it.

4 You and your attorney have been given a form that
5 outlines certain rights and obligations in reference to an
6 appeal. If you haven't already done so, I want the two of you
7 to review it and be sure you understand it, and once both of
8 you are satisfied you understand it, I want both of you to
9 sign it and return it to the courtroom deputy.

10 Has that been done, Ms. Serrano?

11 MS. SERRANO: Yes, Your Honor.

12 THE COURT: Okay. The defendant's remanded to
13 custody, and the attorneys and Mr. Smith are excused.

14 MS. SERRANO: Thank you.

15 COURT SECURITY OFFICER: All rise.

16 *(End of Proceedings)*

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
COURT

Page No. 10	Date 09/24/2019
FILED	
SEP 24 2019	
CLERK, U.S. DISTRICT COURT	
By _____	Deputy

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

§

VS.

§

NO. 4:19-CR-098-A

§

MICHAEL DASEAN ROBINSON

§

ORDER

After having reviewed the presentence report, the objections thereto of defendant, MICHAEL DASEAN ROBINSON, and the other sentencing items, the court tentatively has concluded that defendant should receive a sentence of imprisonment significantly above the top of his advisory guideline imprisonment range for the court to properly and adequately consider the factors the court should consider under 18 U.S.C. § 3553(a) in sentencing. For the information of the parties, the court anticipates taking into account in its sentencing decision underlying documents the probation officer relied upon in making the findings and expressing the conclusions stated in the presentence report relative to the relationship between the sale by defendant to Reed Bartosh of heroin and the death of Brianna Flood and, ultimately, the death of Reed Bartosh. Those things are as follows:

(1) The autopsy report (excluding photographs) pertaining to the December 2, 2017 autopsy performed on Brianna Flood and

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related reports of Forensic Toxicology Results and Investigator's Report;

(2) The three victim letters attached to the second addendum to the presentence report;

(3) The criminal complaint filed in this case on January 7, 2019;

(4) The handwritten statement given by Reed Bartosh on December 1, 2017, and the offense report from the Southlake Police Department (Incident Report 17SPO97319), with an Offense Recording Date of December 1, 2017, the supplement thereto dated December 4, 2017, and the further supplements thereto dated December 14, 2017 and November 7, 2018, respectively;

(5) The Report of Investigation (interview with Reed Bartosh's father) dated November 13, 2018, prepared by DEA;

(6) The Report of Investigation dated December 3, 2018, prepared by DEA and the notes attached thereto prepared by Bob Gill;

(7) The three-page Report of Investigation (interview with SOI) dated December 4, 2018, prepared by DEA;

(8) The Report of Investigation (interview with Brianna Flood's mother) dated December 19, 2018, prepared by DEA;

(9) The four-page Report of Investigation (interview with SOI) dated December 19, 2018, prepared by DEA;

(10) The six-page Report of Investigation (interview with SOI) dated December 19, 2018, prepared by DEA; and

(11) The Report of Investigation (interview with Reed Bartosh's mother) dated December 19, 2018, prepared by DEA.

Also, the court has taken judicial notice of the information shown on the page attached hereto as Exhibit "A," including the information that in 2006 in the United States there were 2089 heroin-related deaths and that the number of such deaths had risen to 15,469 deaths by the year 2016. Exhibit "A" is a page from a publication by the U.S. Department of Justice, Drug Enforcement Administration, bearing the title "2018 National Drug Threat Assessment," which page and cover page are attached hereto as Exhibit "A."

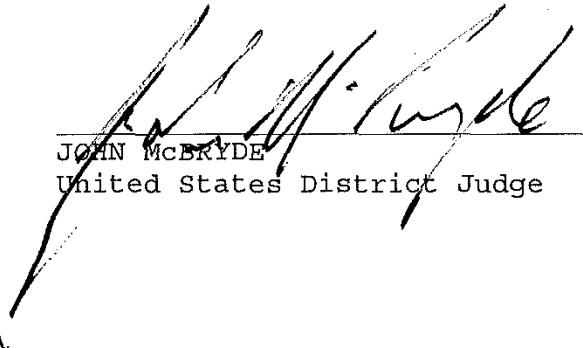
The court notes that it ordered on August 29, 2019, that defendant provide to the court by 4:00 p.m. on September 20, 2019, the opinions of Dr. Shaker, the person hired by defendant as a cause-of-death expert, by the filing of a document by that date containing his opinions. Such a document was not filed until late yesterday afternoon, at approximately 3:56 p.m. on September 23, 2019. Even though it was not timely, the court is accepting such document as providing the information the court required to be included in the document to be filed by 4:00 p.m. on September 20, 2019. Presumably, Dr. Shaker will be present to

testify at the sentencing hearing to be conducted at 10:30 a.m. on Thursday, September 26, 2019. The court is alerting the attorney for the government that he should be prepared to have at the sentencing hearing the witness or witnesses that would be required to establish the relationship, if any, between the heroin injected into Brianna Flood's system and her death.

The parties should take such tentative conclusion into account in making decisions as to what presentations to make at the sentencing hearing.

THE COURT SO ORDERS.

SIGNED September 24, 2019.


JOHN MCBRYDE
United States District Judge