

APPENDIX A

**United States Court of Appeals  
For the Eighth Circuit**

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No. 21-2750

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United States of America  
*Plaintiff - Appellee*

v.

Cyrano R. Irons  
*Defendant - Appellant*

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Appeal from United States District Court  
for the Western District of Missouri - Kansas City

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Submitted: January 14, 2022  
Filed: March 23, 2022  
[Unpublished]

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Before BENTON, SHEPHERD, and STRAS, Circuit  
Judges.

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PER CURIAM

Cyrano Irons, who pleaded guilty to a firearm  
offense, challenges the criminal-history score assigned at

sentencing. Over Irons’s objection, the district court<sup>1</sup> added two points for a pair of armed-criminal-action convictions. *See* Mo. Rev. Stat. § 571.015. We affirm.

Even if we assume that the district court made a mistake in counting those two offenses, any error was harmless. *See United States v. Woods*, 670 F.3d 883, 886 (8th Cir. 2012) (explaining that a computational error is “harmless” if it “did not substantially influence the outcome of the sentencing proceeding” (quotation marks omitted)). At the sentencing hearing, the court explained that “notwithstanding any of these . . . calculations, if [Irons] had won every one of the [objections] advanced, [it] would [have] come out in the same place because of 18 U.S.C. [§] 3553(a),” meaning that Irons’s sentence was based on the statutory sentencing factors rather than the allegedly erroneous criminal-history calculation. This is as clear a statement as any that Irons would have received the same sentence “regardless of which [criminal-history score] applied.” *United States v. Staples*, 410 F.3d 484, 492 (8th Cir. 2005); *see United States v. McGee*, 890 F.3d 730, 737 (8th Cir. 2018) (holding that a similar error was harmless).

We accordingly affirm the judgment of the district court.

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<sup>1</sup> The Honorable David G. Kays, United States District Judge for the Western District of Missouri.

**APPENDIX B**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE EIGHTH CIRCUIT**

No: 21-2750

United States of America  
Appellee

v.

Cyrano R. Irons  
Appellant

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Appeal from U.S. District Court for the Western District  
of Missouri - Kansas City (4:19-cr-00390-DGK-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 26, 2022

Order Entered at the Direction of the Court: Clerk, U.S.  
Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**APPENDIX C**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF ) Case No. 4:19-CR-00390-  
AMERICA, ) DGK-1  
)  
Plaintiff, )  
)  
vs. )  
)  
CYRANO R. IRONS, )  
) July 27, 2021  
Defendant. ) Kansas City, Missouri

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**TRANSCRIPT OF SENTENCING  
BEFORE GREG KAYS  
UNITED STATES DISTRICT JUDGE**

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**APPEARANCES:**

For United States: Brent Venneman  
U.S. Attorney's Office  
400 East Ninth Street  
Suite 5510  
Kansas City, Missouri 64106

For Defendant: Ronna Holloman-Hughes  
Federal Public Defender's Office  
1000 Walnut Street  
Suite 600  
Kansas City, Missouri 64106

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[2] (Begin proceedings in open court at 10:00 a.m.)

THE COURT: This is Case 19-00390-01, United States of America versus Mr. Cyrano Irons.

Welcome to you, Mr. Irons. Would you pull your mask up for us, Mr. Irons, if you can? I know that's hard. I appreciate you helping us.

Mr. Irons appears with his attorney in this case, Ms. Ronna Holloman-Hughes.

MS. HOLLOMAN-HUGHES: Good morning.

THE COURT: Welcome, Ms. Holloman-Hughes.

The government appears by their Assistant United States Attorney, Mr. Brent Venneman.

Welcome, Mr. Venneman.

MR. VENNEMAN: Good morning, Your Honor.

THE COURT: I invite the attorneys, if they are vaccinated, they're welcome to take off their mask if they want to. You don't have to, but you can. And the same goes with probation.

This case is called today for a sentencing hearing. I note that Mr. Irons appeared in this court earlier on August 20th, 2020, and at that time he entered a plea of guilty to a one-count indictment charging him with being a felon in possession of a firearm.

Upon his plea of guilty a presentence investigation was conducted. Present here today is our probation officers [3] as well, Mr. Dickson Noelle, and Mr. Shawn Parrish. And I note that this presentence investigation has been completed, and I note that we have a second addendum and third addendum attached to that. I also note that we have a United States sentencing memorandum, which is document 25. Then I see document 32, which is a addendum to the memorandum, and also the government -- excuse me, the defendant has filed a sentencing memorandum, which is document 31.

Thank you all for those memorandums. I find them to be very helpful.

I'm sorry. Ms. Holloman-Hughes.

MS. HOLLOMAN-HUGHES: Did the Court receive my reply to the (inaudible)?

THE REPORTER: I'm sorry. To the what?

THE COURT: Would you say that --

MS. HOLLOMAN-HUGHES: I have my response.

THE COURT: Would you come to the microphone?

MS. HOLLOMAN-HUGHES: Did the Court receive the defendant's response to the government's sentencing addendum?

THE COURT: I did not.

MS. HOLLOMAN-HUGHES: May I approach?

THE COURT: Yes, please. Yeah.

MS. HOLLOMAN-HUGHES: I apologize.

THE COURT: Thank you very much. Let me take a look at it. So I'm looking the defendant's response to [4] government's sentencing addendum. When did you file this, Ms. Holloman-Hughes?

MS. HOLLOMAN-HUGHES: Judge, I can't remember. A couple days.

THE COURT: Okay.

MR. VENNEMAN: It was last week, Your Honor. We had some discussion about it.

THE COURT: Okay. Very good.

MS. HOLLOMAN-HUGHES: I'm sorry.

THE COURT: Well, I was in another courthouse yesterday and maybe one of the reasons I did not get it. Let me look at it. Okay. So in this response you believe that the government -- the principles of res judicata within that

collateral estoppel -- that you believe that the probation office should be and the government should be collaterally estopped from assessing these points on the Armed Criminal Action because they weren't assessed before; is that right?

MS. HOLLOMAN-HUGHES: I think it's paragraph 28 altogether they weren't assessed before they were deemed running to within the paragraph 27.

THE COURT: That's a very interesting argument, Ms. Holloman-Hughes. And I know, because you're a good lawyer, if you had a case to support that, you would be waving that to me right now I'm sure; right?

MS. HOLLOMAN-HUGHES: Yes, Your Honor.

[5] THE COURT: And so with that, there's no case out there for that?

MS. HOLLOMAN-HUGHES: Not that I know of.

THE COURT: It's more of an equity argument.

MS. HOLLOMAN-HUGHES: Yes, Your Honor.

THE COURT: Okay. Very good.

All right. Is there anything else in these guidelines that we need to take up, Ms. Holloman-Hughes, before I calculate them again? Other than the principles of collateral estoppel, do you have some arguments about the Armed Criminal Action, both the Armed Criminal Action convictions?

MS. HOLLOMAN-HUGHES: Yes. And I don't have any further argument on that.

THE COURT: Okay. And let me make sure I get all this correct here. And Mr. Venneman, you've responded. Anything else you'd like to say in that?

MR. VENNEMAN: Your Honor, I would like to follow-up on something --

THE COURT: Yes, sir.

MR. VENNEMAN: -- from my sentencing memorandum. With respect to the argument that the convictions for Armed Criminal Action should not receive an additional point under the guideline provision that counts additional points for crimes of violence, even if they are sentences imposed on the [6] same day, in essence the same case, I guess I'd just like to clarify I had cited a case in my memorandum called *Miranda-Zarco*.

THE COURT: Let me get that.

MR. VENNEMAN: In rereading my memo I just want to clarify that this is an unsettled issue in the Eighth Circuit. I think a fair characterization of *Miranda-Zarco* case would be that it sort of lights the way for this issue to be resolved in the manner that would be favorable to the government and support this presentence report. But presently, to the best of my knowledge and research, it has not been settled. I don't believe there is an Eighth Circuit case that says a conviction for ACA counts as a crime of violence. I'm just trying --

THE COURT: You believe it should count?

MR. VENNEMAN: Oh, I absolutely believe that it should count. I just wanted to clarify that to the extent that you would read my sentencing memorandum and believe that I'm saying *Miranda-Zarco* says that it does count, I wanted to back off a little bit and clarify that it provides an analysis to reach that conclusion, but it does not settle that issue.

THE COURT: Okay. Very good.

Ms. Holloman-Hughes?

MS. HOLLOMAN-HUGHES: And previously the Court asked if there were any other objections. I did object to the lack [7] of acceptance of responsibility, and so I wanted to talk to the Court just about that.



THE COURT: Sure. Do you want to talk about it right now?

MS. HOLLOMAN-HUGHES: Sure.

THE COURT: You've already filed it in your sentencing memorandum. And do you want to add to that? Would you come to microphone, please?

MS. HOLLOMAN-HUGHES: Yes, sir. Just briefly, Your Honor. I know I did share with the Court and the government the spreadsheet that we had been keeping about just the amount of violence that goes on in CoreCivic.

THE COURT: Yes, ma'am.

MS. HOLLOMAN-HUGHES: And I did say that Mr. Irons, you know, is in a position at CoreCivic of having to protect himself. Obviously the October 2nd, 2019, one, he was not the aggressor in that one, and he was clearly protecting himself. And then in September of '20 also it's put in the PSI that Mr. Mitchell is in a gang, and obviously a rival gang, because Mr. Irons admitted to being a gang member and doing so since he was a young, young man.

He also mentioned when he was arrested that he was in danger and believed that is because of his prior gang association. So they put him in a place where there are other gang members. There's no indication that he's ever the [8] aggressor, but clearly having to protect himself in a place where he is not protected. Others are not protected. They are not protecting their staff.

So I'd ask the Court to consider, under the circumstances, giving him those three points for acceptance.

THE COURT: And you agree there's other things other than the assaultive behavior? There's things in these addendums where there's been reports made about your client smoking in -- in -- in the facility, that he was found with two weapons, two homemade weapons in the

second addendum? So there's other conduct that may not rise to the level of assault. You at least agree that there there's evidence of that?

MS. HOLLOWMAN-HUGHES: Right. The smoking, of course, I don't think rises to the level of taking away his acceptance. But the other behavior, including having the weapons, is, again, to protect himself and not being the attacker at any point.

THE COURT: Okay. Thank you.

Mr. Venneman, anything you'd like to address on that acceptance of responsibility issue?

MR. VENNEMAN: Yes, sir. There are two things I would like to address. The first is simply for record purposes the fact that the objection is to the application or the denial of the credit for acceptance and not to the content [9] or the information described in the paragraphs that give rise to the decision to deny acceptance of responsibility. And, Your Honor, similarly, there's not a specific objection as to the content of the --

THE COURT: So I don't misspeak, in paragraph 2 the defendant was described as an attacker in one of those reports for October 2nd, 2019. But that was before in his - - in fairness to him, that was before his plea of guilty. He pled guilty August 20th, 2020, and October 2nd, 2019, it said after reviewing the surveillance footage of the incident four individuals, including Irons, were identified as the attackers. So I just want to make sure I was -- I may have misstated something on the record. But go ahead, Mr. Venneman.

MR. VENNEMAN: Your Honor, and even if there is an objection to paragraph 2 describing who was the attacker and who -- or who instigated this, notwithstanding that, Your Honor, I -- the government's position is that the record on all of his behavior in the facility is demonstrative of somebody who has no intention of separating

themselves from criminal behavior. It's an ongoing pattern.

I would ask the Court if there was one incident I would think has the greatest import in evaluating this part of the guidelines it would be the second addendum which describes his noncompliance with CoreCivic guards and his possession of [10] contraband to include homemade knives. These are the sort of incidents and events that put not just other inmates at danger. I understand the claim that he needs to protect himself, but this incident, in particular, as described clearly could have and did, for a time, put the guards and the staff in danger. But I also would like to make the point, Your Honor, that notwithstanding the ruling on granting or denying acceptance, the government's sentencing recommendation will not be affected because of the 3553 analysis. That will be done later.

THE COURT: Thank you. So at this time, Mr. Irons, there's a couple points that I think your attorney is -- is advancing for you, and the first one is acceptance of responsibility. In fairness, some of this behavior happened before your guilty plea, which you could still lose acceptance of responsibility for. I don't usually -- I don't usually withhold it based upon that. But the second addendum to the presentence investigation is enough, I believe, the line on that alone, to not give you those -- the total offense level three -- three points. So I am going to overrule your objection and find that your behavior after your plea of guilty was inconsistent with someone whose tried to withdraw from criminal conduct or associations. And so that -- that's that.

The next issue is whether or not the Armed Criminal [11] Action should count. And I note these are criminal actions. And also paragraph 28 is another objection. I note in paragraph 28 reflects an assault second degree Armed Criminal Action, as does paragraph 27. And they alleged

to have occurred at the same time contemporaneously with each other. And I am going to overrule your objection in that regard as well based upon the reasoning set forth by the probation officer in the first addendum and also based upon the reasoning that the government has advanced in their sentencing memorandum.

So that gives us a total level -- total offense level of 22, and criminal history category of V. That gives us a statutory range of not more than 10 years in prison on this offense; a guideline range of 77 to 96 months; a supervised release range of one to three years; a fine range of 15,000 to \$150,000; and a special assessment of \$100.

Mr. Venneman, do you agree with those calculations, sir?

MR. VENNEMAN: Yes, Your Honor, I do. I'm sorry to interrupt the flow. I just wanted to ask if the Court was also -- you referenced the convictions for second degree assault. Are you also counting the additional points --

THE COURT: I'm counting those as well.

MR. VENNEMAN: For the ACAs as well?

THE COURT: Yes.

[12] MR. VENNEMAN: Thank you, Judge. I just wanted to clarify. Thank you.

THE COURT: I'm basically adopting the probation officer's calculations to this.

Ms. Holloman-Hughes, I know you object to these, the rulings, but do you agree I've at least calculated this correctly after the rulings?

MS. HOLLOMAN-HUGHES: Yes, sir. Yes, sir.

THE COURT: Thank you. So, Mr. Irons, that, sir, is our starting point in these cases. Next I note that the parties have filed sentencing memorandums. Is there any-

thing else you'd like to argue at this time, Mr. Venneman, about punishment?

MR. VENNEMAN: Yes, Your Honor. Since the government has made a recommendation for a sentence above the guidelines range, I am, to a degree, rehashing what's in my sentencing memorandum. But I think it's important to remind the Court in this -- in this case how very serious and dangerous the defendant's history and characteristics are, which is the basis for its recommendation of a sentence of 108 months would be a sentence notwithstanding any guideline calculations.

The defendant has a very troubling criminal record. Before this fourth felony conviction, he has three prior felony convictions. And each one of those involves shooting [13] people. Obviously the danger to the community consideration is of paramount importance here. Again, I would also point out over the course of his criminal life his total lack of respect for the law, courts. Law enforcement has demonstrated through various acts, including fleeing from law enforcement, violating court supervision by getting new criminal cases.

I would also ask the Court to consider the facts of this case. The possession of a .40 caliber pistol with an extended magazine puts Mr. Irons at risk, it puts his family at risk, and it certainly puts the probation officers at risk in this case.

So for those reasons, Your Honor, I think that the recommendation or sentence of 108 months, in light of the 3553 factors, is a fair and reasonable sentence.

THE COURT: Thank you.

Ms. Holloman-Hughes?

MS. HOLLOMAN-HUGHES: Yes, sir. Your Honor?

THE COURT: Yes. Yes, ma'am.

MS. HOLLOMAN-HUGHES: Mr. Irons is a young, young man and he has had an unfortunate childhood. His mother was obviously addicted and killed when he was very young. He had to go live with his father, who was also addicted, but fortunately no longer addicted. He is here today and he is supportive of him.

[14] And he expressed when he was found with this gun that he is in danger because of his past. He didn't say because of anything else, but because of him and because of his past he knows that some people want him dead because of his past. And so he had this gun.

But the difference between then and now is that he had it in his home. He's not riding down the street with a gun. When he was arrested he was in a truck with no gun, and I believe the PSI says that he was in a truck with his girlfriend and his young daughter with no weapon. He did not run or flee as the young, young man would have done.

He -- when they walked into his house and they found the gun he was told to sit down. He did not run. He and his girlfriend cooperated. So he is showing some maturity.

He even has a job, something he never really had before because he's been locked up for most of his life. But he is showing some maturity and I'd ask the Court to consider that in the 3553(a) analysis.

I asked him, what are you going to do? You know, you have people who are obviously in this city not fond of you. And his fiancée is currently trying to find another place for them to stay so that when he gets out he's not in this city, and he does not need the -- the protection of a firearm. So I'd ask the Court to consider all of that, the fact that he wasn't on supervision for a long period of time, [15] but was making strides in maturing.

I'd ask the Court to consider a guideline sentence because we know he's going to get out, and he's a young man. But the presence of probation and parole I believe helped

him, I believe it will continue to help him provide him with the service he needs. But he definitely needs to get out of this city because either he or somebody else is going to wind up dead. So I ask the Court to sentence him to a guideline range sentence with three years of supervision to follow and a \$100 special assessment.

THE COURT: Thank you.

Mr. Irons, sir, you don't have to say anything. I think Ms. Holloman-Hughes has done an excellent job of stating your case for you. But if you wish to speak, sir, you have a right to do so. Would you like to say something, sir?

THE DEFENDANT: Yeah. Yeah. (Inaudible.)

THE COURT: I didn't hear that.

MS. HOLLOMAN-HUGHES: He wants to know if he can take his mask off.

THE COURT: I'm sorry. I'm sorry. Everyone other than -- everyone has to have their mask on. Sorry about that.

Please proceed, sir.

THE DEFENDANT: Yeah.

THE COURT: Could you maybe get closer to the microphone? Yes.

[16] THE DEFENDANT: You know, basically I've been locked up, you know, most of my life, at least since I was like 12. You know, I really never had the opportunity to build my foundation and show my capabilities because, you know, I've been locked up. So even though I do get out, I never built a foundation because it seemed like I didn't get right back up. So I didn't have the resources to leave to move from where I was because I know if I leave to go somewhere else I would be successful, but I never had time to, you know, show my, you know, capabilities because I've been locked up most of my life.

And, you know, I did a lot of progressing when I was out. I did -- you know, I got a job, you know, I stayed to myself, I did a lot of things differently. I did a lot of things differently. And I had -- I had -- I had to learn and find myself in a nonfriendly environment growing up. I had to -- I had to -- in jail all of my life I had to figure my family out being locked up, my kids. I had to figure myself out. To figure out what life was about, you know what I'm saying, being locked up. So, you know, I mean, I know -- I know what it is now. I just never had the resources to just leave from where I was from and get out the way, you know, go somewhere else where I would be successful where I don't have to have a firearm, I don't have to do, you know, certain things. So that's all basically.

[17] I just ain't never had resources. I've been in and out of jail since I was 12 years old, you know what I'm saying? So that's really it. You know, that's all.

THE COURT: All right. Thank you. Thank you, Mr. Irons.

Mr. Irons, let me go through this with you, sir. I note there are people here. Ms. Holloman-Hughes has suggested that Mr. Irons's father is here. And I see -- thank you -- thank you all for being here today. I see three beautiful young children here with you-all, and we know this is a difficult day for Mr. Irons, but also those who care about him. We appreciate you being here today. I know that Mr. Irons will need your support today and in the days to come. So thank you for being there.

So, Mr. Irons, we do calculate the guidelines. And but really the main -- the main analysis we do here is -- has to do with this statute called 18 U.S.C. 3553(a), and in that -- in that statute Congress has given the Court factors to consider in every case, and some factors get certain weight and some factors get -- don't get the same weight,



depending on the crime, the criminal history, things like that. So let me go through this with you.

And notwithstanding any of these guideline calculations, if you had won every one of the ones that Ms. Holloman-Hughes had advanced, I would come out in the same [18] place because of 18 U.S.C. 3553(a). So this is more dependent on the factors, I guess, in my sentence.

There's -- you know, one of the things you did I think that saves you, Mr. Irons, from a -- from a maximum sentence under the law is the fact you were honest in accepting and pleading guilty here today, or before this. You pled guilty to this, you didn't play games with that part of the process, and that's going to save you, really, from the maximum sentence allowed by law, in my opinion. So thank you for doing that.

I think Ms. Holloman-Hughes made good objections for you. And that's the kind of -- that's the kind of objections that we appreciate.

You know, the problem in your case I think for you is your criminal history. Mr. Venneman points out, very rightly so, that all these felony crimes from the assault second Armed Criminal Action on paragraph 27 where someone was shot four or five times, then the assault second Armed Criminal Action on paragraph 28, where another person was shot six or seven times. And then even the last case before in the federal court, paragraph 29, the felon in possession, someone had been shot. I'm not saying you shot them, but someone had been shot. Any time -- up until this time any time there's been a felony involvement with you in the criminal justice system someone is getting shot, which is very alarming. And I [19] agree with Ms. Holloman-Hughes, someone is going to die here, if they haven't already.

And so we look at those factors, or those events, and that goes to the factor of respect for the law, and the need

to protect the public, which are two of the big drivers in your case.

The nature of this crime, the fact that you're on supervision for being a felon in possession of a firearm, and you have another firearm, that's obviously important to us in our analysis, sir.

So that's -- that's -- that's really the drivers of a large sentence in this case, Mr. Irons, the need -- the circumstances of this crime, the need to protect the public, the behavior while incarcerated while awaiting sentencing is concerning to the Court as well. And that goes to respect for the law, Mr. Irons.

So after consideration of all those factors, and notwithstanding the guideline calculations, my sentence is -- is based clearly and -- clearly on 18 U.S.C. 3553(a) factors.

So -- and I note in the last case with Judge Phillips you received, it looks like, a variance above the guidelines or a departure above the guidelines, Ms. Holloman-Hughes.

MS. HOLLOMAN-HUGHES: We actually had a binding.

THE COURT: Oh, you had a binding plea on that.

[20] MS. HOLLOMAN-HUGHES: Yes.

THE COURT: Thank you. Well, I note the guidelines were less than the sentence he received in that case. Thank you, Ms. Holloman-Hughes.

So after consideration of all those factors, it is pursuant to the Sentencing Reform Act of 1984, it's the judgment and sentence of this Court that this defendant, Cyrano R. Irons, is hereby committed to the custody of the Bureau of Prisons for 108 months on this one-count indictment. This sentence shall run consecutively with Case Number 13-00034-01.

Upon his release from imprisonment the defendant shall be placed on supervised release for three years. Since the Court finds the defendant does not have ability to pay a fine, the fine is waived.

Thank you, sir. Thank you. I note the baby's crying. We appreciate it when you take them out. We know it's hard to sit still.

Since the Court finds the defendant does not have the ability to pay a fine, the fine is waived. And we ask everybody to sit down if they can, please. Thank you.

It is further ordered the defendant shall pay to the United States a special assessment of \$100, which shall be due immediately.

While on supervised release, the defendant shall [21] comply with the mandatory and standard conditions that have been adopted by this Court.

In addition, he shall also comply with special conditions listed in part D of the presentence investigation report.

Mr. Irons, sir, you have 14 days to appeal this decision. Mr. Venneman, is there anything else on behalf of the government, sir?

MR. VENNEMAN: No, Your Honor. Thank you.

THE COURT: Thank you.

Ms. Holloman-Hughes, is there anything else on behalf of your client, ma'am?

MS. HOLLOMAN-HUGHES: No Your Honor.

THE COURT: Thank you, ma'am.

That will conclude this case. Good luck to you, Mr. Irons.

(Proceedings concluded at 10:30 a.m.)