

No. _____

In the Supreme Court of the United States

JAY SAWATZKY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
The Iowa Supreme Court

APPENDIX

**PARRISH KRUIDENIER DUNN GENTRY
BROWN BERGMANN & MESSAMER L.L.P.**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Jay J. Sawatzky

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:19-CR-00022-001

USM Number: 18994-030

Alfredo G. Parrish and Gina Messamer
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Two, Three, and Four of the Second Superseding Indictment filed on April 23, 2019.

☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of a Firearm and Ammunition	04/12/2018	Two
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of a Firearm	11/30/2018	Three
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Felon in Possession of a Firearm and Ammunition	01/30/2019	Four

☐ See additional count(s) on page 2

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) One ☒ 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 must notify the court and United States attorney of material changes in economic circumstances.

October 2, 2019

Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

October 2, 2019

Date

DEFENDANT: Jay J. Sawatzky
CASE NUMBER: 4:19-CR-00022-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Three years as to each of Counts Two, Three, and Four of the Second Superseding Indictment filed on April 23, 2019, to be served concurrently.

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 periodic drug tests thereafter, as determined by the court.
 - ☐ 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)*

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: Jay J. Sawatzky
CASE NUMBER: 4:19-CR-00022-001

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.

Defendant's Signature _____

Date _____

DEFENDANT: Jay J. Sawatzky
CASE NUMBER: 4:19-CR-00022-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in an approved treatment program for domestic violence. Participation may include inpatient/outpatient treatment. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must refrain from being an active member of any Outlaw motorcycle club, including but not limited to, the Sons of Silence. Further, you must refrain from attending meetings of any Outlaw motorcycle club, participating in any activities sponsored by any Outlaw motorcycle club, and wearing articles of clothing containing Outlaw motorcycle club lettering or logos.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Jay J. Sawatzky
CASE NUMBER: 4:19-CR-00022-001**CRIMINAL MONETARY PENALTIES**

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

- ☐
- Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$ 0.00	\$ 0.00	\$0.00

- ☐ 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		\$0.00	\$0.00

- ☐ 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: Jay J. Sawatzky
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SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 300.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ 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:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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:

a Bennelli, Model Nova, 12-gauge shotgun (SN: Z048979), a Smith & Wesson, Model SW1911, .45 caliber pistol (SN: UCT3603), and a Kimber, Model Ultra Carry II, .45 caliber pistol (SN: KU221428), and assorted ammunition, as outlined in the Preliminary Order of Forfeiture entered on July 15, 2019.

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) JVT assessment, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: Jay J. Sawatzky
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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months as to each of Counts Two, Three, and Four of the Second Superseding Indictment filed on April 23, 2019, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed as close to Iowa as possible; specifically FCI Pekin or USP Leavenworth, as commensurate with his security and classification needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ 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 _____ 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:

Defendant delivered on 02-13-2020 to FCI GRE

at GREENVILLE, IL, with a certified copy of this judgment.

T.G. WEALICH, WARDEN

UNITED STATES MARSHAL

By A. LENTZ, Cso

DEPUTY UNITED STATES MARSHAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

- - - - -	-X	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Criminal No. 4:19-22
	:	
vs.	:	
	:	
JAY J. SAWATZKY,	:	TRANSCRIPT OF SENTENCING
	:	
Defendant.	:	
- - - - -	-X	

Second Floor Courtroom
United States Courthouse
123 East Walnut Street
Des Moines, Iowa 50309
Wednesday, October 2, 2019
9:30 a.m.

BEFORE: THE HONORABLE JOHN A. JARVEY, Chief Judge.

APPEARANCES:

For the Plaintiff:	MARC L. Krickbaum, ESQ. U.S. Attorney MIKAELA J. SHOTWELL, ESQ. Assistant U.S. Attorney U.S. Courthouse Annex, Suite 286 110 East Court Avenue Des Moines, Iowa 50309-3899
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For the Defendant:	ALFREDO G. PARRISH, ESQ. Parrish Kruidenier Dunn Boles Gribble Gentry Brown & Bergmann 2910 Grand Avenue Des Moines, Iowa 50312
--------------------	---------------------------------------------------------------------------------------------------------------------------------------------

Terri L. Martin, CSR, RPR, CRR
United States Court Reporter
Room 189, U.S. Courthouse
123 East Walnut Street
Des Moines, Iowa 50309

1 than that, Judge, we don't have any objection.

2 THE COURT: Thanks.

3 Exhibits 1 through 41 are received. The objection is
4 overruled.

5 (Government Exhibits 1 through 41
6 were received in evidence.)

7 MR. KRICKBAUM: Thank you, Your Honor.

8 The government calls Special Agent Matthew Jenkins.

9 THE CLERK: Please raise your right hand.

10 MATTHEW JENKINS, GOVERNMENT'S WITNESS, SWORN

11 THE CLERK: Please be seated.

12 DIRECT EXAMINATION

13 BY MR. KRICKBAUM:

14 Q. Good morning, sir.

15 A. Good morning, sir.

16 Q. Please tell us your name.

17 A. It's Matthew Jenkins, J-E-N-K-I-N-S.

18 Q. And where do you work?

19 A. I work for the ATF, Bureau of Alcohol, Tobacco, Firearms and
20 Explosives.

21 Q. What do you do there?

22 A. I'm a special agent.

23 Q. How long have you been a special agent with ATF?

24 A. Since May of 2014.

25 Q. And, generally speaking, what do you do as a special agent

1 with ATF?

2 A. We have a variety of criminal violations that we
3 investigate, to include firearms violations to, you know, using
4 them in a violent crime, simple possession, explosives,
5 explosives work, use of explosives in violent crime, and drug
6 distribution and drug conspiracy as well.

7 Q. And can you speak up just a little bit?

8 A. Sure.

9 Q. Thank you.

10 Before you joined ATF, what did you do before that?

11 A. I started as an Ankeny police officer in 2005. I was with
12 Ankeny until I took the position with ATF.

13 Q. Do you have training and experience and expertise on the
14 subject of outlaw motorcycle gangs?

15 A. I do.

16 Q. And is that expertise summarized in Government's Exhibit 1?

17 A. It is.

18 Q. That's an affidavit that you submitted in support of a
19 search warrant as part of this investigation?

20 A. It is.

21 Q. Without reviewing everything that is in that affidavit in
22 terms of your background, can you just give us a general
23 overview of your training and experience with relation to outlaw
24 motorcycle gangs?

25 A. Yes, sir. As an ATF agent, I've had -- been lucky enough to

1 work with a lot of agents who have actually infiltrated outlaw
2 motorcycle gangs. I spoke to them directly, been around them.
3 I've been to meetings, conferences. I've had training from
4 agents at the academy, all regarding outlaw motorcycle gangs,
5 how they operate and how they work.

6 Q. Do you also have hands-on experience?

7 A. I have.

8 Q. How so?

9 A. I've been investigating the Sons of Silence for the last
10 three years, almost three years.

11 Q. Let's then jump to the subjects of your testimony. I want
12 to start with the claim that the defendant has made in his
13 sentencing papers, which is that whatever the Sons of Silence
14 used to be in the past, the defendant changed them or attempted
15 to change them during his tenure as president. So I want to
16 take a look at some of the records and documents that the
17 defendant kept during his time as president of the Sons of
18 Silence.

19 Would you first take a look at Government Exhibit 41A?

20 MR. KRICKBAUM: And may we publish these on the
21 screen, Judge? They've all been admitted.

22 THE COURT: Yes.

23 BY MR. KRICKBAUM:

24 Q. You can look at it on the screen.

25 A. Yes, sir.

1 Q. Do you recognize what's in 41A?

2 A. I do.

3 Q. What is that?

4 A. That is a briefcase that was located in the residence of
5 Brian Hill who lives in Roland, Iowa.

6 Q. Was that briefcase located at Brian Hill's residence on
7 September 5th of 2019?

8 A. It was.

9 Q. Who is Brian Hill?

10 A. Brian Hill is the treasurer for the Sons of Silence
11 Motorcycle Club. He's a member of the club.

12 Q. Is treasurer one of the four leadership positions in the
13 local chapter of the Sons of Silence?

14 A. It is. We're specifically talking about the Central Iowa
15 Chapter, which is Central Iowa, and Mr. Hill was a part of that
16 group.

17 Q. Whose belongings were in that briefcase that was found at
18 Mr. Hill's residence?

19 A. These belong to Jay Sawatzky, the defendant.

20 Q. And we'll talk in a little bit more detail about how you
21 concluded that, but next would you look at Government's Exhibit
22 2E.

23 Generally speaking, what is this a photograph of?

24 A. This is a photograph of members of the Central Iowa Chapter
25 of the Sons of Silence.

1 Q. And was this seized from the defendant's storage unit in
2 January of 2019?

3 A. It was.

4 Q. Do you see the defendant in that photo?

5 A. I do.

6 Q. Where is he?

7 A. He's in the center, in the rear row, the back row.

8 Q. And do you see Brian Hill?

9 A. I do see Brian Hill. He's in the far left in the back row.

10 Q. Is he wearing the red shirt?

11 A. He's wearing the red shirt.

12 Q. All right. Let's go back to that briefcase.

13 Why did you conclude that it belonged to the
14 defendant?

15 A. So when I opened it, there was numerous items inside of
16 there that belonged to Mr. Sawatzky, including business cards,
17 numerous business cards. He had two boxes full of business
18 cards actually that said "Swaty" on it, which is his nickname in
19 the club. There's also numerous items in there that has his
20 name on it.

21 Q. Let's talk about the business cards, Government's Exhibit
22 41B. Are those the business cards you were referring to?

23 A. Yes, sir. That's a sampling of them, yes.

24 Q. Those were inside that briefcase?

25 A. Yes, sir.

1 Q. There's a stack of each of those?

2 A. Yes, sir.

3 Q. It says, "Sons of Silence MC, Central Iowa," the top one,
4 and then it says, "Swaty 1%er." You just told us that Swaty is
5 the defendant's nickname. What does the 1%er mean?

6 A. So the 1%ER is the outlaw motorcycle gangs, so the American
7 Motorcycle Association awhile back said that 99 percent of most
8 motorcycle clubs are peaceful, law-abiding citizens. However,
9 1 percent of them consider themselves 1%ers. They're outlaws.
10 They don't follow the rules of the public, and they abide by
11 their own rules of the club, and it defines them as 1%ers.

12 Q. These cards identify the defendant as the president of the
13 Central Iowa Chapter; is that right?

14 A. It does.

15 Q. And looking at Government Exhibit 41C, what is that a photo
16 of?

17 A. So in April of 2018, Boone police conducted a search warrant
18 of Ms. Kathy Pinkerton's residence where Mr. Sawatzky had been
19 staying. We assisted on that search warrant. This was one of
20 the bags that we used to collect some of the items.

21 After that search warrant, items were returned back to
22 him, and I found our bag in that briefcase. So just like you
23 see it here with the 6A on it, which was the property sheet
24 number, was found inside that briefcase.

25 Q. So those are items previously seized from the residence

1 where Mr. Sawatzky was living?

2 A. Yes, sir.

3 Q. And then returned to Mr. Sawatzky?

4 A. Yes, sir.

5 Q. And then found in the briefcase at Brian Hill's house?

6 A. Yes, sir.

7 Q. Look at, if you would, Government's Exhibit 41D.

8 Does this photo show multiple items associated with
9 Mr. Sawatzky and/or the Sons of Silence?

10 A. It does.

11 Q. Let's talk about what's at the bottom.

12 What is the metallic item at the bottom of that photo?

13 A. It's a business cardholder. It has "Swaty l%er," with the
14 title of President and Sons of Silence Motorcycle Club. On the
15 bottom are the initials S.F.F.S, which are Sons Forever, Forever
16 Sons.

17 Q. Looking at the receipt on the right, have you reviewed that
18 receipt?

19 A. I have.

20 Q. What is it?

21 A. It's a State of Iowa Department of Natural Resources
22 receipt. It's a fishing license signed by Mr. Sawatzky.

23 Q. In June of 2018?

24 A. In June of 2018.

25 Q. Do some of those coins and other items include white

1 nationalist or white supremacist symbols?

2 A. They do.

3 Q. Let's talk about a close-up of one of those items, which is
4 41E, Government Exhibit 41E.

5 What is that?

6 A. It's a money clip. It portrays a hooded figure with behind
7 it a cross which appears to be on fire.

8 Q. Is that -- does that appear to depict the Klu Klux Klan?

9 A. It does.

10 Q. Is that reminiscent of other materials that were previously
11 seized from Mr. Sawatzky's residence in January of 2019?

12 A. Yes.

13 Q. Look at Government's Exhibit 4A if you would.

14 What is 4A?

15 A. So in January of 2019, we executed search warrants at a
16 residence outside of Boone. There was a trailer where
17 Mr. Sawatzky had been living, and this was actually on a window,
18 like a curtain inside the trailer.

19 Q. That was hanging from the window of the trailer?

20 A. Yes, sir.

21 Q. Where the defendant was arrested?

22 A. Yes, sir.

23 Q. Government Exhibit 4C.

24 What is 4C?

25 A. 4C is a small box with a KKK symbol, a KKK hooded figure on

1 it. When you open it, there was a small knife. There was also
2 a document which said honorary member of the Klu Klux Klan.

3 Q. Let's go back to what you found in the defendant's briefcase
4 if we could look at Government's Exhibit 41F.

5 What is that?

6 A. That was inside the briefcase that we talked about earlier.
7 That is a notepad similar -- there's lots of notepads in there,
8 but similar to the item that our bag had, our 6A bag; but this
9 was another notebook where they keep notes from their meetings.
10 They call it church. So this contained, you know, notes of a
11 meeting that they had.

12 Q. "They" being defendant and other members of the Sons of
13 Silence?

14 A. Yes.

15 Q. Let's walk through what's on that notepad. Starting with
16 the top, "I.T.C.O.B.," do you understand what that means?

17 A. I do. I've heard two explanations for it, which are I Take
18 Care of Brothers and I Take Care of Business. Based on my
19 interviews of Sons of Silence members, people who are now out of
20 the club, it's given -- it has to be given by a national
21 enforcer, the hierarchy of the Sons all the way to the top, and
22 it's given to a member if they do some act of violence, is the
23 way I understood it. So they have to earn it back in violence
24 some way.

25 Q. Looking at the next lettering, S.F.F.S, I think you already

1 told us what that means?

2 A. Yes, sir; Sons Forever, Forever Sons.

3 Q. And then the letters that are diagonal down the middle of
4 the page, "G.F.S.D.," do you understand what that means?

5 A. It means God Forgives, Sons Don't.

6 Q. Now, the defendant's sentencing papers have suggested that
7 he kept his racist paraphernalia separate from his Sons of
8 Silence paraphernalia. So will you identify the symbol next to
9 the G.F.S.D.?

10 A. On the right is a swastika similar to the curtain or flag
11 that was draped in his trailer.

12 Q. And then how about the symbols on the bottom left?

13 A. So I've heard of those as SS lightning bolts from the Nazi
14 Germany era.

15 Q. And the last notation at the bottom, "Bad Influence," what
16 do you understand that to mean?

17 A. So bad influence is a patch you can get if you are in the
18 Sons of Silence. It can, again, be a range of things. It
19 doesn't have to be for violence, such as the I.T.C.O.B., but you
20 can get it for various acts in the club.

21 Q. Let's look at what was on the back of that notebook,
22 Government Exhibit 41L.

23 What was on the back of that notebook?

24 A. It was that note there.

25 Q. What does it say?

1 A. All N word must die, with an exclamation point.

2 Q. Let's then look at some of the other symbols related to the
3 front of that notebook. Would you look at Government Exhibit
4 2C, please.

5 What is 2C?

6 A. This is Mr. Sawatzky's vest. They call it a cut. This is
7 what they wear when they're riding their motorcycle.

8 Q. Sorry to interrupt you.

9 Ms. Kruse, could you maybe enlarge the vest itself?

10 Do you see some of the same patches and symbols that
11 were on that notebook?

12 A. I do. I see on the top right -- or the top left side of the
13 shoulder, you see President. Underneath that is that diamond.
14 That's what they all want, to become a full member of the Sons
15 of Silence, a diamond member, and that is the outlaw portion
16 that we see, 1%er.

17 Underneath that is that I.T.C.O.B. patch. Top, for me
18 top left is Sons Forever, Forever Sons, the Bad Influence patch.
19 On the bottom is a charter member patch. The way I understood
20 this in the interviews is that if you're one of the founding
21 members of a club or chapter, you'll get that charter member.
22 That's the way I understood it.

23 Q. Was that vest, is that also called a cut? I don't know if
24 you already said that.

25 A. I did. Yes, sir, it's a cut. That's what they wear as

1 their -- it means a lot to them.

2 Q. Was that seized from the defendant's truck in January of
3 2019?

4 A. It was.

5 Q. Let's look at the back of the defendant's cut, Government's
6 Exhibit 2D, and we'll just look at this relatively briefly.

7 Can you just describe the patches that we see on the
8 back of the cut?

9 A. Sure. It's important because that -- so the center patch is
10 what they call it, it's that large patch. So most biker clubs,
11 biker gangs will have a center patch so you know what club they
12 belong to that. Underneath that, directly underneath that is
13 "Central." All that does is just tells you that's what chapter
14 he belongs to. And on the bottom is what they claim is their
15 territory. So different clubs here in Iowa might have different
16 cities. Different states will have different rockers, they call
17 them rockers, bottom rocker, a different state just to denote
18 what the territory is and what their area is.

19 Q. Let's then look at -- let's go back to the briefcase.
20 Government Exhibit 41G.

21 Can you enlarge that, please, Ms. Kruse?

22 Is this a notebook that was found in that briefcase?

23 A. Yes.

24 Q. Does that appear to be the defendant's handwriting?

25 A. It does.

1 Q. How do you make that determination?

2 A. I've read lots of notes that he has had that we found both
3 in the house, in the trailer, the --

4 Q. That's fine as a point of comparison.

5 A. Yeah.

6 Q. The first note there, "National VP needs to know when any
7 member advances in club (i.e. prospect to probate)."

8 What do you understand that to mean?

9 A. So in order to become a member of the Sons of Silence, you
10 have to go through a formal process. A lot of times you start
11 off as a hang-around, where you're allowed to be around club
12 members, other support club members. They do not -- you're not
13 a part of the club.

14 The next step is they'll have you join what they call
15 support club, which is not a 1 percent club, but is what they
16 call a puppet club, where, for instance, they have what's called
17 the Twisted Silence in Waterloo and in southern Iowa. So those
18 guys will -- first you can tell the name, Sons of Silence,
19 Twisted Silence, but they'll have them do work that they don't
20 want to do or if they need something done, they can have a
21 Twisted Silence member go handle something.

22 So what this is basically saying is as you work your
23 way up through the ranks, from a hang-around to a support club
24 member, if the club likes you, they're going to bring you into
25 the club. The first step is a prospect or prospecting member.

1 At this point you're going to start wearing a Sons of Silence
2 cut. You don't get the diamond. You don't get a lot of the
3 other stuff. But you might get a bottom rocker that says
4 "Iowa." You may get a tag that says "Prospect" on it so
5 everyone now knows what your level is in the club.

6 If you can pass that, which that can be anywhere from
7 six months to a year, depending on how well you do, then you go
8 up to a probationary status, which is probate, which is what you
9 see there. That, again, is six months to a year, depending on
10 how well you do or what happens.

11 At that point you're starting to get more and more
12 patches on your vest to show that you're a member. You might
13 get the center patch at that point.

14 Once you've gone through that, you'll get voted on by
15 the club members whether or not they're going to let you become
16 a full member or full patched member of the Sons of Silence in
17 this instance. At that point, if they bring you on board,
18 you're going to get that diamond, which is what everybody wants
19 in the club, they want to be known as outlaw and have that
20 diamond.

21 Q. This note refers to the national VP. Is that the national
22 vice president?

23 A. It is.

24 Q. So he would be over, in other words, up the hierarchy from
25 the local chapter, correct?

1 A. Yes. And from what I understand, they have local chapters,
2 regional chapters, and then they have the national chapter.

3 Q. And the national vice president needs to know when people
4 are advancing in the club. Who would communicate that to the
5 national vice president in your understanding?

6 A. My understanding, the president does. He's the one that
7 communicates up. If he's unavailable to do that, the vice
8 president would then take over; but it's primarily the job of
9 the president of each chapter to communicate.

10 Q. The last note there says, "Carrying firearms is up to
11 Chapter President."

12 Did I read it correctly?

13 A. You did, sir.

14 Q. Who is the chapter president?

15 A. Mr. Jay Sawatzky, the defendant.

16 Q. He decided who carried firearms within the club?

17 A. Yes. That's the way I understand that.

18 Q. The next exhibit I want to look at is 41H.

19 Can you enlarge that notebook, please?

20 Looking at the third note, it says, "+39 restaurant's
21 owner is boss of the group that runs Ames, Iowa, rocker."

22 What do you understand that to mean?

23 A. So I know that there's a restaurant in Ames, Iowa, called
24 +39. It's an Italian restaurant, high-end restaurant, and at
25 the bottom is an Ames, Iowa, rocker. So I know, based upon

1 another agent in our office got a call from Ames P.D., that the
2 owner of +39 had been visited by members of the Sons of Silence
3 because they were wearing vests that on the bottom looked
4 similar to, like, a Sons of Silence vest or motorcycle club
5 vest; but because it had the Ames, Iowa, the Sons of Silence
6 went to him and basically threatened him and told him to stop
7 wearing it because it was -- this goes back to territory, what
8 you're allowed to do. It's hard to understand. It's taken me
9 awhile.

10 But when you're in the motorcycle culture, you have to
11 go through the people who have more power, more respect than
12 you. And so what happened here was +39 didn't go and ask
13 permission from the Sons of Silence who run Iowa to wear that
14 vest. It was simply for advertising. But they stopped wearing
15 that vest because they were scared.

16 Q. It was for advertising for an upscale Italian restaurant?

17 A. A high end, yes.

18 Q. And the defendant and the Sons of Silence believed that that
19 restaurant owner in Ames needed their permission to wear a
20 motorcycle vest with a patch; is that correct?

21 A. Yes.

22 Q. Look at Government Exhibit 34.

23 Do you recognize that?

24 A. I do. So that is a still image taken from a surveillance
25 camera inside of +39 restaurant.

1 Q. And do you recognize anyone in that?

2 A. Yes. It's hard to see here; but if you play the video, the
3 first one is Mr. Sawatzky, the defendant. The next is Rollie
4 Robbins, aka Rhino. He's no longer in the club. He was an
5 enforcer. And then behind him is a man by the name of Darryl --
6 "Coach" is his nickname -- McDonald. You see them as they all
7 walk in. At first I thought the first two only had their gloves
8 on, but then the guy behind them also has a pair of gloves on,
9 too. So all three walk in like this wearing gloves and then
10 they threatened the owners.

11 And I want to make it a note. The owners didn't want
12 to cooperate with law enforcement as far as pressing charges.
13 They were too scared of retaliation, so they didn't want to be a
14 part of that.

15 Q. That incident occurred in approximately August of 2015; is
16 that right?

17 A. Yes.

18 Q. Back to the defendant's briefcase --

19 A. It may be September, but August or September.

20 Q. Fair enough.

21 Back to the briefcase. Would you look at Government
22 Exhibit 41I? Is that another notebook that was in that
23 briefcase?

24 A. It is.

25 Q. And would you look at the third note down, it says, Meet

1 with A-Train.

2 If you could enlarge that, Ms. Kruse.

3 I'm just going to read it, and I'll ask you about it.

4 Meet with A-Train and his new bosses. Tell them they can have
5 their chapters around the state but that will not wear territory
6 patches, including A-Train.

7 Are you familiar with someone named A-Train?

8 A. I am.

9 Q. Who is A-Train?

10 A. His name is Aaron Byrd, B-Y-R-D.

11 MR. PARRISH: Can we have what the exhibit number is?

12 It's covered up.

13 MR. KRICKBAUM: Yes. It's 41I for the record.

14 MR. PARRISH: Thank you.

15 BY MR. KRICKBAUM:

16 Q. You said Aaron Byrd?

17 A. Aaron Byrd, yes, sir.

18 Q. Who is Aaron Byrd?

19 A. Aaron Byrd is the President of the Central Chapter of the
20 BACA, which is Bikers Against Child Abuse. They are a
21 motorcycle club. They're not a 99 -- or a 1 percent club.
22 They're the other charitable organization.

23 Q. They fall within the 99 percent of motorcyclists who
24 presumably follow the law?

25 A. Yes.

1 Q. And the name of the group is Bikers Against Child Abuse?

2 A. Yes.

3 Q. What do you understand the defendant to mean when he says,
4 They can have their chapters around the state but that will not
5 wear territory patches?

6 A. So, again, it goes back to that bottom rocker, what it would
7 say. I've seen photographs of their central patch, center
8 patch, and on it it says like Central Chapter, Central Iowa
9 Chapter; but it's one large center patch. There's no rockers
10 underneath saying that they're Iowa or Central Iowa. It's just
11 the main center patch. So they're obviously not wearing a
12 bottom territory rocker.

13 Q. Looking at Government's Exhibit 41J, is that another -- can
14 we have a close-up -- is that another page from a notebook in
15 the briefcase?

16 A. It is.

17 Q. Thank you, Ms. Kruse.

18 Looking toward the bottom, do you see the note -- it's
19 actually the third one up from the bottom. It says, BACA would
20 like to start more chapters in Iowa. I will contact A-Train
21 later this week with decision.

22 Do you see that?

23 A. Yes, sir.

24 Q. What do you understand that to mean?

25 A. I understand that to mean that BACA is showing respect

1 because they're a motorcycle club, went to the Sons of Silence,
2 in this case the president, Jay Sawatzky, and asked permission
3 to have more chapters throughout Iowa. At that point it was up
4 to Mr. Sawatzky and the Sons of Silence whether or not they
5 would allow a charitable organization to have more motorcycle
6 chapters in the state.

7 Q. But in any case, according to Sawatzky, they were not
8 allowed to wear their territory patch?

9 A. Yes.

10 Q. And that was a decision that Mr. Sawatzky made?

11 A. It appears so, yes.

12 MR. KRICKBAUM: Judge, I just want to, for the record,
13 draw the court's attention to a paragraph of the PSR that's
14 relevant here. It's page 18, paragraph 65. It's at the top of
15 page 18 of the PSR, and I want to read it. "The defendant
16 reported" -- and this would be reported to the probation
17 office -- "that he also helped start the Iowa Chapter of Bikers
18 Against Child Abuse (BACA), which is a group of motorcyclists
19 that escort victims of child abuse to court. According to a
20 letter from Aaron 'A-Train' Byrd, 'Mr. Sawatzky is not now, nor
21 has he ever been any part, or had any involvement of the
22 founding, or operation of any aspect of BACA, (Bikers Against
23 Child Abuse) of Iowa. This information is known to me as I am
24 the State Founder of BACA in Iowa, and was present during the
25 Federal Background Check Process of all founding and initial

1 members.'" "

2 BY MR. KRICKBAUM:

3 Q. I want to go back to the briefcase, Special Agent Jenkins.
4 Government's Exhibit 41L, if we could look at that, please.

5 Pardon me, we've already seen that. Let's now talk
6 about -- you can take that down, Ms. Kruse.

7 Let's start with the same general topic about whether
8 the defendant transformed the Sons of Silence into a charitable
9 or philanthropic organization during his leadership. I want to
10 talk about some evidence that has been found within the last
11 month at the homes of other members of the Sons of Silence.

12 So let me just ask you by way of background, on
13 September 5th of this year, did ATF agents execute federal
14 search warrants at five houses of members of the Sons of
15 Silence?

16 A. We did.

17 Q. And Government Exhibits 3A through J, which you've reviewed
18 before coming to court today, are those photographs of some of
19 the Sons of Silence paraphernalia that were found in those
20 houses?

21 A. Yes, sir.

22 Q. Let's look at just a few of them, starting with Government
23 Exhibit 3A.

24 Now, this article of clothing, was a similar article
25 of clothing found at multiple houses on September 5th?

1 A. Yes.

2 Q. This particular one was found at the house of a man named
3 Darryl McDonald?

4 A. That's correct.

5 Q. Are you familiar with his position in the Sons of Silence?

6 A. I am.

7 Q. What is it?

8 A. He started as the treasurer, worked up to enforcer, and now
9 I believe he's vice president.

10 Q. Now, just to show what we're looking at, what is the -- what
11 are the words on this picture?

12 A. Sure. At the top, "Spreading hate and discontent," is a
13 common phrase they use. On the bottom, "Since 1967." It's the
14 date that the Sons of Silence were formed. Obviously the State
15 of Iowa with that 1%er diamond.

16 Q. Is there anything on this sweatshirt or any other articles
17 of clothing that were recovered that indicates that the Sons of
18 Silence stopped spreading hate and discontent within the 50
19 years they've been operating in Iowa under the defendant's
20 leadership?

21 A. No.

22 MR. PARRISH: Excuse me. I'm going to object.

23 There's nothing that he was leading this group for 50 years as
24 posed in the question. Ask that it be stricken from the record
25 and the court disregard that statement. That's a misstatement

1 of the record. He was never in charge of this organization for
2 50 years.

3 MR. KRICKBAUM: I'm happy to clarify if my question
4 was unclear. That was not my intent, Your Honor.

5 BY MR. KRICKBAUM:

6 Q. This shirt notes that the Sons have been spreading hate and
7 discontent since 1967; is that right?

8 A. That's what the shirt says, yes.

9 Q. The defendant has been the leader for a shorter period of
10 time than that, correct?

11 A. Yes.

12 Q. Is there anything in this shirt or any other article of
13 clothing to indicate that they stopped spreading hate and
14 discontent once he became the president?

15 A. No.

16 Q. I want to stay on Mr. McDonald for a moment, the man who you
17 said is currently the vice president and the former enforcer.
18 Is he one of the people who was in the still photo from the
19 upscale Italian restaurant in Ames that we looked at a few
20 exhibits ago?

21 A. He was. He was the third and final person walking in.

22 Q. That was Government's Exhibit 34, just for the record. We
23 don't need to look at that again.

24 I want to talk about a couple of other things that
25 were found in Mr. McDonald's house, specifically Sons

1 paraphernalia. Government's Exhibit 3B, was that found in
2 Mr. McDonald's house?

3 A. It was.

4 Q. And we don't need to read it since it is now part of the
5 record.

6 Government Exhibit 3E, was that found in
7 Mr. McDonald's house?

8 A. It was.

9 Q. Does that show a confederate flag, what appears to be
10 confederate flag with a 1%er diamond in the middle?

11 A. Yes.

12 Q. I want to talk about a photograph that the defendant
13 submitted as part of his character letters as part of his
14 exhibits.

15 So this would be document 109 for the record, and it's
16 page 47, Ms. Kruse, if you have that.

17 Yes, that one. If you're able to enlarge that.

18 This looks like a -- well, it says, 2015 cruise with
19 friends, Jay and Rollie. Who's the person with the defendant in
20 that photo?

21 A. That's Mr. Rollie Robbins, aka Rhino.

22 Q. Are you aware of his position or former position? I think
23 you testified to this, but I just want to be clear.

24 A. Yes. He was an enforcer. He's no longer in the club.

25 Q. Looking at Government Exhibit 2B, which I think will show a

1 different photo of Mr. Robbins.

2 Can you enlarge the inset picture on the right,
3 Ms. Kruse? That one.

4 Generally speaking, what does this picture depict?

5 A. Members of the Sons of Silence. Most of them are Central
6 Iowa Chapter Sons of Silence members.

7 Q. Was this seized from Mr. Sawatzky, the defendant's property
8 in January of 2019?

9 A. It was.

10 Q. Is he shown in this photo?

11 A. He is.

12 Q. Where is he?

13 A. He's in the, what I call middle row, second from the left.

14 Q. He has his arms crossed in front of him?

15 A. He does.

16 Q. And then is Mr. Rollie Robbins from the cruise in this
17 photo?

18 A. He is. He is the person standing to his left and in the
19 back row, so he does not have a large beard.

20 Q. All right. Let's talk about a couple of these character
21 letters the defendant submitted. The first one I want to talk
22 about is letter No. 5 from Wade Adams.

23 It's docket 109 at page 18, if you have that,
24 Ms. Kruse, otherwise I can read it.

25 Do you see --

1 Could you enlarge just the first paragraph, please?

2 It says, "To the Honorable Judge Jarvey:

3 "My name is Wade Adams. I would like to offer my
4 input in regards to the sentencing of Jay Sawatzky on October 2,
5 2019. I am General Manager and co-owner of Harley-Davidson of
6 Carroll, Iowa, and I have known Jay for 7 years in a variety of
7 capacities."

8 Are you -- to your knowledge, who is Wade Adams and
9 how does he know the defendant?

10 A. Wade Adams, the first I knew of him, he was a member of the
11 Sons of Silence. He stepped away -- he was the first, from what
12 I understand, the first liaison from the Sons of Silence to
13 control the support club Twisted Silence. He left the club for
14 one reason and one reason only, from what I understand, is that
15 he wanted to be an owner of the Harley-Davidson in Carroll.
16 Harley-Davidson has a rule that states if you're part of a 1
17 percent club, you have to leave that club, you cannot be an
18 owner of a Harley-Davidson franchise, and that's why he left.

19 Q. Does this letter from Wade Adams say anything about knowing
20 the defendant through the Sons of Silence?

21 A. No.

22 Q. Let's then look at another letter. It's still docket 109.
23 This is letter No. 6, page 20, a letter from Brad Ball. If you
24 look at the first sentence of that letter, it says, "I have
25 known Jay Sawatzky for around six years."

1 Are you familiar with Brad Ball?

2 A. I am.

3 Q. To your knowledge, how does he know the defendant?

4 A. Mr. Ball started as a Sons -- or a Twisted Silence member.
5 He worked his way up through the Sons of Silence, and shortly
6 before the warrants in September of 2019, he became a full
7 patched member of the Sons of Silence Central Chapter.

8 Q. And was his house one of the houses that were searched on
9 September 5th?

10 A. It was.

11 Q. I want to talk about a letter that was found at the house,
12 which is Government Exhibit 37.

13 And if you could enlarge that, Ms. Kruse.

14 I'm going to read it, and I'm going to ask you about
15 it.

16 "It is my understanding that you know Jay Sawatzky,
17 (Swaty). He is scheduled to be sentenced in federal court on
18 September 27, 2019.

19 "We are interested in obtaining a character letter
20 from you regarding your knowledge of Jay and whether or not he
21 would be a good candidate for a lower sentence or possible
22 probation. You should state as many favorable things about him
23 as you can in this letter. If you feel there are some negative
24 things about Jay, please outline those for me also."

25 It then continues by asking for the letter to be

1 submitted to Kathy Pinkerton, with an e-mail address for Kathy
2 Pinkerton.

3 Did I read that correctly?

4 A. Yes.

5 Q. And can you read the handwritten note after the second
6 paragraph?

7 A. It says, "Skip this" and in parenthesis "Kathy will just
8 take out negatives anyway."

9 Q. And that was in Brad Ball's house last month?

10 A. It was.

11 Q. In the letter that Brad Ball eventually submitted to this
12 court, the character letter, did he mention anything about
13 knowing the defendant through the Sons of Silence?

14 A. He did not.

15 Q. During the search of Mr. Ball's house, did agents find Sons
16 of Silence paraphernalia?

17 A. We did.

18 Q. I'm just going to talk about one piece of that that was
19 found, which is Government's Exhibit 3H.

20 Is that from an article of clothing found in
21 Mr. Ball's house?

22 A. It is.

23 Q. Now, the defendant's sentencing brief filed yesterday said
24 that, in biker culture, the symbol of a skull is, quote, not to
25 wish harm or death to others.

1 Could you read what is on that shirt, sir?

2 A. "The devil whispered, 'I am coming for you.'"

3 And on the bottom it states, "The Son whispered back,
4 'You better bring help.'"

5 Q. Are you aware that Mr. Ball, who submitted one of these
6 character reference letters, has a 2002 felony conviction for
7 burglary?

8 A. I am.

9 Q. I want to show you another exhibit relating to Mr. Ball,
10 Government Exhibits 40A through C, starting with 40A.

11 Are you familiar with what's depicted in that still?

12 A. I am.

13 Q. What generally can you tell us about Government Exhibit 40?

14 A. Yes. So this is a Snapchat video. What you see is
15 Mr. Ball. He's driving a vehicle. You can't see here, but in
16 his right hand he has a pistol. He tells the person videoing
17 him, "Have you ever heard of a car pop?" At that point he
18 raises the firearm, fires a single round out of the window and
19 brings it back to his lap.

20 Q. And he's a convicted felon, correct?

21 A. He is.

22 Q. We just have stills from this video, but let's just look at
23 the last two, which is Government's Exhibit 40B.

24 Is that Mr. Ball?

25 A. It is.

1 Q. And Government's Exhibit 40C, can you see the firearm in his
2 hand in that photo?

3 A. I can. You can see the dark outline. It's not the best
4 picture, but you can even see the rear site, the two dots for
5 the rear site.

6 Q. That he fired out of the window of that car?

7 A. Yes.

8 Q. I want to talk about another character letter the defendant
9 submitted. This is document 109, page 22. It's a letter from a
10 man by the name of Jason Bentley.

11 If you could pull up the first paragraph, please,
12 Ms. Kruse.

13 It says, "I have known Jay for quite a few years and
14 have come to know him better than most."

15 To your knowledge, how does Jason Bentley know the
16 defendant?

17 A. Jason Bentley also was started as a Twisted Silence member,
18 became president of Twisted Silence, and then has now risen up
19 through prospect in Sons of Silence, probate, and he's a full
20 patch member of the Sons of Silence.

21 Q. Now, this letter at the top is dated July 25, 2019. To your
22 knowledge, when did Mr. Bentley become a full patch member of
23 the Sons of Silence?

24 A. Three days before we executed search warrants on
25 September 5, 2019.

1 Q. So after Mr. Bentley submitted a character letter for the
2 defendant, he got promoted to full patch member of the Sons; is
3 that right?

4 A. It is.

5 Q. Does Mr. Bentley's letter mention anything at all about the
6 Sons of Silence?

7 A. It does not.

8 Q. In the second paragraph of that letter -- I'll just read it.
9 It's in the record. The second sentence of the second -- excuse
10 me. It's the third full paragraph, second sentence. It says,
11 "I can say that I have never seen a violent bone in his body,"
12 referring to the defendant; is that right?

13 A. It is.

14 Q. Is that consistent with the evidence that you've gathered in
15 your investigation of the Sons of Silence?

16 A. It is not.

17 Q. How so?

18 A. There have been other instances where violence occurred.

19 MR. PARRISH: Objection, Your Honor. I'm going to
20 object to that on this basis. He says based upon what this
21 character letter indicated. It would seem that the question
22 should be posed, did he have any evidence that this person had
23 engaged in any acts of violence, not general acts of violence.
24 And my objection, Judge, goes that it's not a proper question to
25 ask this witness with at least -- I know hearsay is allowed

1 here, but with a sufficient foundation that they're connecting
2 the two up.

3 MR. KRICKBAUM: I can pose a new question, Your Honor.

4 THE COURT: Go ahead.

5 BY MR. KRICKBAUM:

6 Q. Let's stick with the defendant and Mr. Bentley. Do you have
7 reason to believe that Mr. Bentley has knowledge of the
8 defendant being involved in acts or threats of violence?

9 A. Yes.

10 Q. Please explain.

11 A. One incident occurred in Waterloo in 2018, November of 2018.

12 Q. And did you interview Mr. Bentley as part of this
13 investigation?

14 A. I have.

15 Q. When was that?

16 A. That was the date of the warrant, September 5, 2019.

17 Q. What did he tell you about what happened in Waterloo in
18 November of 2018?

19 A. He stated that Mr. Sawatzky had come to his residence with
20 some other members. At that point they weren't full members of
21 the Sons of Silence yet. It was over almost a year ago, but
22 they were prospecting for the Sons of Silence. I don't want to
23 go into too much detail here. But with Mr. Sawatzky in the
24 passenger seat, with Mr. Bentley driving his vehicle and other
25 members, another vehicle containing other Sons of Silence

1 members, associates, they went to look for a rival motorcycle
2 gang, primarily African American males, and conducted an ambush
3 essentially where there was a shooting. No one was injured
4 during that shooting, but that's what occurred.

5 Q. And did Mr. Bentley have -- he had his explanations for why
6 they were looking for that rival, predominantly black motorcycle
7 gang; is that right?

8 A. He did.

9 Q. What did he say that the defendant was carrying in his lap
10 as they were looking for this rival, predominantly black
11 motorcycle gang?

12 A. He had a crossbow.

13 Q. And, according to Mr. Bentley, the reason that the defendant
14 had a crossbow while looking for members of a rival motorcycle
15 gang is that the defendant was going to sell the crossbow to
16 Mr. Bentley's son?

17 A. That's correct.

18 Q. That's why he was carrying a crossbow on his lap in
19 Waterloo?

20 A. Yes.

21 Q. Let's look at Government's Exhibit 35, and we're going to
22 talk about this shooting in more detail in a little bit, but I
23 want to talk about Government Exhibit 35 first.

24 Generally speaking, what is Government's Exhibit 35?

25 A. So these are members of that -- it's called Street Soldiers,

1 that motorcycle gang. That's what you see here are members of
2 that group.

3 Q. Is this something commonly referred to as a hit list for
4 those members of the Street Soldiers?

5 A. What we located and what we knew, yes, and two of the
6 members here we believe may have been involved.

7 Q. So two of the members may have been involved in that
8 shooting in Waterloo?

9 A. Yes.

10 Q. What did Mr. Bentley tell you about who created that hit
11 list in Government Exhibit 35?

12 A. First he said that he did it, he created it. Later he
13 recanted said that another person had created it, given it to
14 him, but that person is deceased, so I didn't have an
15 opportunity to interview him.

16 Q. When you interviewed Mr. Bentley as one of the character
17 references for the defendant in this case, how did you he refer
18 to the Street Soldiers?

19 A. Derogatory.

20 Q. Specifically what did he say?

21 A. He called them first black elements. He called them
22 darkies, and then he used the N word.

23 Q. Let's talk about just one piece of Sons of Silence
24 paraphernalia found in Mr. Bentley's home last month, Government
25 Exhibit 3K.

1 Was that found in Mr. Bentley's home on an article of
2 clothing?

3 A. It was.

4 Q. And it says, "God Forgives, Sons Don't"?

5 A. Yes, sir.

6 Q. Is that your understanding of the G.F.S.D. acronym that is
7 written on the defendant's notebook that we talked about in
8 Government Exhibit 41?

9 A. It is.

10 Q. Are you aware that Mr. Bentley has a 1993 felony conviction
11 for burglary?

12 A. I am.

13 Q. Please look at Government's Exhibit 38.

14 What is 38?

15 A. That is a firearm that was located directly next to the bed
16 of Mr. Bentley when we served the search warrant at the
17 residence. Nobody else was home or in the bed, and it was
18 directly next to it.

19 Q. And you placed it on the bed to take that photo; is that
20 correct?

21 A. For the photograph, yes.

22 Q. All right. There's a couple other letters, character
23 letters I want to talk about, and I'll try to be brief. This is
24 still document 109. This is letter 2 and it's page 5. It's a
25 letter from Kathy Pinkerton. That would be the defendant's

1 ex-wife; is that right?

2 A. It is.

3 Q. In the second paragraph of that letter, the first sentence,
4 it says, "I met Jay when he worked with my husband, Mark, as a
5 carpenter for Carpenters Union Local 106 out of Des Moines."

6 Are you familiar with Kathy Pinkerton's ex-husband,
7 Mark?

8 A. I am.

9 Q. Are you familiar with his role in the Sons of Silence?

10 A. I am.

11 Q. What was that role?

12 A. He was the president prior to -- or he had been president of
13 Central Iowa Chapter prior to Mr. Sawatzky.

14 Q. He's the former president of Central Iowa Sons of Silence?

15 A. Yes.

16 Q. Does Ms. Pinkerton's letter mentioning anything at all about
17 the Sons of Silence anywhere in her letter?

18 A. No.

19 Q. The last letter I want to talk to you about is still docket
20 109. It's page 24. It's letter 8 from a man named Dan Lankford.

21 Do you see the first sentence there? It says, "I have
22 known Jay for a little over 11 years."

23 A. Yes, sir.

24 Q. Are you familiar with Dan Lankford?

25 A. I am.

1 Q. Are you familiar with his role in the Sons of Silence?

2 A. I am.

3 Q. What is that role?

4 A. For most of -- for a large portion of Jay's time as the
5 president, Dan was the vice president.

6 Q. And if you would look please -- and what is his current
7 role?

8 A. He became president.

9 Q. And let's look at Government Exhibit 2E.

10 This is one of the photos we saw before of the
11 defendant and other members of the Sons of Silence, which
12 includes Brian Hill in the red on the left; is that right?

13 A. It is.

14 Q. Do you see Dan Lankford in that photo?

15 A. I do.

16 Q. Where is he?

17 A. On the far right.

18 Q. In the back row?

19 A. In the back row, yes, sir.

20 Q. Does Dan Lankford's letter mention anything at all about the
21 Sons of Silence?

22 A. It does not.

23 Q. Let's go back to the letter briefly. Again, this is page 24
24 of docket 109 and look at --

25 If you could, if you could pull up the second

1 paragraph please, Ms. Kruse. I'm going to read it.

2 It says, "He's just an awesome man family good father
3 awesome grandfather. He is not a bad guy, just made a bad
4 decision like we all have. But Jay has helped me grow up to be
5 a better man. Do you really think sending him away to prison
6 and spending thousands of dollars is better or would you rather
7 have him out in the public's eye being watched to learn to show
8 you he has changed?"

9 Did I read that correctly?

10 A. Yes, sir.

11 Q. Does that passage appear be the same as the passage in Brad
12 Ball's letter which we already reviewed?

13 A. The exact same.

14 Q. If we just could pull up page 20 of docket 109, which is
15 Brad Ball's letter. In the second paragraph there, if you go to
16 the second line there -- or the end of the first line, "He's
17 just an awesome man family good father," and it goes on.

18 Is that verbatim the same?

19 A. It is.

20 Q. Including typographical errors?

21 A. It is.

22 Q. The next thing I want to talk to you about are some of the
23 things that were found in defendant's storage unit in Boone in
24 January of 2019, and I want to focus on patches that were found
25 that belonged to rival motorcycle gangs.

1 So if you could look first at Government's Exhibit 27A
2 and tell me if you recognize that and what it is.

3 A. I do recognize that. The name of that club was One Shot
4 Ryders. They've since disbanded. We have the large patch, the
5 center back patch. The bottom would be the territory, Waterloo,
6 Iowa, the area they're from. On the left would be stuff that
7 would have been on the front of the vest, where you had the MC
8 Motorcycle Club. He was the treasurer, and his nickname was
9 "Meek."

10 Q. What kind of club is the One Shot Ryders?

11 A. They're a 99 percent club, so they're law-abiding citizens.

12 Q. And what about the race of their members?

13 A. Primarily -- it's a mixed race club, but a lot of the
14 members are African American or black.

15 Q. When you found these patches -- well, has the defendant, to
16 your knowledge, ever been a member of the One Shot Ryders?

17 A. No.

18 Q. Did the Sons of Silence in Central Iowa even allow black
19 members, to your knowledge?

20 A. No.

21 Q. When you found these patches in the defendant's storage unit
22 belonging to a rival gang, what did you do?

23 A. I remembered a Waterloo police report where a member of the
24 One Shot Ryders had been stopped on the road by some Sons of
25 Silence members, taken to another location, where he was

1 surrounded by them, forced to give up his cut or his vest
2 because he was in fear of his life from what I understand. So
3 then I decided that I would try to make contact with that man
4 and interview him myself, and I did.

5 Q. And did he confirm that that incident happened when he was
6 accosted by a group of Sons of Silence members who physically
7 took his cut from him?

8 A. He did. He said he was coming up to a stop sign, surrounded
9 by Sons of Silence members. He believed they were prospects,
10 later identified two of them being Bentley, one Bentley Ball --
11 or Jason Bentley and the other one Bradley Ball, went to a
12 parking lot, next to a parking lot, where he said they had their
13 hands on their hips. He believed they had firearms. They said
14 that the club was disbanded, that he had to stop basically
15 wearing that, you know, the garb of the One Shot Ryders, and he
16 felt that he had to give it to them, which they asked for, or he
17 would be harmed or killed or beaten up.

18 Q. And what is the race of the man that you spoke to?

19 A. He's mixed race, but he identifies as a black man.

20 Q. What happened to One Shot Ryders after this incident,
21 according to that member that you spoke to?

22 A. So they were scared, they were really scared. So both the
23 Waterloo chapter and there was a Des Moines chapter, they both
24 disbanded. And also, again, on this man, he was extremely
25 scared, did not want to press charges, did not want anything to

1 do with this. He was too scared to testify for fear of
2 repercussions and possible injuries from the Sons.

3 Q. This incident happened in approximately September of 2018?

4 A. Yes, sir.

5 Q. And the two people that he identified as being likely
6 participants from the Sons of Silence, Bentley and Ball, they
7 both submitted character references for the defendant; is that
8 right?

9 A. They did.

10 Q. And then these patches showed up in the defendant's storage
11 unit?

12 A. Well, not only in the storage unit, but in his motorcycle.
13 There's two bags in the back of the motorcycle, saddle bags.
14 They're hard, but inside one of those is where this was found.

15 Q. Let's look at Government Exhibit 27B.

16 Generally speaking, what's 27B?

17 A. The best way to explain this is trophy patches. So if
18 you're a rider coming through a Sons of Silence territory,
19 similar to what happened with the One Shot Rider, they're going
20 to take your stuff, and here that is what you see. Even so much
21 as the top one, that's a belt, so they even took this person's
22 belt. They have their center patches. They have a bunch of
23 other stuff.

24 But I made contact with someone from, they call them
25 the Road Docs. They're a group of pharmacists -- or excuse me,

1 physicians, paramedics, EMTs, and nurses. That's the one with
2 the medical star, they call it. They didn't have exact details
3 of what happened, but they believe his cut was taken from him as
4 well and that's why the patches are here.

5 Q. And then the combat vets?

6 A. The combat vets as well. I've reached out to the combat
7 vets to see if they're missing a patch. They don't believe they
8 are, but they don't know why Mr. Sawatzky would have possession
9 of one.

10 Q. Were these patches found in the same storage unit as the One
11 Shot Rider patches that were in the defendant's motorcycle?

12 A. They were. And these were patches that were returned
13 earlier during the first warrant when we found them in his safe.

14 Q. And they were returned to Mr. Sawatzky and then you found
15 them again?

16 A. Yes.

17 Q. All right. That is all I have for now on patches, but I'm
18 not about done.

19 The next thing I want to talk to you about is a new
20 topic. It is the strangulation of Carly Hubby on April 29th of
21 2017. First, drawing your attention to exhibits that you've
22 reviewed before your testimony. Government's Exhibits 13A
23 through O, are those portions of audio and video from dispatch,
24 as well as body cam videos, from the Boone County Law
25 Enforcement Center and Boone police officers on April 29, 2017?

1 A. They are.

2 Q. And Government Exhibits 14A through O, those are the
3 corresponding transcripts for those recordings?

4 A. They are.

5 MR. KRICKBAUM: Your Honor, I don't know if the court
6 has had an opportunity to listen to these or watch any of these.

7 THE COURT: No.

8 MR. KRICKBAUM: Okay. Then we're not going to play
9 all of them, but we are going to play some of them.

10 Let's start with Government Exhibit 13A.

11 (Government Exhibit 13A was started to be played.)

12 MR. KRICKBAUM: Would you pause it for just a moment,
13 Ms. Kruse.

14 BY MR. KRICKBAUM:

15 Q. Is 13A a 911 call that we're about to hear that was placed
16 by a neighbor of Carly Hubby on the afternoon of April 29, 2017?

17 A. It is.

18 Q. And based on the call time on the dispatch logs, this call
19 was placed at 4:47 p.m.?

20 A. Right, yes.

21 MR. KRICKBAUM: Go ahead, Ms. Kruse.

22 Thank you.

23 (Government Exhibit 13A was continued to be played.)

24 BY MR. KRICKBAUM:

25 Q. Agent Jenkins, shortly after this neighbor called 911 to

1 report that she heard a woman screaming, "Help me, oh, my God, I
2 need help," did Boone police officers respond and speak to that
3 neighbor directly?

4 A. They did.

5 Q. And let's look at Government's Exhibit 14B -- excuse me,
6 13B. If you could play that, please.

7 MR. PARRISH: Your Honor, I'm going to object --
8 (Government Exhibit 13B was started to be played.)

9 MR. PARRISH: I'm sorry. I'll just wait.

10 MR. KRICKBAUM: Can you pause it?

11 Go ahead.

12 MR. PARRISH: My objection is this, Judge, that the --
13 I don't know why the officer's testimony and the ATF officer's
14 testimony is necessary for this. He's laying foundation. He
15 wasn't there, I realize this is a sentencing hearing and hearsay
16 is admitted; but he wasn't there. He wasn't part of anything
17 having to do with this investigation.

18 So I'm going to object to him being able to comment on
19 anything. The record speaks for itself. So I don't know why
20 the government feels it's necessary to have him comment on it
21 when he was not part of the investigation or he's not even a
22 witness in the case.

23 THE COURT: Overruled.

24 MR. KRICKBAUM: Go ahead and play that, Ms. Kruse.

25 Thank you.

1 (Government Exhibit 13B was continued to be played.)

2 BY MR. KRICKBAUM:

3 Q. That was a little bit hard to hear. If you look at
4 Government Exhibit 14B, does that transcript reflect that, among
5 other things, she said she heard -- I heard somebody yell, "Help
6 me," and then the same voice yelling, "Help me, oh, my God, I
7 need help, somebody help me." Is that accurate?

8 MR. PARRISH: Your Honor, I'm going to object. We're
9 not disputing the documents. The words speak for themselves,
10 but at a sentencing hearing, I don't think -- I don't know what
11 purpose is served if he asks a witness who had nothing to do
12 with it, the question, does it say what it says it says when
13 it's not even objected to. I don't know the purpose of the
14 narrative before the court at a sentencing hearing.

15 My objection, Judge, is it does not really promote or
16 get to the heart of what this case is all about.

17 THE COURT: Overruled.

18 BY MR. KRICKBAUM:

19 Q. Did I read that accurately?

20 A. You did.

21 MR. KRICKBAUM: If we could then play another portion
22 of that interview with the neighbor, Exhibit 13C.

23 (Government Exhibit 13C was played.)

24 BY MR. KRICKBAUM:

25 Q. And looking at Government Exhibit 14C --

1 MR. PARRISH: Could I have a continuing objection --

2 THE COURT: You may.

3 MR. PARRISH: To this narrative?

4 Thank you, Judge.

5 THE COURT: Overruled.

6 BY MR. KRICKBAUM:

7 Q. And only because that was a little bit hard to hear, I want
8 to make sure that a couple of key points are clear on the
9 record.

10 The neighbor said, "You can tell the difference
11 between somebody who is hollering and somebody who is scared and
12 crying and you can tell definitely a change in voice."

13 Is that right?

14 A. It is.

15 Q. And at the end of that clip, she says, "I don't want
16 anything to happen to her. She's not a friend of mine or
17 anything, but nobody deserves to" -- and then she trails off?

18 A. Yes.

19 Q. I think the rest of them will be easier to hear and so I
20 will not have to repeat them.

21 Now, is it your understanding that shortly after the
22 neighbor called 911, Ms. Hubby, the victim, also called 911?

23 A. Yes.

24 Q. Let's listen to Government's Exhibit 13D.

25 (Government Exhibit 13D was started to be played.)

1 MR. KRICKBAUM: And I've got that out of order, I'm
2 sorry. Ms. Kruse, if you could stop it.

3 One moment, Your Honor.

4 (Pause.)

5 MR. KRICKBAUM: And just for the record, this is 13D
6 as in David.

7 (Government Exhibit 13D was played.)

8 BY MR. KRICKBAUM:

9 Q. Special Agent Jenkins, to your knowledge, who was Carly
10 Hubby's boyfriend in April of 2017?

11 A. The defendant.

12 Q. And at the remainder of this 911 call, did Ms. Hubby's
13 sister then get on the line and talk to the dispatcher for a
14 period of time?

15 A. She did.

16 Q. Let's then look at what happened when officers met Ms. Hubby
17 in the parking lot of the hospital, which is Government's
18 Exhibit 13E.

19 (Government's Exhibit 13E was played.)

20 BY MR. KRICKBAUM:

21 Q. Let us now look at the video from the waiting room of the
22 hospital, which is Government Exhibit 13G. We're going to skip
23 13F.

24 (Government's Exhibit 13G was played.)

25 BY MR. KRICKBAUM:

1 Q. Is the woman who's been depicted in the video Carly Hubby?

2 A. It is.

3 Q. Toward the beginning of that clip, Ms. Hubby said, "Because
4 he stole all of my money."

5 Are you aware of there being a dispute between the
6 defendant and Ms. Hubby about a debt in April of 2017?

7 A. Yes.

8 Q. And generally, just very briefly, what was the dispute, to
9 your knowledge?

10 A. At this point I believe that Ms. Hubby was giving him money,
11 large sums of money. I know one occasion that she gave him
12 money to purchase methamphetamine.

13 Q. And that's based on information that Carly Hubby has told
14 you?

15 A. Yes.

16 Q. In that clip she said, "He's president of the Sons of
17 Silence. He's got a lot of brothers."

18 What do you understand the term "brothers" to mean
19 there?

20 A. They consider themselves brothers. So if you're a Sons of
21 Silence member, other Sons of Silence members are brothers to
22 each other. So when she said, "He's got lots of brothers,"
23 she's talking about other Sons of Silence members.

24 Q. Let us move to another clip from the hospital, which is 13I.

25 (Government Exhibit 13I was played.)

1 BY MR. KRICKBAUM:

2 Q. In the beginning of that clip, Ms. Hubby said, "I'm scared
3 the fuck of him and his club, I'm scared. That means me calling
4 the police and all is not okay."

5 What do you understand her to be referring to when she
6 refers to his club?

7 A. The Sons of Silence.

8 Q. She then referred to an incident that she said happened a
9 year-and-a-half ago at Wilson's?

10 A. Yes.

11 Q. Are you familiar with Wilson's?

12 A. I am.

13 Q. What is Wilson's?

14 A. It is a bar in Boone, Iowa.

15 Q. And she said in this video that we just watched, "He hit me
16 once or kicked me in the neck as hard as he could, and that is
17 the incident that happened at Wilson's."

18 Is that what she said?

19 A. Yes.

20 MR. KRICKBAUM: Judge, I want to for the record note
21 paragraph 52 of the presentence report, which is on page 14 --
22 and I'm just going to briefly read the information in that
23 paragraph. It says, The defendant was represented by counsel.
24 The defendant was originally charged with domestic abuse
25 assault. However, he pled to the lesser-included offense noted

1 above. That would be disorderly conduct.

2 It says, According to the complaint, trial
3 information, and incident report, on, February 23, 2016, the
4 defendant's girlfriend, Carly Hubby, reported that she and the
5 defendant got into an argument at a bar. Hubby met the
6 defendant at the bar to deliver his patch shirts. During the
7 argument, the defendant punched Hubby in the neck, causing pain
8 and redness. When Hubby stated that she was going to call LEO,
9 the defendant hit her in the head with a cell phone causing a
10 cut to her head.

11 BY MR. KRICKBAUM:

12 Q. Did Ms. Hubby say in this video that we just watched that,
13 quote, I got him out of it, I got all the charges dropped?

14 A. Yes.

15 Q. In this case he pled from a domestic abuse assault to a
16 disorderly conduct; is that right?

17 A. It was.

18 MR. KRICKBAUM: The last clip I want to play for now
19 is 13L, please.

20 (Government's Exhibit 13L was played.)

21 BY MR. KRICKBAUM:

22 Q. Was that the doctor that came in to speak to Ms. Hubby?

23 A. It is.

24 Q. I was inaccurate a moment ago. I actually have one more
25 clip I want to play right now. It's a previous clip, which is

1 13K. And we're just going to play to minute 1:01 rather than
2 playing the whole clip.

3 (Government Exhibit 13K was played.)

4 THE COURT: We're going to take 15 minutes.

5 MR. KRICKBAUM: Thank you, Your Honor.

6 MR. PARRISH: Thank you, Your Honor.

7 (Recess at 11:02 a.m., until 11:17 a.m.)

8 THE COURT: Please be seated.

9 Mr. Krickbaum, you may continue.

10 MR. KRICKBAUM: Thank you, Your Honor.

11 BY MR. KRICKBAUM:

12 Q. Special Agent Jenkins, we just listened to and watched
13 Government's Exhibit 13K. I want to ask you a couple of
14 follow-up questions about it.

15 Toward the beginning of that clip, Ms. Hubby tells the
16 police officers, Brian Hill is the only other one around here
17 and he's in Roland, but he's got nine brothers. They're not his
18 brothers but, you know, they're his brothers.

19 The Brian Hill Ms. Hubby refers to, is that the same
20 Brian Hill who had the briefcase full of the defendant's notes
21 and other items?

22 A. It is.

23 Q. Look, if you would, at Government Exhibit 2E, which we've
24 seen before.

25 Brian Hill, is that the same Brian Hill who's on the

1 far left in the red shirt?

2 A. It is.

3 Q. And Ms. Hubby said that Brian Hill lives in Roland.

4 Is that accurate?

5 A. It is.

6 Q. She also said directly after that, in the clip that we just
7 listened to, They will kill me. They're all excavators. They
8 will bury me in a tomb in the earth. They will, I guarantee it.

9 To your knowledge, are any of the members of the Sons
10 of Silence excavators?

11 A. Yes.

12 Q. Who?

13 A. Brian Hill.

14 Q. Look if you will at Government Exhibit 3F.

15 Is that an article of clothing that was taken from
16 Sons of Silence vice president Darryl McDonald's home in
17 December of 2019?

18 A. It is.

19 Q. What does it say?

20 A. "A friend will help you move. A brother will help you move
21 a body."

22 Q. And going back to Government Exhibit 2E, which we just
23 looked at, we saw Brian Hill on the left. Do you see Darryl
24 McDonald in that photo?

25 A. I do. He's seated between Mr. Hill and Mr. Sawatzky.

1 Q. He's directly next to Brian Hill?

2 A. Yeah. He's sitting next to Brian Hill. He's second -- back
3 row, second from the left.

4 Q. And as you're looking at the photo, the next person to the
5 right is the defendant?

6 A. It is.

7 Q. Let's look at a couple of photographs that were taken in the
8 hospital by police, first Government Exhibit 16B.

9 Is that a photograph taken that day of one side of
10 Ms. Hubby's neck?

11 A. It is.

12 Q. And then 16A, is that a photograph that they took of the
13 other side of her neck?

14 A. It is.

15 Q. And I just want to draw the court's attention to what has
16 been admitted as Government's Exhibit 15, which is a statement
17 from the International Association of Forensic Nurses. It
18 states in part, "Frequently there are no external evidence of
19 injury from strangulation, even in fatal cases."

20 Special Agent Jenkins, we discussed earlier, but I
21 want to go back to it, based on your review of the trial record
22 in this case, the strangulation of Ms. Hubby occurred shortly
23 before 4:47 p.m.; is that right?

24 A. It is.

25 Q. And that would be because that's when the neighbor first

1 called 911?

2 A. Right.

3 Q. I want to refer you to, though you do not need to pull up,
4 Government Exhibit 18.

5 Is that a copy of the defendant's testimony when he
6 was tried on the strangulation charge in Boone County?

7 A. It is.

8 Q. And referring to pages 124 and 125 and 139 and 142, I want
9 to ask you to summarize what's contained in those pages which
10 have been admitted as evidence.

11 What did Mr. Sawatzky say under oath about where he
12 was on April 29th --

13 MR. PARRISH: I would object, Your Honor. The summary
14 is not an accurate portrayal of his testimony. We think it
15 ought to be connected to the testimony itself. It speaks for
16 itself. It doesn't need any interpretation from an independent
17 witness.

18 THE COURT: It's a lengthy exhibit. He can highlight
19 the portions that he thinks are most relevant. So can you
20 later.

21 BY MR. KRICKBAUM:

22 Q. What did Mr. Sawatzky state about his whereabouts?

23 A. He stated that he was at home, at this time it would be 203
24 Ringgold Street, which would be the residence of his ex-wife,
25 Kathy Pinkerton; that he was there all night long and that he

1 was with his daughter, Kourtney Sawatzky, and that they had, I
2 believe it was T-bone steaks.

3 Q. He said that he did not leave his home all evening after
4 4:00 p.m.; is that right?

5 A. That's correct.

6 Q. And he said -- you mentioned T-bone steaks. He said he had
7 a very nice evening that night with his daughter at home?

8 A. That's correct.

9 Q. Let us play then Government Exhibit No. -- before you play
10 it, did police officers go to that house, 203 Ringgold, on the
11 night of April 29th looking for the defendant?

12 A. They did.

13 MR. KRICKBAUM: Let's play Government Exhibit 130.
14 This may be a little bit hard to hear. We have the transcript,
15 140.

16 (Government Exhibit 130 was played.)

17 BY MR. KRICKBAUM:

18 Q. Special Agent Jenkins, the young woman who's speaking to
19 police officers in that video, do you know who she is?

20 A. She's the daughter of Jay Sawatzky, Kourtney Sawatzky.

21 Q. And the woman who comes on speaker phone in the middle of
22 that, who is that?

23 A. That's the ex-wife, Kathy Pinkerton.

24 Q. And both of those women wrote character letters in support
25 of the defendant for the sentencing hearing; is that true?

1 A. They did.

2 Q. I want you now to follow up with what happened after this
3 strangulation, after the defendant strangled Ms. Hubby,
4 according to her reports. Did she return to a relationship with
5 him after that?

6 A. She did.

7 Q. Was there a no-contact order issued between them because of
8 this strangulation that occurred?

9 A. Yes.

10 Q. And over the next year or so, did Boone police officers
11 repeatedly stop and sometimes arrest both Ms. Hubby and the
12 defendant for violating that no-contact order?

13 A. Yes.

14 Q. So I want to talk to you about -- I want to move forward
15 several months to December 15, 2018, so several months after the
16 strangulation. I want to talk to you about some text messages
17 between the defendant and Carly Hubby in December.

18 Would you please look at Government Exhibit 25,
19 page 7.

20 Can you tell us, are these text messages between the
21 defendant and Carly Hubby?

22 A. They are.

23 Q. Were they extracted from the defendant's phone after it was
24 seized from his trailer in January of 2019?

25 A. They were.

1 Q. And on the far left, does it indicate who the text is from
2 and who it's to?

3 A. It does.

4 Q. And then the message is the box that's the second from the
5 right, which is highlighted; is that right?

6 A. Yes.

7 Q. So starting at the bottom of page 7, the first highlighted
8 message, which is from Carly Hubby to the defendant, what did
9 Ms. Hubby say?

10 A. "I want my life back."

11 Q. Continue.

12 A. "The one you promised me."

13 Q. Looking at the next page, page 8, how did the defendant
14 respond?

15 A. "Ya and that's what you would have had if you hadn't told
16 the fucking police on me."

17 Q. And what did Ms. Hubby say to that?

18 A. "No, that's why you should not try to kill me."

19 Q. Looking forward to page 11, looking at the highlighted
20 message in the middle there, what did the defendant say to
21 Ms. Hubby on that same date of December 15th?

22 A. "Look, I don't give a shit anymore. You lied, cheated and
23 told on me. That's it!"

24 Q. Looking at page 12, could you read the next highlighted
25 message on page 12, which is from the defendant to Carly Hubby?

1 A. "I tried to look past it but I can't."

2 Q. And then Ms. Hubby's response -- she sends several
3 responses. What is the next highlighted response from Ms. Hubby
4 to the defendant?

5 A. "I tried to look past you trying to kill me in hurting me
6 and abusing me and I did."

7 Q. And what did the defendant say to that?

8 A. "Any abuse was always started by you!"

9 Q. Looking at the next page, page 13, how did Ms. Hubby reply
10 when the defendant blamed her for any abuse?

11 A. "I don't get any credit for not calling the cops so many
12 times when I should have. I know I did not start the abuse,
13 that's bullshit."

14 Q. If you would, page 18 is the next highlighted text.

15 In the middle of the page, what did the defendant say
16 to Ms. Hubby on that same date?

17 A. "I'm not choosing them at all. You chose this when you
18 talked to cops."

19 Q. And Ms. Hubby sent several replies. What's the highlighted
20 line at the bottom of that page?

21 A. "You tried to kill me, said 'You're gonna die bitch,' and
22 then my sister called the cops. Wow."

23 Q. Turning to page 19 -- well, let me ask you about the sister
24 calling the cops. I think you testified earlier that
25 Ms. Hubby' sister spoke to the 911 dispatcher while the sister

1 was driving Carly Hubby to the ER on the day of the
2 strangulation; is that right?

3 A. It is.

4 Q. What did the defendant then say on page 19?

5 A. "She called but you talked."

6 Q. And how did Ms. Hubby reply?

7 A. "Yeah, you really, really stand by that standard of not
8 calling cops oh being a snitch. Like I said, you tried to kill
9 me."

10 Q. And she sent another message, and then how did the defendant
11 reply in the next highlighted text?

12 A. "If I tried to kill you, then you would be dead."

13 Q. Flipping to page 22, what did the defendant say in the top
14 message? What did he say to Ms. Hubby on that same date?

15 A. "I was just as lucky to find you as you were finding me.
16 Together we were unstoppable. It kills me that you told on me.
17 I really wish you hadn't."

18 Q. And Ms. Hubby's reply?

19 A. "It kills me that you tried to kill me. It killed me every
20 time we touched in anger. But I still love you and I still
21 thought we were gonna be together. I really wish you hadn't
22 given up. I think that's what kills me most of all."

23 Q. How did the defendant respond to that?

24 A. "I would never in my life tell on you."

25 Q. And then the last highlighted text from Ms. Hubby to the

1 defendant?

2 A. "You were more lucky than I was. You're the one who touched
3 me in anger. You're the one that gave up. Don't be fooled,
4 Jay. You're gonna do this to another girl and you really think
5 she's going to do what I did, write seven letters, do everything
6 she can in her power to get you off? No, she's not and you're
7 gonna be fucked."

8 Q. Ms. Hubby referred to the seven letters. She said "write
9 seven letters." Are you aware that she wrote multiple letters
10 to a judge in Boone County asking for the no-contact order to be
11 lifted and taking the blame for what happened, essentially
12 saying it was her fault what happened on April 29th?

13 A. Yes, sir.

14 Q. The last page I want to ask you about is page 24, starting
15 at the top. This is the same date. What did the defendant say
16 to Ms. Hubby in the first highlighted text?

17 A. "If you would have never told on me, then we would have been
18 stronger than ever."

19 Q. And how did Ms. Hubby respond?

20 A. "If you never would've beat me who had been stronger than
21 ever."

22 Q. She then sent another text. And then read the next
23 highlighted text that Ms. Hubby sent.

24 A. "You should be ashamed when you do that to me, should have
25 been sorry. You're not sorry at all. You're just thinking of

1 yourself no matter what."

2 Q. And then Ms. Hubby sent another text. And how did the
3 defendant reply in the next highlighted text?

4 A. "There's only one time I did you wrong. The rest was your
5 fault."

6 Q. That's all I want to cover from that exhibit.

7 I do want to go back to one more statement that
8 Ms. Hubby made to the police in the hospital after she was
9 strangled, and that is Government's Exhibit 13A, which is
10 another short video clip.

11 MR. KRICKBAUM: If you could play 13A.

12 (Government's Exhibit 13A was played.)

13 BY MR. KRICKBAUM:

14 Q. When the police asked Ms. Hubby whether the defendant had
15 weapons, she said, He's got -- among other things, she said,
16 He's got guns, he's got a .380, he's got a Sig, he's got a
17 Benelli.

18 I want to focus on the Benelli. Did law enforcement
19 later recover a firearm manufactured by Benelli in this case?

20 A. We did.

21 Q. Let's look at Government's Exhibit 21A.

22 What is 21A?

23 A. The Benelli Super Nova that we recovered from Ms. Kathy
24 Pinkerton's residence at 203 Ringgold. That was a warrant that
25 we served in April of 2018.

1 Q. You said that's a Benelli Super Nova. Is that a .12 gauge
2 shotgun?

3 A. It is, yes.

4 Q. Let's look at Government's Exhibit 21C.

5 Is that another photograph of the same shotgun after
6 it was seized in evidence?

7 A. It is. I took that photograph.

8 Q. Where did law enforcement find that Benelli? You said it
9 was at the house. Where in the house was it?

10 A. It was -- so as you walk into the main living area of the
11 house, there's kind of a little office area, but it's all open.
12 To the left, right in the middle of the living room, there's a
13 safe against the wall. It was inside that safe. The safe had
14 another firearm that Ms. Kathy Pinkerton said was hers, a
15 revolver. There was a lot of ammunition. There was also a
16 bunch of documents that linked both Kathy and the defendant to
17 the safe. The combination to that safe was a combination of
18 their birth dates together.

19 Q. And the defendant has pled guilty in this case to possessing
20 that firearm; is that right?

21 A. Yes.

22 Q. Have you seen what appears to be that same Benelli shotgun
23 in another photograph in this case?

24 A. I have.

25 Q. Take a look at Government's Exhibit 11, page 3.

1 Is that a photograph from July of 2016 that was found
2 on the defendant's phone?

3 A. It is.

4 Q. Who's in the photo? Who is the person?

5 A. The defendant, Mr. Sawatzky.

6 Q. And where does he appear to be located? Are you familiar
7 with that location?

8 A. I am. I have been there. Behind Ms. Pinkerton's residence,
9 there's an outbuilding, a garage. He had his weights set up
10 there, kind of an office area, and that's where he's seated by
11 the desk there.

12 Q. Where is the Benelli shotgun?

13 A. Directly behind him, leaning up next to a cabinet.

14 Q. If you could look at Government's Exhibit 21B -- sorry; I
15 need to pronounce better. I apologize, Ms. Kruse.

16 21D, now, on the left is the Benelli shotgun that you
17 recovered at that house in April of 2018, correct?

18 A. Yes.

19 Q. And on the right is the photograph of the defendant from
20 July of 2016?

21 A. Correct.

22 Q. Is there any similarities in these two firearms?

23 A. There are. They're both Super Novas. They're both Benelli
24 Super Novas. I know they look different, but the barrels are
25 the exact same. What you see is a magazine extender on the two,

1 and what you have is it's just an add-on part. It's pretty
2 easy -- I actually took it off. Once I had the right Allen
3 wrench, it took me about a minute-and-a-half, two minutes to
4 take it off. So all you would need is a cap to put it back on
5 and fix it and it would look exactly like the photograph.

6 Q. The photograph on the left is the one with the extended
7 magazine?

8 A. It is.

9 Q. And are there any features of the two firearms that appear
10 similar on the firearms themselves?

11 A. Yes, sir. So I noted that on the photograph that the --
12 that I didn't take, the fore grip is put all the way forward
13 like it had chambered a round, and it was just forward. You can
14 tell by the markings on the grip are the exact same markings --
15 this isn't the best photo; we have another one that would
16 probably be better. But the grip is the exact same, the fore
17 grip is. You can see where it starts to cut back, where the
18 ridges are, they are exactly the same.

19 Further, if you look at the vent ribs on the top, they
20 acted like a ruler, so what I did was I counted -- you can count
21 as the arch comes down or the holes, but I counted down to where
22 that, on the picture on the right, where that cap would insert,
23 and it's the exact same length for both of them. So it's very
24 similar.

25 Q. Now, the defendant has suggested that the gun in the photo

1 on the right is a BB gun that's made to look like a Benelli
2 Super Nova .12 gauge shotgun and that defendant then possessed
3 an actual Benelli a couple of years later that was recovered by
4 law enforcement and in the safe in the living room of his house.

5 After the defendant made that claim, did you contact
6 Benelli to ask them whether they've ever authorized anyone to
7 manufacture a look-alike non firearm that resembles or that is a
8 look-alike for the Super Nova .12 gauge shotgun?

9 A. I did.

10 Q. What did they say?

11 A. They're response was almost immediate. I asked about pellet
12 guns, airsofts, look-alikes, replica, BBs, pellets, all of them.
13 I said to them, Do you make those, manufacture those, or have
14 you licensed anybody to do that? Her response was an immediate
15 no and actually laughed a little bit. I also did a bunch of
16 Internet searches to see if maybe there was a Benelli Super Nova
17 similar to what's depicted there in a BB gun, pellet gun,
18 airsoft gun. I couldn't do that. I tried.

19 Q. In the sentencing brief that the defendant filed last night,
20 he included photographs of BB guns that he said that he -- or
21 his counsel found on the Internet. Are any of those photos that
22 he included photos of a gun that is in the style of the Benelli
23 Super Nova .12 gauge shotgun?

24 A. No. So the ones that he had offered weren't like it at all.
25 It was a completely different model of Benelli. It was a

1 Chinese company is what we believe it is. That was basically
2 taking the make of it and trying to make it their own and make
3 money off of it; but the other one was like a Remington 870, I
4 don't recall what the other was, but nothing like Benelli Super
5 Nova. I searched, couldn't find it, and maybe they couldn't as
6 well.

7 Q. Okay. I want to talk about what else was in the safe in the
8 house where the defendant was staying, somewhat briefly.
9 Government's Exhibit 21B, tell us if you know what that is.

10 A. So you can see that's the living room. There's the safe
11 behind it. This is where we found the Benelli and the revolver.
12 This is an ammunition canister that was found in the safe.

13 Q. Was there other ammunition that was in the safe that was not
14 in that can?

15 A. There was. There was other loose ammunition and then also
16 loose ammunition in a can.

17 Q. Now, in the presentence report on pages 41 and 22 of the
18 final PSR, the defendant has denied or objected to possessing
19 various calibers of ammunition. And I'm just going to list the
20 ones he's objected to: .22 caliber, .380 caliber, nine
21 millimeter, .45 caliber .44 caliber, and .223 caliber.

22 Were those calibers submitted to the DCI lab for
23 fingerprint comparison in this case?

24 A. They were.

25 Q. And what did the results show?

1 A. Every single one of those rounds that we're talking about,
2 the bag or the container has his fingerprint on it, all of the
3 ones that they've objected to.

4 Q. Have a fingerprint?

5 A. No; have his fingerprints on them.

6 Q. The defendant's?

7 A. The defendant's.

8 Q. Let's now move on to another topic that occurred around the
9 same time that this Benelli and the ammunition was recovered
10 from the defendant's home. The day before those things were
11 recovered, was the defendant found with methamphetamine in his
12 motorcycle?

13 A. He was.

14 Q. So that would be April 11th of 2018. Can you just -- I want
15 to move through this narrative relatively quickly, so I'll ask
16 you this question to begin with. Did the incident that day
17 begin when a police officer in Boone saw the defendant on his
18 motorcycle and saw Ms. Hubby get on the motorcycle?

19 A. Yes.

20 Q. And the officer -- at that time there was a no-contact order
21 between the defendant and Ms. Hubby; is that right?

22 A. Yes. Prior to the stop the officer actually called and
23 verified that the no-contact order was in place.

24 Q. And what happened? Did the officer pursue the defendant at
25 that point?

1 A. He did. He went to gain ground to stop the vehicle.

2 Mr. Sawatzky gained ground on the officer, at which point

3 Ms. Hubby jumped off of the motorcycle and hid from law

4 enforcement. Mr. Sawatzky left that area and stopped a short

5 time later when the officer activated his lights and sirens.

6 Q. Mr. Sawatzky has denied or objected to possessing this

7 methamphetamine, so I want to review what the evidence is. Once

8 the officer stopped Mr. Sawatzky, did the officer perform an

9 inventory search of that motorcycle?

10 A. Yes.

11 Q. And was one of the saddle bags of the motorcycle unlocked?

12 A. Yes.

13 Q. What was in that unlocked saddle bag?

14 A. Ms. Hubby's purse was in that saddle bag.

15 Q. Was the other saddle bag locked?

16 A. It was.

17 Q. How did the officer open it?

18 A. When Mr. Sawatzky was brought to jail, on his pants on a key

19 ring he held by his belt line, he actually had the keys to the

20 saddle bags on his person.

21 Q. What was in that locked saddle bag that the officer opened

22 with the defendant's key from his key ring from his pants?

23 A. There was five individual baggies of methamphetamine. Each

24 contained about 1/16 of an ounce or 1.75 grams of

25 methamphetamine.

1 Q. Would you please look at Government's Exhibit 20 and tell me
2 if that's a photo of the methamphetamine after it was seized
3 from the motorcycle.

4 A. It is.

5 Q. Does that appear to be consistent with distribution of
6 methamphetamine?

7 A. It is.

8 Q. The next thing that I want to talk to you about, Special
9 Agent Jenkins, is the defendant's threat to murder his state
10 prosecutor. As of April of 2018, after this stop where the
11 methamphetamine is found in his motorcycle, did the defendant
12 face charges in Boone County for possession with intent to
13 distribute methamphetamine?

14 A. He did.

15 Q. And also in April of 2018, did the defendant's girlfriend,
16 Carly Hubby, begin to provide you and the ATF with information?

17 A. Yes.

18 MR. PARRISH: What was that date again?

19 MR. KRICKBAUM: April of 2018.

20 MR. PARRISH: April what?

21 MR. KRICKBAUM: I didn't --

22 MR. PARRISH: Oh, you just said April?

23 MR. KRICKBAUM: Yes.

24 MR. PARRISH: Thank you.

25 BY MR. KRICKBAUM:

1 Q. Now, at the time Ms. Hubby was providing you with
2 information, to your knowledge, was the defendant aware that she
3 was providing you with information?

4 A. No.

5 Q. Now, in April of 2018, what did Ms. Hubby tell you about --
6 specifically about the Assistant Boone County Attorney who was
7 prosecuting the defendant's drug case?

8 A. She stated that Mr. Sawatzky had two plans in place. One
9 plan was that he would be able to get out and lead a normal
10 life. The other plan was that if he had an extended jail
11 sentence, that he might as well kill the prosecutor, which would
12 be Mr. Speers, the Boone County prosecutor, and then he -- there
13 was two other people that he may kill. One was Kari White,
14 which was a probation officer.

15 Q. The prosecutor you said was Mr. Speers. Is that Matthew
16 Speers?

17 A. It is.

18 Q. He's an Assistant Boone County Attorney?

19 A. He is.

20 Q. Is he the same prosecutor who prosecuted the defendant for
21 strangling Carly Hubby?

22 A. He is.

23 Q. When you said that the defendant had two plans, did he label
24 what those plans were?

25 A. Plan A and plan B.

1 Q. Plan A was the live-a-normal-life plan?

2 A. The way I understand it, yes.

3 Q. And what was plan B?

4 A. Plan B was to kill Matthew Speers and possibly a second.

5 Q. Did you believe this to be a credible threat when you heard
6 it?

7 A. I wanted to verify. So I actually called Matthew Speers and
8 talked to him directly. It was urgent enough that I called him
9 several times until he called me back. Once he called me back,
10 we spoke about -- Ms. Hubby provided certain details about what
11 Mr. Sawatzky had told her, basically he knows the path that he
12 takes, that he walks a certain direction with his dog, that
13 Mr. Sawatzky wants to use a bow, a compound bow -- or I'm sorry,
14 a crossbow because it's silent, an assassin's weapon. He wants
15 to use -- he knew that Mr. Speers had, like, a life alert button
16 and believed he had a life alert button and would call the
17 police if anything happened to him. When I called Mr. Speers
18 and I told him these things, I said, Hey, do you have a routine
19 when you walk your dog? He was visibly nervous and said, Yes, I
20 have a routine when I go home and walk my dog.

21 Mr. Speers' house at the time and Ms. Hubby's house at
22 the time were relatively close, less than a mile, a half mile.
23 I assume that might have something to do with his knowledge of
24 Mr. Speers' pattern, but Mr. Speers was absolutely afraid.

25 Q. So it was in April when Ms. Hubby told you about the

1 defendant's plan to kill his prosecutor. I want to talk to you
2 about texts that the defendant sent from the Boone County Jail a
3 few weeks after that, which is Government Exhibit 23A.

4 If we could look at 23A.

5 Now, are these text messages between the defendant and
6 several other people in Government's Exhibit 23 that he sent
7 while he was in custody at the Boone County Jail?

8 A. Yes.

9 Q. And am I right that they go from top to bottom; in other
10 words, the ones at the bottom are first and then it continues up
11 from there; is that correct?

12 A. Chronologically, bottom to top.

13 Q. I apologize, bottom to top.

14 And this first set of texts, 23A, these are texts
15 between the defendant and Kathy Pinkerton, his ex-wife; is that
16 right?

17 A. It is.

18 Q. And you recognize her phone number, correct?

19 A. Yes.

20 Q. Let's start at the bottom then, the first text that
21 Ms. Pinkerton sent to the defendant. What did Ms. Pinkerton say
22 to the defendant?

23 A. "Well, word on the street is you put a hit out on Speers.
24 My 80-year-old mom heard it from 90-year-old friend."

25 Q. And how did the defendant respond in the next text up?

1 A. "Really. I couldn't afford that."

2 Q. And the date of those texts is May 14, 2018?

3 A. They are.

4 Q. And looking at 23B, have you determined -- let me first say
5 the date of 23B is the next day, May 15. And have you
6 determined who the defendant was texting at that time?

7 A. We have. We spoke with Ms. Hubby, and she stated that
8 because there was an active no-contact order, that she was
9 communicating with him with various pseudonyms through an app.
10 So this is one of those.

11 Q. So these are texts between the defendant and Carly Hubby?

12 A. They are.

13 Q. And she's using the pseudonym "Barb"?

14 A. She is.

15 Q. In part because she's not allowed to have any contact with
16 Mr. Sawatzky, the defendant, because of the no-contact order?

17 A. Correct.

18 Q. Looking at the second page -- I'm sorry, let's start we're
19 going to start with the first page. The last highlighted text
20 there is a text from the defendant to Ms. Hubby. What did he
21 say to her?

22 A. "I think if I move, they will stop attacking my daughter."

23 Q. And then what did the defendant say in the next text to
24 Ms. Hubby?

25 A. "That's option A and you know option B."

1 Q. Now, when the defendant said if I move, they will stop
2 attacking my daughter, what do you understand that to mean?

3 A. During the warrant we did --

4 MR. PARRISH: Objection to that. That's calling for a
5 legal conclusion of this witness.

6 THE COURT: I'll reserve ruling on the objection.

7 You can go ahead and answer.

8 A. About a month before that we had executed a warrant. We
9 found methamphetamine in the residence, specifically near
10 Ms. Sawatzky, Kourtney Sawatzky, and upstairs in the bedroom of
11 Ms. Pinkerton as well, so DHS was involved. We called DHS and
12 let them do their investigation at that time. We didn't charge
13 Ms. Sawatzky or Ms. Pinkerton at the time and let DHS do their
14 investigation. So that's what he was referring to.

15 BY MR. KRICKBAUM:

16 Q. DHS was investigating --

17 THE COURT: The objection is overruled. Go ahead.

18 MR. KRICKBAUM: I apologize.

19 BY MR. KRICKBAUM:

20 Q. DHS was investigating, among others, Kourtney Sawatzky
21 because her children were in a home where drugs were found?

22 A. Yes.

23 Q. Government Exhibit 23C, this is dated a week -- a little
24 less than a week later, May 21st. Are these more texts between
25 the defendant and Carly Hubby who is using the pseudonym "Barb"?

1 A. They are.

2 Q. I want to start on page 2 with the bottom highlighted text
3 on page 2.

4 Ms. Kruse, can you move to page 2? Thank you.

5 So this text is sent by the defendant to Carly Hubby.
6 What did the defendant say to Carly Hubby?

7 A. "He has succeeded in taking everything I love from me. I
8 have nothing more to lose. Not a single reason left to even
9 poke the bear."

10 Q. And when the defendant refers to "He has succeeded in taking
11 everything I love from me," who do you understand "he" to be
12 referring to?

13 A. Mr. Speers.

14 Q. The next message that defendant sent Carly Hubby, what did
15 he say in the next one up?

16 A. "The only thing I can think of is if Carly still wants to be
17 with me, maybe she could hire attorney to try and drop our NCO,"
18 no-contact order, "and possibly put it on a speedy trial."

19 Q. Now, the defendant is texting Carly Hubby but referring to
20 Carly in the text. What is your understanding of why he is
21 doing that?

22 A. This is an attempt to mislead law enforcement so they don't
23 know they're communicating.

24 Q. And he continues when he talks about trying to drop our NCO
25 and possibly put it on a speedy trial, the next text up that

1 continues from the defendant's name, "Type situation and then I
2 could move back in with her." Is that right?

3 A. It is.

4 Q. "Her" being Carly Hubby?

5 A. Yes.

6 Q. Then going to the first page of 23C, am I right that on the
7 bottom text, the defendant asks Carly Hubby, "What do you think
8 of yhat idea?" "That" is misspelled. That is what he said,
9 right?

10 A. Yes.

11 Q. And how did Ms. Hubby respond?

12 A. "I'm sure she'll do that for you, she loves you so much."

13 Q. Again, this is Carly Hubby referring to herself in the third
14 person?

15 A. Right.

16 Q. Moving up one, what did Ms. Hubby say -- excuse me, what did
17 the defendant say to Ms. Hubby in the next text, highlighted
18 text up?

19 A. "I know, right. I miss her so much. My only other option
20 ends up for me and two others. And I'm trying, babe, to avoid
21 that."

22 Q. In the next text does the defendant clarify that he left out
23 a word?

24 A. Yes.

25 Q. What did he add?

1 A. He added "Bad for."

2 Q. So that would make the lower text read, My only other option
3 ends up bad for me and two others?

4 A. That's correct.

5 Q. And the threat that Ms. Hubby had told you about weeks
6 earlier was that the defendant had threatened both the Assistant
7 County Attorney, Matt Speers, as well as a second person who you
8 believe to be the probation officer?

9 A. Yes.

10 Q. Government Exhibit 23E, now, these are dated a couple of
11 days later, May 24th; is that right?

12 A. That's correct.

13 Q. And these are between the defendant and one of his ex-wives,
14 Nikki Sawatzky, correct?

15 A. It is.

16 Q. And you are also familiar with her telephone number; is that
17 right?

18 A. I am.

19 Q. Let's turn to page 2, starting with the bottom text from
20 Nikki Sawatzky to the defendant. What did she say to him?

21 A. So they haven't I believe that's appoint her an attorney and
22 may not. The one I talk to has conflict of interest so we are
23 calling another. But Boone corrupt coming from an out of town
24 attorney.

25 Q. Is Nikki Sawatzky the mother of Kourtney Sawatzky who is the

1 defendant's daughter?

2 A. I believe so, yes.

3 Q. So when they say they haven't appointed her an attorney, who
4 do you understand Nikki to be referring to?

5 A. Kourtney.

6 Q. Now, the next one up continues a message from Nikki to the
7 defendant. What does she say?

8 A. "Which we already knew but if they think they're gonna get
9 away with messing with these babies. I've had it with Boone.
10 Mf fuck."

11 Q. And the next message up, which is also from Nikki to the
12 defendant?

13 A. "Sorry, I'm contacting ACLU today again."

14 Q. And how does the defendant respond in the top highlighted
15 message?

16 A. "Contact the president for all I care. Something needs to
17 be done before I resort to plan B!"

18 Q. Plan B was to kill the assistant county attorney who was
19 prosecuting his case, correct?

20 A. That's correct.

21 Q. Shortly before the defendant sent these texts, was he
22 released from the Boone County Jail?

23 A. He was.

24 Q. And did he remain free until he was arrested in this case,
25 which was in -- the federal case, which was in February of 2019,

1 so months later?

2 A. Yes.

3 Q. And am I correct that he never executed on his plan to
4 murder his state prosecutor?

5 A. He never did.

6 Q. The last topic I want to talk to you about, but it will take
7 a little while, and that is a shooting involving the Sons of
8 Silence and a gang called Street Soldiers in November of 2018.
9 So let's talk about that, and let's start with some background
10 on the Street Soldiers.

11 Can you just give us a general description of what
12 kind of a motorcycle club is the Street Soldiers?

13 A. Yes, sir. The Street Soldiers started shortly before that,
14 so before November of 2018. Another club had disbanded. Part
15 of the One Shot Ryders and Thunderguards disbanded and became
16 the Street Soldiers. They consider themselves to be a 1%er
17 club, an outlaw club.

18 Q. And what about the race of their members?

19 A. They are primarily minority members, and the ones that I've
20 met with and understand, all but one is black.

21 Q. In the fall of 2018, what was happening with the Street
22 Soldiers and their presence in Iowa?

23 A. What was the date?

24 Q. The fall of 2018.

25 A. The fall, so they wanted to set up a meeting with the Sons

1 of Silence -- this goes back to the bottom rocker and respecting
2 the Sons of Silence as their territory -- to meet with the Sons
3 of Silence and to let them know that they were going to be
4 creating a chapter and they wanted to move to the Waterloo area.

5 Q. Were they wearing a patch identifying their club?

6 A. Yes.

7 Q. And the bottom rocker?

8 A. Yes.

9 Q. Are you familiar -- let me rephrase that.

10 I want to talk to you about a meeting that took place
11 in the fall, September or October of 2018, at a bar in
12 Marshalltown between the Street Soldiers and the Sons of
13 Silence. So I want to talk to you about that meeting, and I
14 first want to ask you, who told you about that meeting?

15 A. Several different people actually told me about that
16 meeting. I spoke to members of the Street Soldiers, Sons of
17 Silence members and former Sons of Silence members as well.

18 Q. Among the people that you spoke to was a confidential source
19 who we've identified as CS No. 2; is that right?

20 A. It is.

21 Q. And these people that you spoke to, were they present for
22 the meeting that we're talking about?

23 A. They were.

24 Q. What was the purpose of the meeting as they described it to
25 you?

1 A. The meeting was between the Sons of Silence and the Street
2 Soldiers to determine whether or not the Street Soldiers could
3 begin their chapter and then move to the Waterloo area.

4 Q. And what did the Street Soldiers need in order to begin
5 their chapter and move to the Waterloo area?

6 A. Permission from the Sons of Silence.

7 Q. According to the eyewitnesses that you talked to, who was
8 present on the Sons of Silence side of that meeting?

9 A. Mr. Sawatzky, Brian Hill, and then Darryl McDonald was also
10 there.

11 Q. So the defendant, correct?

12 A. Yes.

13 Q. Brian Hill, the excavator?

14 A. Yes.

15 Q. And Darryl McDonald, the enforcer, who has the T-shirt about
16 burying bodies?

17 A. Yes.

18 Q. What was the defendant's role in that meeting, according to
19 the people that you spoke to?

20 A. Security, to stand back and kind of watch and observe.

21 Q. I'm sorry, let me --

22 A. The defendant? Oh, I'm sorry. He was leading the meeting.

23 Q. I'll just ask you again, the defendant's role, and your
24 answer was?

25 A. Leading the meeting, he was in charge of the meeting.

1 Q. And according to the eyewitnesses you talked to, who was
2 present for the Street Soldiers?

3 A. There was the president and vice president, Marcus and
4 Terrance Williams.

5 Q. Did CS No. 2 tell you -- after the meeting broke up, did CS
6 No. 2 talk to a member of the Sons of Silence about whether the
7 Street Soldiers were going to get permission to open or operate
8 a chapter in Iowa?

9 A. He did. He spoke with Brian Hill, and Brian Hill informed
10 CS No. 2 that the Street Soldiers were not going to be allowed
11 to be a chapter in Iowa.

12 Q. So that meeting happens in the September, October time
13 frame. Let's jump ahead a month or so to November of 2018.

14 Was Carly Hubby still providing you with information
15 in November of 2018?

16 A. She was.

17 Q. And was she living with the defendant or living with him
18 frequently during that time?

19 A. Yes.

20 Q. And that was in violation of the no-contact order; is that
21 right?

22 A. It was.

23 Q. So why did you allow Carly Hubby to live with the defendant
24 in violation of a no-contact order while she was providing you
25 with information?

1 A. Throughout the investigation, we tried to separate Ms. Hubby
2 from Mr. Sawatzky. We asked her numerous times to stay away,
3 stop contacting him. She didn't listen to us. She continued to
4 go back to him.

5 At that point, it's not my job as an ATF agent to
6 enforce state laws, especially no-contact orders, and Boone P.D.
7 and Boone County were arresting them for that no-contact order,
8 so they were doing their job.

9 Q. I want to talk about the information that Carly Hubby gave
10 you in early November of 2018. Generally speaking, what did she
11 tell you?

12 A. She told me that Mr. Sawatzky had planned to go to Waterloo
13 to scare a rival motorcycle gang, and the words she used, she
14 listed two gangs, one was Street Soldiers, that they were going
15 to go up there and deal with, and then a specific name of one of
16 the members, Ren who we later identified was actually a member
17 of the Street Soldiers.

18 Q. So let's look at Government's Exhibit No. 28.

19 Does that contain text messages that Ms. Hubby sent
20 you in November of 2018?

21 A. Yes.

22 Q. And starting at the top of page 1 of 28, just to orient us,
23 the date of these beginning texts is November 3rd of 2018; is
24 that right?

25 A. It is.

1 Q. That would be the day before the shooting?

2 A. Yes.

3 Q. So at the beginning of the texts, Ms. Hubby is texting you
4 on the left in the clear text; is that right?

5 A. Yes.

6 Q. And you see she refers to the Street Soldiers, Sin City and
7 Ren. Those are the groups or people that you just talked about,
8 correct?

9 A. Yes.

10 Q. And she says, "The Waterloo shit.

11 "He goes tomorrow?"

12 What do you understand that to mean?

13 A. You know, at the time, I didn't have a good background what
14 was going on. I knew a little bit but not very much. I knew
15 that, obviously, he was going up there to handle a problem in
16 Waterloo. When they talk about the Street Soldiers and Sin
17 City, those are both primarily minority or black biker gangs.
18 So that's what I understood it to be.

19 Q. And who is "he" when she says, "He goes tomorrow"?

20 A. Mr. Sawatzky, the defendant.

21 Q. So let's look about the next day. If you can look at page
22 2. Does the next page contain texts between you and Ms. Hubby
23 on November 4th, the day of the shooting?

24 A. They do.

25 Q. All right. At the top she says -- why don't you read what

1 she says?

2 A. "Crossbow, .45 and bat."

3 Q. And you reply, "That's what he took?"

4 A. Yes.

5 Q. Why don't you read her response.

6 A. "Yes.

7 "They're just gonna scare them I overheard."

8 Q. Now, when Ms. Hubby told you that the defendant had brought
9 a crossbow with him to Waterloo, am I correct that she had
10 previously told you that when the defendant was plotting about
11 how to possibly murder his state prosecutor, he said he was
12 going to commit that murder with a crossbow because it would be
13 silent?

14 A. Yes.

15 Q. On September 5th of this year, so last month, did you
16 interview Jason Bentley who was actually present for the
17 eventual shooting of the Street Soldiers?

18 A. I did.

19 Q. And you mentioned this earlier in your testimony, but what
20 did he tell you the defendant had on his lap in Waterloo during
21 the confrontation or at around the time of the confrontation
22 with the Street Soldiers?

23 A. A crossbow.

24 Q. And you asked Ms. Hubby, "When did they leave," meaning when
25 did the defendant go to Waterloo, correct?

1 A. Yes.

2 Q. And what did she say?

3 A. "Around 11."

4 Q. Now, looking at page 3, which are text messages she sent you
5 on November 5th, the day after the shooting, she says, "So did
6 find out anything from yesterday?"

7 And you replied, "Nothing happened...or they didn't
8 report anything."

9 Is that right?

10 A. Yes.

11 Q. At that time did you know anything about the shooting at the
12 point you had that exchange with her?

13 A. No.

14 Q. And what did Ms. Hubby send you in response?

15 A. The first response was, "Wow." And then she sent me a
16 series of three documents that she had taken photographs of.

17 Q. And those documents are a copy of the hit list that we've
18 looked at earlier, Government's Exhibit 35, which contains
19 photographs, names and, in some cases, addresses of what appear
20 to be members of the Street Soldiers; is that right?

21 A. Yes.

22 Q. That hit list takes up the next several pages of this text
23 exchange, correct?

24 A. Yes.

25 Q. So if you could then go to page 7, what did Ms. Hubby tell

1 you on page 7, which is the same day -- the day after the
2 shooting, November 5th? If you could just read down the row her
3 messages to you on page 7.

4 A. "Face and Flex were the ones they went after.

5 "Street Soldiers shot off three rounds and they fired
6 back 24 rounds from car to car.

7 "Police were coming when they left he said.

8 "If you ask me that's a lot of missed bullets.

9 "He was almost certain someone got hit.

10 "You know what's really fucked up?"

11 Q. Now, when Hubby told you that Face and Flex were the ones
12 they went after, I think you testified to this. I just want to
13 make sure. Who are Face and Flex?

14 A. Those are the nicknames of the president and vice president
15 of the Street Soldiers, so the two men that were present at the
16 Marshalltown meeting, Terrence Williams and Marcus Williams.

17 Q. And are they present on the hit list that Ms. Hubby had
18 texted to you that day?

19 A. Yes.

20 Q. She said, "The Street Soldiers shot off three rounds and
21 they fired back 24 rounds from car to car."

22 Who do you understand the "they" to be in that
23 communication?

24 A. "They" would be the Sons of Silence members.

25 Q. And toward the end she said, "He was almost certain someone

1 got hit."

2 Who do you understand her to be referring to there?

3 Who was almost certain?

4 A. The defendant.

5 Q. Thank you.

6 Looking at page 8, you asked her where she got this
7 information?

8 A. I did.

9 Q. And what was her response?

10 A. From him.

11 Q. Meaning the defendant?

12 A. Yes.

13 Q. Page 8, you asked her in the middle message, in the middle
14 green message, you asked her, "Who made up the sheets?"

15 Were you referring to the hit list there?

16 A. I was.

17 Q. What was her response, if you could just read to the last
18 text -- the second-to-the-last text on that page.

19 A. "His brothers.

20 "Whoever is in charge of intel.

21 "It's accuracy is good I was told.

22 "He thinks about 9 of them will quit now."

23 Q. And the nine of them he thinks will quit, what does that
24 refer to?

25 A. He's referring to the Street Soldiers. He believes that

1 after this incident, it will scare them so they will quit the
2 club.

3 Q. Looking at page 11, is page 11 a continuation of your same
4 text conversation with Ms. Hubby?

5 A. It is.

6 Q. And this would be a couple of days later on November 7th?

7 A. It is.

8 Q. You asked her in the first text in the green, "Who else
9 shot?"

10 And what was her response?

11 A. "Well, we will be able to now he has a job."

12 Q. Was that nonresponsive; that was responding to something
13 else?

14 A. I believe it was something else.

15 Q. And then what did she say after that?

16 A. "Joey/Big Tuna and Brian.

17 "Did you find anything out?"

18 Q. You then asked her, "Brian?"

19 And what was her response?

20 A. "Hill."

21 Q. That would be the aforementioned Brian Hill who we've
22 discussed multiple times today; is that right?

23 A. It is.

24 Q. And then you asked, "Do you know what type of gun the had?"

25 And her response?

1 A. "No."

2 Q. And then what did she say?

3 A. "Swaty had a .45."

4 Q. And you asked her, "Okay. Did he put it back?"

5 And what was her response?

6 A. "He has it on him now."

7 Q. Now, did you later learn or -- after your initial
8 conversation with Ms. Hubby when she told you that the defendant
9 was going to Waterloo, after that, did you learn that a Waterloo
10 police officer was called to a location in Waterloo on the
11 morning after the shooting? That would be November 5th.

12 A. Yes.

13 Q. And what was he called there for?

14 A. The owner of the business that was on that street, it's a
15 desolate street, so this was on a Sunday night when it occurred.
16 The exact time I don't have off the top of my head, but it was
17 toward the evening hours. So he owns both sides of the -- of
18 the side of the street, so he was walking from one business,
19 like, the administrative side, to go over to the other side, and
20 he observed on the ground shell casings, so he contacted law
21 enforcement.

22 Q. What caliber of shell casings did the officer eventually
23 find when he responded to the scene?

24 A. There was a pile of .45 caliber and there was a pile of nine
25 millimeter.

1 Q. Now, much later after the shooting, did you interview
2 confidential source No. 2?

3 A. I did.

4 Q. And did he tell you that he was one of the people involved
5 in the shooting between the Street Soldiers and the Sons of
6 Silence?

7 A. Yes.

8 Q. Did he tell you that the defendant and multiple other
9 members of the Sons of Silence were present for that shooting?

10 A. Yes.

11 Q. I want to talk through what he told you in summary. Let's
12 start with, where did CS 2 tell you he met with the defendant on
13 the day of the shooting?

14 A. At Brian Hill's residence.

15 Q. At Brian Hill's residence?

16 A. Yes.

17 Q. In Roland, Iowa?

18 A. Yes.

19 Q. Was CS 2 armed?

20 A. He was.

21 Q. What was he armed with?

22 A. A nine millimeter pistol.

23 Q. And according to CS 2, was Brian Hill armed?

24 A. He was.

25 Q. What was he armed with?

1 A. He had a .380 pistol, a Taurus Judge, which is a revolver,
2 and he had an AK.

3 Q. Was the defendant armed, according to CS 2?

4 A. Yes.

5 Q. What did he have?

6 A. A .45 caliber pistol.

7 Q. And a crossbow?

8 A. And a crossbow.

9 Q. The fact that Brian Hill -- I think you testified his house
10 was one of the ones that was searched in September of 2019?

11 A. That's correct.

12 Q. And Government Exhibits 29A through J, those are all items
13 that were seized from his house and you reviewed those before
14 your testimony, correct?

15 A. I have.

16 Q. Now, CS 2 told you prior to your search at Mr. Hill's house
17 that on the day of the shooting, Mr. Hill had a .380, a Taurus
18 Judge revolver, and an AK-47, correct?

19 A. Yes.

20 Q. Let's talk about what you found at Mr. Hill's house months
21 after CS 2 told you that.

22 Look at Government Exhibit 29D. Can you tell
23 us generally -- first of all, is that a photo of items seized
24 from Mr. Hill's house in September of 2019?

25 A. It is.

1 Q. What do we see here?

2 A. That's that photo of his motorcycle cut, and they are
3 removing a revolver from the interior pocket.

4 Q. 29E, is that -- go ahead.

5 A. Similar, they're removing that resolver from an interior
6 pocket.

7 Q. Does that have part of the Iowa rocker on it?

8 A. It does.

9 Q. What's the patch on the left?

10 A. The patch on the left says, "Federal Fabricated Crimes" with
11 a line through it.

12 Q. 29G? What is that?

13 A. That is the Taurus Judge being removed from the interior
14 pocket of his vest.

15 Q. 29I?

16 A. That is an overall of that revolver that was taken out of
17 his vest that says "The Judge" on the right-hand side.

18 Q. And then 29J is the last one from Mr. Hill's house.

19 A. Underneath of his cut, there was an AK pistol, and there's
20 your AK pistol with, it looks like, a round next to it.

21 Q. All right. Now, so we said -- you said that, according to
22 CS 2, the defendant and Mr. Hill armed themselves at Mr. Hill's
23 house. Where did they go after that, according to CS 2?

24 A. They drove to Jason Bentley's residence.

25 Q. Jason Bentley, one of the character witnesses for the

1 defendant --

2 A. Yes, sir.

3 Q. -- or I should say, he wrote a letter?

4 According to CS 2, what happened on the way to
5 Mr. Bentley's house when they were driving there?

6 A. Well, the CS was seated in the backseat. The defendant
7 handed the CS a firearm to clean off both the bullets and the
8 actual firearm itself. The driver was Mr. Hill. Mr. Hill
9 passed another firearm back to the CS. The CS wiped down that
10 firearm and ammunition as well. There was a bag in the back
11 behind the CS. The CS took that bag, the firearms out of it,
12 and wiped down those firearms and ammunition as well.

13 Q. Now, when these three men, with their freshly wiped down
14 firearms, arrive at Jason Bentley's house, who did they
15 eventually meet? What other people did they meet at Mr.
16 Bentley's house, according to the CS?

17 A. Yes, sir. So Corey Einfelt, E-I-N-F-E-L-T. Later
18 Mr. Bradley Ball arrived, aka Buttons, and then you had
19 Mr. Bentley was there, Mr. Hill now, and the defendant,
20 Mr. Sawatzky.

21 Q. Now, the three new people who weren't in the car on the way
22 to Bentley's house are Bentley, Ball, and Corey Einfeld, is it
23 your understanding they were all prospects for the Sons of
24 Silence at the time of this shooting?

25 A. Yes.

1 Q. And CS 2 was a probate, correct?

2 A. Yes.

3 Q. One level up from a prospect?

4 A. Yes.

5 Q. None of them yet were full patch members, none of them?

6 A. None of them.

7 Q. We saw the hit list of Street Soldiers earlier, Government
8 Exhibit 35. According to CS 2, when defendant and CS 2 and
9 these other men congregated at Bentley's house, what happened
10 with that hit list?

11 A. That hit list was passed around between the members so they
12 could see who was -- you know, where they were going and who
13 they were going after.

14 Q. And let's look at Government Exhibit 35.

15 That's a copy of the hit list. Remind us again, where
16 was that item recovered?

17 A. This item was recovered in the trailer belonging to
18 Mr. Sawatzky when we did the search warrant in January of 2019.

19 Q. In his trailer, the same trailer with the Nazi flag hanging
20 on the window?

21 A. Yes.

22 Q. After the Sons of Silence passed around that hit list at
23 Bentley's house, according to CS 2, where did they go next?

24 A. They went to the area of one of the member's houses and
25 started watching them, trying to find them.

1 Q. One of the members of the Street Soldiers?

2 A. Yes, sir.

3 Q. And there were two cars; is that right?

4 A. There were.

5 Q. Who was in each car?

6 A. The CS was in one vehicle with Mr. Bradley Ball, and then
7 the other vehicle was a newer Dodge Ram. That was Bentley's
8 vehicle. So Bentley was the driver, Mr. Sawatzky was the
9 passenger, front seat passenger. In the rear seat was Corey
10 Einfelt, and then you also had Mr. Hill was in the backseat.

11 Q. Now, when CS 2 talked to you about driving with Mr. Ball to
12 Waterloo, did he, in fact, tell you that they parked their car
13 across the street from and in the vicinity of the house of one
14 of the Street Soldiers they were looking for?

15 A. Yeah. I believe he said they backed in to watch as well.

16 Q. One of the Street Soldiers that was on that hit list?

17 A. Yes.

18 Q. Could you summarize for us, walk us through, what did CS 2
19 say happened as they're parked near the house watching the home
20 of that Street Soldier?

21 A. There's a food pantry nearby, so I've also seen video that
22 corroborates this; bit they're parked watching the house. They
23 begin to leave, and the victims actually pull into that area,
24 which is behind the residence of the victim. The victims begin
25 to get behind CS 2 and Bradley Ball, and Bradley Ball and the CS

1 leave the area, followed by the victims as they follow them
2 around.

3 Do you want me to continue?

4 Q. Please.

5 A. So Mr. Ball is driving, drives in kind of a figure eight,
6 kind of out of the area about a few blocks, also while on the
7 phone talking to somebody in the Dodge Ram, is coordinating with
8 them. Ball comes back around the area, and then he passes by
9 the Dodge Ram that is now parked on the side of the road in that
10 desolate area. Mr. Ball cuts his vehicle off to stop the
11 victims who were behind them. Mr. Bentley later told me he cut
12 off as well, trying to stop that vehicle from moving, but as
13 they passed through the choke point, gunfire was exchanged.

14 Q. Now, CS 2 told you he believed that the Street Soldiers
15 fired first, correct?

16 A. That's correct.

17 Q. And the Street Soldiers you talked to said they believed the
18 Sons fired first?

19 A. That's correct.

20 Q. In any case, there was gunfire exchanged between those two
21 cars, correct?

22 A. There was.

23 Q. And CS 2 told you that he unloaded his magazine, he fired
24 every bullet that was loaded in that gun, correct?

25 A. He did.

1 Q. And then the Sons of Silence drove away?

2 A. Yes.

3 Q. Both cars?

4 A. Yes.

5 Q. According to CS 2, where did they go after the shooting?

6 A. Back to Mr. Bentley's residence.

7 Q. And according to CS 2, at Mr. Bentley's residence, what
8 statements did Brian Hill make to CS 2?

9 A. Brian Hill met up with CS 2, told CS 2 that he should wash
10 his hands. He also explained that he had fired his -- or
11 emptied his firearm as well, so both Mr. Ball and Mr. Hill had
12 fired their weapons empty, and they needed to wash their hands.

13 Q. Did CS 2 tell you that he and Mr. Hill later scrubbed,
14 physically scrubbed their firearms with a wire brush to clean
15 them off?

16 A. Yes.

17 Q. To be clear, Mr. Hill was one of four leaders of the Central
18 Iowa Chapter of the Sons of Silence, correct?

19 A. Yes.

20 Q. And who did Mr. Hill report to in the Sons?

21 A. The defendant, Mr. Sawatzky.

22 Q. When CS 2 talked to you about the shooting, did he tell you
23 why he participated in it, the shooting and ambush and entire
24 incident?

25 A. Sure. To gain influence in the club, to work his way to

1 become a full patch member of the Sons of Silence.

2 Q. In particular, did he tell you that he wanted to earn that I
3 Take Care of Business patch, I.T.C.O.B.?

4 A. He did. He wanted to be the first probate to ever earn that
5 patch.

6 Q. Now, the other participants who were not yet full members of
7 the Sons, Bentley, Ball, Einfeld, after the shooting, did they
8 eventually become full members?

9 A. Yes.

10 Q. Within the last month or so?

11 A. Yes.

12 Q. How do you know that?

13 A. We were at their houses, and Mr. Bentley told me early in
14 September of 2019, shortly before we executed the search
15 warrants, that they had become patch members.

16 Q. And at their homes did you actually recover their cuts
17 showing that they are now full diamond 1%ers?

18 A. Yes.

19 Q. I only have a couple more exhibits and then I'm almost done.
20 The first is Government Exhibit 30.

21 Does that depict a 1911 style Smith & Wesson .45
22 caliber firearm?

23 A. It does.

24 Q. And Ms. Hubby texted you that photo in August of 2018,
25 correct?

1 A. She did.

2 Q. Can you tell where that photo appears to have been taken?

3 A. Mr. Sawatzky's trailer that we did a search warrant on in
4 early 2019.

5 Q. And the defendant pled guilty to possessing this firearm in
6 this case, correct?

7 A. He did.

8 Q. Did you eventually learn that he traded that gun for another
9 .45 caliber, a different .45 caliber pistol?

10 A. Yes.

11 Q. And that was a trade with his boss, correct?

12 A. It was.

13 Q. What does the defendant's boss do for a living?

14 A. He owns an excavating company, where he buries -- yeah, an
15 excavating company.

16 Q. Let's look at Government Exhibit 31.

17 I must have gotten that wrong.

18 One moment, Judge.

19 MS. SHOTWELL: 32.

20 BY MR. KRICKBAUM:

21 Q. 32. Is that the gun that the defendant traded for?

22 A. Yes.

23 Q. The Kimber .45 caliber?

24 A. Yes.

25 Q. Where was it found?

1 A. It was found underneath the bed in the trailer during the
2 search warrant in January of 2019.

3 Q. Loaded with a round in the chamber?

4 A. Yes.

5 Q. Defendant also pleaded guilty to possessing that gun in this
6 case, correct?

7 A. He did.

8 MR. KRICKBAUM: One moment, Your Honor.

9 (Pause.)

10 MR. KRICKBAUM: I don't have any other questions at
11 this time.

12 Thank you, Judge.

13 THE COURT: Mr. Parrish?

14 MR. PARRISH: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. PARRISH:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. We've met before, have we not?

20 A. A few times.

21 Q. You testified in the prior case that I was involved with --
22 probably a couple of them, but one in front of Judge Pratt?

23 A. Yes.

24 Q. Do you recall your testimony in that case?

25 A. I do.

1 income; is that correct?

2 A. Yes.

3 Q. Matter of fact, in some of her e-mails that you didn't
4 reference, she was always desperate for money and asking could
5 she meet maybe to give you some information so she could get
6 some money?

7 A. Yes.

8 Q. Okay. And I take it a lot of times that's just common,
9 people who are meth addicts and have some credibility issues and
10 cooperating with law enforcement, you will agree they sometimes
11 use law enforcement for information, so they can at least give
12 them information so they can get some money?

13 A. Everyone has their own reasons for doing it --

14 Q. Right.

15 A. -- working with the police.

16 Q. Right. But you also knew that she had an axe to grind with
17 Mr. Sawatzky?

18 A. Yes.

19 Q. And that was aware not only from the text messages that were
20 exchanged back and forth, but also from the fact that she wanted
21 this relationship to go on?

22 A. It was one of the most dynamic and toxic relationships I've
23 ever seen.

24 Q. And at times she would say, "Hey, I'm going to break up and
25 I'm going to bury you." And at times she would say, "Hey, I'm

1 the defendant's permission to do it. You have heard that this
2 is referred to as a Sons state. The defendant needs to hear one
3 thing very loud and clear here today, and that is that this is
4 not his state. This is not a Sons state. This is our state.
5 This state belongs to the people of Iowa. And if the people of
6 Iowa want to ride motorcycles or start a motorcycle club or wear
7 vests because they own an Italian restaurant, they don't need
8 the defendant's permission to do it.

9 The defendant is not the man in these character
10 letters. He is the man in those text messages to Carly Hubby.
11 He is the man who tells her that she brought this abuse on
12 herself. He is the man who planned to kill a state prosecutor,
13 who learned his pattern of life, who knew where and when he
14 walked his dog, and he planned to use a crossbow to silently
15 kill him. The defendant is a man who took that same crossbow to
16 Waterloo to ambush a rival motorcycle gang because he didn't
17 like their club and he didn't like that they're black.

18 The court has the discretion to vary upward in this
19 case, to boxcar these counts, and to give a sentence that is
20 just. The court should do that. You should do that. You
21 should give him 15 years.

22 THE COURT: Thank you.

23 In fashioning an appropriate sentence, I have
24 considered each of the factors found in Title 18, United States
25 Code, Section 3553(a), which means I have considered the nature

1 and circumstances of these offenses, as well as the history and
2 characteristics of Mr. Sawatzky.

3 I have considered the seriousness of the offense. We
4 spoke about it moments ago. The presence of firearms here is
5 serious for all of the obvious reasons, but let's just make it
6 clear, it's serious because the defendant is the president of a
7 1%er outlaw motorcycle gang, one that controls biker groups in
8 Iowa through violence and intimidation. The presence of the
9 weapons here is serious because of the fairly pervasive or
10 persistent possession of racist, Nazi, white supremacist
11 memorabilia which speaks to an anger that was carried out
12 against a Waterloo African American upstart biker club that
13 didn't have his permission.

14 I've considered the question of just punishment and
15 note his criminal history, and we talked about the fact that the
16 possession of firearms is worse when it relates to people who
17 have been convicted once, twice, or whatever, of drug crimes.
18 But the danger associated with someone possessing firearms after
19 suffering convictions more than 15 years ago pales in comparison
20 to the dangers associated with that of a recent domestic abuser
21 possessing firearms. I find that he did assault Ms. Hubby in
22 April of 2018. Her demeanor and her statements that we had
23 observed real-time on those videos, together with the neighbor,
24 together with the text messages, strongly corroborates that
25 there was an assault here. I find that by a preponderance of

United States Court of Appeals
For the Eighth Circuit

No. 19-3172

United States of America

Plaintiff - Appellee

v.

Jay J. Sawatzky

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: September 25, 2020

Filed: April 19, 2021

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

GRASZ, Circuit Judge.

Jay J. Sawatzky pled guilty to three counts of possessing a firearm and ammunition as a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court¹ varied upward from the United States Sentencing Guidelines Manual's

¹The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

(“Guidelines”) 84 to 105 months’ range by sentencing Sawatzky to 120 months of imprisonment on each count, to be served concurrently. Sawatzky appeals his sentence, arguing that the sentencing was procedurally unfair based on a purported Sixth Amendment violation; the district court committed a procedural error in determining his advisory sentencing range; and the district court imposed a substantively unreasonable sentence. For the reasons below, we affirm.

I. Background

In April 2018, an officer observed Sawatzky and his girlfriend riding a motorcycle together despite a no-contact order stemming from allegations that Sawatzky strangled his girlfriend the previous year. Officers placed Sawatzky under arrest and conducted an inventory search of the motorcycle, finding methamphetamine. The next day, officers executed a search warrant at a residence where Sawatzky frequently stayed and found a Benelli shotgun near hundreds of rounds of various kinds of ammunition. Later that year and in January 2019, officers recovered evidence that Sawatzky was in possession of additional ammunition and two other firearms, one of them reportedly stolen. During a search of Sawatzky’s cellular phone in January 2019, officers recovered a photograph depicting Sawatzky with what appeared to be a Benelli shotgun nearby.

Sawatzky pled guilty to three counts of possessing a firearm and ammunition as a felon. Sawatzky’s sentencing was scheduled for Wednesday, October 2, 2019. However, on the Friday prior to sentencing, a search of Sawatzky’s jail cell resulted in the seizure of hundreds of pages of documents, including correspondence with his attorney. At the sentencing hearing, counsel for the government represented that no recently seized materials would be used at sentencing. Counsel for the government also represented: (1) the seized documents were reviewed by a civil attorney, who separated privileged and unprivileged materials; (2) the prosecution team did not review any privileged materials; and (3) privileged materials were returned to Sawatzky’s counsel on the Monday prior to sentencing. The district court offered to continue the sentencing hearing, specifying it could be reset to a time prior to

Sawatzky's state court criminal trial. Sawatzky decided to proceed with sentencing as originally scheduled.

During the sentencing hearing, a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") testified about Sawatzky's domestic violence charges and his association with a violent motorcycle gang. The ATF agent also testified about a photograph, which was recovered from Sawatzky's cellular phone, depicting Sawatzky sitting at a desk in an outbuilding of his residence with a shotgun leaning on a cabinet near him. The ATF agent affirmed that the photograph, although discovered in January 2019, was from July of 2016. The photograph's metadata shows the file name included "20160707," indicating it was taken on July 7, 2016. The ATF agent believed the Benelli shotgun recovered from Sawatzky's residence and the firearm in the cellular phone photograph are the same firearm. He explained they are the same type of firearm with the same markings, although one of the firearms had a removable magazine extender in the photograph entered into evidence. Additionally, despite Sawatzky's assertion that he had a shotgun-style BB gun, the ATF agent testified he knew of no toy gun styled like a Benelli shotgun.

II. Discussion

A. Sixth Amendment

Sawatzky argues the seizure of documents from his jail cell days before his sentencing hearing resulted in a fundamentally unfair proceeding. He alleges the government's conduct interfered with his access to counsel and his ability to prepare for the sentencing hearing. Additionally, he argues the constitutional harm occurred at the time of the seizure. During the hearing, Sawatzky sought exclusion of any information derived from the seized materials. On appeal, Sawatzky asks the court to view the incident not only as a case-specific prosecutorial interference matter but as one also impacting the future attorney-client relationship, such as during any future criminal proceedings. Specifically, Sawatzky notes he was subject to state criminal proceedings at the time of the seizure, and because law enforcement officers

from the sheriff's office were involved in reviewing the seized materials, potential exists for future prejudice outside the federal sentencing context. Finally, he argues that to choose between a delay of the federal sentencing or participating unprepared was a Hobson's choice because of the potential for a higher federal sentence following his state court trial. For these reasons, Sawatzky seeks a remand for resentencing, exclusion of evidence, and an expanded record.

"We review claims of constitutional error de novo." *United States v. Sweeney*, 611 F.3d 459, 473 (8th Cir. 2010). "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. This provision "guarantees criminal defendants a meaningful opportunity to present a complete defense[.]" *United States v. Holmes*, 413 F.3d 770, 774 (8th Cir. 2005) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)).

A defendant establishes a Sixth Amendment violation if (1) "the government knowingly intruded into the attorney-client relationship," and (2) "the intrusion demonstrably prejudiced the defendant, or created a substantial threat of prejudice." *United States v. Singer*, 785 F.2d 228, 234 (8th Cir. 1986) (internal citations omitted). The remedy for a Sixth Amendment deprivation "should be tailored to the injury suffered from the constitutional violation[.]" *United States v. Solomon*, 679 F.2d 1246, 1250 (8th Cir. 1982) (holding "remedies should be limited to denying the government use of the results of its intrusion"). Further, the remedy should "assure the defendant effective assistance of counsel in a subsequent proceeding." *Singer*, 785 F.2d at 234–35.

Assuming, without deciding, that the government knowingly intruded into the attorney-client relationship when officers seized privileged documents from Sawatzky's cell, he has the burden of demonstrating he suffered prejudice. *See Singer*, 785 F.2d at 234. Sawatzky, however, fails to demonstrate any particular prejudice or substantial threat of prejudice to his sentencing proceeding. No evidence derived from the seized materials was introduced at the sentencing hearing. The district court offered Sawatzky additional time to prepare for the sentencing

hearing, assuring Sawatzky the federal sentencing could easily precede his state court criminal trial, thus alleviating any concern the delay could negatively influence the sentencing. Sawatzky does not explain how the district court's proposed remedy would fail to cure any prejudice stemming from the seizure of materials for a few days prior to the sentencing hearing. Neither does he demonstrate how the time without his materials impacted his sentencing at all. *See United States v. Morrison*, 449 U.S. 361, 366 (1981) (rejecting a Sixth Amendment claim because "respondent has demonstrated no prejudice of any kind, either transitory or permanent, to the ability of her counsel to provide adequate representation in these criminal proceedings"). Sawatzky fails to suggest how either his state court proceedings or ongoing attorney-client relationship were prejudiced. In any event, it would not be this court, but the relevant presiding court who would evaluate any prejudice permeating future hypothetical proceedings.

We therefore conclude the district court's offer of additional time to prepare for the sentencing hearing was an adequate shield from prejudice, given the relatively short-term deprivation of materials and absence of any evidence derived from the seized materials being used for sentencing. Under these circumstances, we hold Sawatzky has not established a Sixth Amendment violation.

B. Guidelines Sentencing Range Calculation

Sawatzky argues the district court committed procedural error when calculating his Guidelines-recommended sentence by relying on his two prior convictions. Specifically, he argues the convictions are: (1) too old to consider as part of his criminal history score, (2) too close together to count as separate convictions, and (3) not "controlled substance offense[s]" under Guidelines § 4B1.2(b).

"In reviewing a sentence for significant procedural error, we review a district court's factual findings for clear error and its interpretation and application of the [G]uidelines de novo." *United States v. Smith*, 983 F.3d 1006, 1008 (8th Cir. 2020)

(alteration in original) (quoting *United States v. Marshall*, 891 F.3d 716, 719 (8th Cir. 2018)). The government has the burden of proving facts supporting sentencing enhancements by a preponderance of the evidence. *United States v. Mannings*, 850 F.3d 404, 408 (8th Cir. 2017).

Under the Guidelines, the sentencing court calculates a defendant's criminal history score by including, among other things, "[a]ny prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense[.]" U.S.S.G. § 4A1.2(e)(1). The calculation "[a]lso count[s] any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period." *Id.* Sawatzky argues the district court erred by counting two convictions outside the fifteen-year period contrary to the Guidelines provisions.

Sawatzky pled guilty on May 3, 1999, to (1) possession of methamphetamine on October 30, 1998, with intent to manufacture or deliver, and (2) conspiracy to manufacture methamphetamine on February 18, 1999. Both crimes violate Iowa Code § 124.401. *See* Iowa Code § 124.401(1)(b)(7) and (c)(6). Sawatzky was sentenced to a term of imprisonment exceeding one year and one month for each crime, the sentences to run concurrently, and he was released on December 5, 2001. As part of the current federal crime, Sawatzky pled guilty to possessing, on or about April 12, 2018, the Benelli shotgun and ammunition. April 12, 2018—the date officers discovered the Benelli shotgun—is outside the fifteen-year period for counting the earlier crimes as part of Sawatzky's criminal history. Accordingly, the government has the burden of showing the gun crime commenced within fifteen years of the earlier drug crimes, which period of time ended on December 5, 2016.

The government alleged Sawatzky possessed the Benelli shotgun in July 2016. As evidence, the government relies upon the cellular phone photograph of Sawatzky with the Benelli shotgun. The presentence investigation report ("PSR") paragraph 14 states that officers seized Sawatzky's phone in January 2019 and

recovered from it a photograph dating back to July 2016 of Sawatzky with the Benelli shotgun. Sawatzky objected to the PSR, arguing the photograph does not show him with the Benelli shotgun, but rather “shows him in a room with what appears to be a shotgun. [He] had a similar designed weapon that was a bb [sic] gun.” In his objections, Sawatzky did not object to the date assigned to the photograph in the PSR, nor did he raise the issue during the sentencing hearing. On appeal, however, Sawatzky argues the government failed to prove the photograph was taken prior to December 2016.

During the sentencing hearing, the district court heard evidence that officers recovered a photograph from Sawatzky’s cellular phone, that its metadata indicated it was taken on July 7, 2016, and that it depicts Sawatzky sitting near a shotgun. In addition to being able to compare the recovered photograph with a photograph of the firearm found in Sawatzky’s residence, the district court heard testimony from the ATF agent who, based on his observations, experience and research, believed the firearms were the same one and the recovered photograph was not of a toy gun. The district court then overruled Sawatzky’s objection to paragraph 14 of the PSR. The district court found the July 2016 photograph depicted the same Benelli shotgun as the one seized by officers in April 2018.

Based on the evidence presented, the district court did not commit clear error when finding the photographs depicted the same shotgun. Similarly, assuming Sawatzky preserved his argument as to the date of the earlier photograph, a preponderance of the evidence exists to support the determination it had been taken prior to December 2016.

The Guidelines’ plain language and this circuit’s precedent foreclose Sawatzky’s other two procedural-error arguments. First, Sawatzky argues he was unfairly surprised by the fact he had *two* separate prior convictions when the state court treated them as a single offense for sentencing. Nevertheless, the convictions are counted independently because they were separated by an intervening arrest—that is, he was “arrested for the first offense prior to committing the second offense.”

U.S.S.G. § 4A1.2(a)(2). While Sawatzky did object to the PSR counting the offenses separately, he does not dispute his arrest for the October 1998 offense occurred prior to commission of the February 1999 offense. Therefore, the district court properly counted the convictions separately when determining Sawatzky's criminal history score. *See United States v. Grady*, 931 F.3d 727, 730 (8th Cir. 2019).

Second, Sawatzky argues the district court relied on an inflated Guidelines sentencing range when it improperly increased his base offense level under Guidelines § 2K2.1(a)(2) after wrongly determining his prior convictions under Iowa Code § 124.401 were categorically “controlled substance offense[s]” under Guidelines § 4B1.2(b). However, the Eighth Circuit has held “section 124.401 fits within the Guidelines definition of a controlled substance offense.” *United States v. Castellanos Muratella*, 956 F.3d 541, 544 (8th Cir. 2020) (discussing *United States v. Brown*, 638 F.3d 816, 818–19 (8th Cir. 2011)); *see also United States v. Ford*, 888 F.3d 922, 930 (8th Cir. 2018) (“The structure of [Iowa Code § 124.401] reveals that it is divisible because different drug types and quantities carry different punishments.”). Therefore, the district court correctly considered Sawatzky's prior convictions as controlled substance offenses for purposes of determining his base offense level. Overall, the district court did not commit procedural error by including the prior Iowa convictions in the sentencing calculation.

C. Substantive Reasonableness

In the absence of procedural error, we review Sawatzky's sentence for “substantive reasonableness under a ‘deferential abuse-of-discretion standard.’” *United States v. Stephen*, 984 F.3d 625, 632 (8th Cir. 2021). Sawatzky argues his sentence is substantively unreasonable because the district court failed to depart downward from an over-represented criminal history and failed to consider or improperly considered other factors. “A district court's decision to deny a downward departure is unreviewable unless the district court had an unconstitutional motive or erroneously thought that it was without authority to grant the departure.” *United States v. Angeles-Moctezuma*, 927 F.3d 1033, 1037 (8th Cir. 2019) (cleaned

up) (quoting *United States v. Phelps*, 536 F.3d 862, 868 (8th Cir. 2008)). Sawatzky does not contend the district court either had an unconstitutional motive or thought it was without the authority to grant a departure. Accordingly, we cannot review the decision not to depart downward, but we will review whether Sawatzky's criminal history was over-represented with the other factors relevant to substantive reasonableness.

Generally, the sentencing court should consider, but need not make specific findings regarding, each sentencing factor under 18 U.S.C. § 3553(a). *Gall v. United States*, 552 U.S. 38, 50–51 (2007); *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). However, “[w]here a sentence is outside the advisory guideline range, we consider the extent of the deviation, giving ‘due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.’” *United States v. Shoulders*, 988 F.3d 1061, 1064 (8th Cir. 2021) (quoting *Gall*, 552 U.S. at 51). While a district court has wide latitude in weighing sentencing factors, it “abuses its discretion when it (1) fails to consider a relevant factor that should have received significant weight; (2) gives significant weight to an improper or irrelevant factor; or (3) considers only the appropriate factors but in weighing those factors commits a clear error in judgment.” *Feemster*, 572 F.3d at 461 (internal quotations and citation omitted).

Sawatzky contends the district court should have imposed a more lenient sentence due to his artificially inflated criminal history and positive characteristics, as noted in letters from his family and friends. Additionally, he argues the district court improperly considered unsubstantiated allegations against him for domestic violence and his participation in a violent motorcycle gang, including his possession of racist memorabilia.

The district court agreed that Sawatzky's criminal history score may have been over-represented by the Guidelines calculations because the prior convictions occurred so long ago and may have been treated as a single offense by the Iowa court, thus Sawatzky's criminal history might indicate he is less dangerous than the

Guidelines would suggest. Nevertheless, the district court found other factors, such as evidence of racial violence, possession of racist objects, history of domestic abuse, and statements about threatening prosecutors, of greater concern. These other factors indicated to the sentencing court that Sawatzky may actually be *more* dangerous than a typical felon-in-possession defendant and *more* dangerous than the Guidelines reflected. We conclude the district court did not enhance Sawatzky's sentence based on his beliefs or viewpoints but rather on proper and relevant factors including his history of violence and abuse.

We find no clear error of judgment in weighing the relevant aggravating and mitigating factors. Having reviewed the sentencing record and the district court's reasoning for the sentence imposed, we conclude the district court did not abuse its discretion or impose a substantively unreasonable sentence. The district court was within its discretion to rely primarily upon the seriousness of the offense, especially in light of Sawatzky's other conduct, rather than his nearly outdated criminal history and letters written on his behalf by friends and family.

III. Conclusion

The district court properly included Sawatzky's prior convictions in the sentencing range calculation and applied a substantively reasonable sentence. Further, despite the presentence seizure of documents, Sawatzky fails to show prejudice to support a Sixth Amendment violation. We therefore affirm Sawatzky's sentence.

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

No: 19-3172

United States of America

Appellee

v.

Jay J. Sawatzky

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cr-00022-JAJ-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 24, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans