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2022 WL 4182321

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United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,
v.

Kalvin WALKER, Defendant - Appellant.

No. 21-4275

|

Submitted: July 28, 2022

|

Decided: September 13, 2022

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. [Henry E. Hudson](#), Senior District Judge. (3:20-cr-00131-HEH-1)

Attorneys and Law Firms

ON BRIEF: [Jeremy C. Kamens](#), Federal Public Defender, Patrick L. Bryant, Appellate Attorney, [Nia Ayanna Vidal](#), Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Heather Hart Mansfield, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Before [DIAZ](#), [RICHARDSON](#), and [RUSHING](#), Circuit Judges.

Opinion

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

*1 Kalvin Walker pled guilty, without a plea agreement, to being a felon in possession of a firearm, in violation of [18 U.S.C. § 922\(g\)\(1\)](#). At the sentencing hearing, the district court sustained the Government's objection to the Sentencing Guidelines calculation and applied a four-level enhancement under [U.S. Sentencing Guidelines Manual](#) § 2K2.1(b)(6)(B) (2021). The court thus calculated a Guidelines range of 46 to 57 months' imprisonment, and sentenced Walker to 46

months' imprisonment. On appeal, Walker challenges the district court's application of the enhancement. We affirm.

A Guidelines error is harmless—and, thus, does not warrant reversal—if “(1) the district court would have reached the same result even if it had decided the Guidelines issue the other way, and (2) the sentence would be reasonable even if the Guidelines issue had been decided in the defendant's favor.” [United States v. Mills](#), 917 F.3d 324, 330 (4th Cir. 2019) (cleaned up). The error will be deemed harmless if we are “certain” that these requirements are satisfied. [United States v. Gomez](#), 690 F.3d 194, 203 (4th Cir. 2012).

Initially, Walker questions whether the assumed harmless error inquiry conflicts with the Supreme Court's decisions in [Rosales-Mireles v. United States](#), 138 S. Ct. 1897 (2018), and [Molina-Martinez v. United States](#), 578 U.S. 189 (2016). We conclude that the assumed error harmlessness inquiry does not conflict with the Supreme Court's emphasis on the importance of starting the sentencing process with the correct Guidelines range. In fact, the Supreme Court has expressly recognized that “[t]here may be instances when, despite application of an erroneous Guidelines range, a reasonable probability of prejudice does not exist,” such as where the explanation of the sentencing factors demonstrates “that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range.” [Molina-Martinez](#), 578 U.S. at 200; see [Mills](#), 917 F.3d at 330 (recognizing the same).

Applying the assumed error harmlessness inquiry here, we conclude that the first prong of the inquiry is satisfied. The district court explicitly stated that, even if it incorrectly calculated the Guidelines range, it nonetheless believed an upward variance sentence of 46 months was appropriate. Therefore, the “court made it abundantly clear that it would have imposed the same sentence … regardless of the advice of the Guidelines.” [United States v. Gomez-Jimenez](#), 750 F.3d 370, 382 (4th Cir. 2014).

Turning to the second prong, we consider whether the sentence is substantively reasonable, taking into account the Guidelines range that would have applied absent the assumed errors. [Mills](#), 917 F.3d at 331. When reviewing the substantive reasonableness of a sentence, “we must examine the totality of the circumstances … to see whether the sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a).” *Id.* (cleaned up). In reviewing a sentence outside the Guidelines range, we “may consider the extent of the deviation, but must give due

deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." *Gall v. United States*, 552 U.S. 38, 51 (2007).

***2** In reaching the sentence, the district court indicated that an upward variance was warranted in light of Walker's background, as well as the facts and circumstances of the case. Our view of the record confirms that the district court substantially discussed the circumstances relating to Walker's offense when considering whether to apply the firearm enhancement. Before imposing the sentence, the district court acknowledged Walker's troubled childhood, medical history, and positive employment record. However, the district court further acknowledged Walker's relatively extensive criminal history, which included firearms convictions. Based on the

factors identified by the district court, we are satisfied that Walker's upward variance sentence is substantively reasonable and, consequently, that any miscalculation of the Guidelines range was harmless.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

All Citations

Not Reported in Fed. Rptr., 2022 WL 4182321

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA }
v. } } Criminal Case No.:
KALVIN WALKER } } 3:20 CR 131

May 14, 2021

COMPLETE TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE HENRY E. HUDSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

12 Stephen W. Miller, Esquire
OFFICE OF THE UNITED STATES ATTORNEY
13 919 East Main Street
Suite 1900
14 Richmond, Virginia 23219

15 Holli R. Wood, Esquire
OFFICE OF THE ATTORNEY GENERAL
16 202 North 9th Street
Richmond, Virginia 23219

Counsel on behalf of the United States

19 Nia A. Vidal, Esquire
OFFICE OF THE FEDERAL PUBLIC DEFENDER
20 701 East Broad Street
Suite 3600
21 Richmond, Virginia 23219

Counsel on behalf of the Defendant

24 KRISTA L. HARDING, RMR
OFFICIAL COURT REPORTER
25 UNITED STATES DISTRICT COURT

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1 (The proceeding commenced at 9:40 a.m.)

2 THE COURT: Good morning.

3 MS. VIDAL: Good morning.

4 MS. WOOD: Good morning.

5 THE COURT: Please call our case, Ms. Pizzini.

6 THE CLERK: Case Number 3:20 CR 131. *United*
7 *States of America v. Kalvin Walker.*

8 Ms. Holli R. Wood and Mr. Stephen W. Miller
9 represent the United States.

10 Ms. Nia A. Vidal represents the defendant.

11 Are counsel ready to proceed?

12 MS. WOOD: The United States is ready.

13 MS. VIDAL: The defense is ready, Your Honor.

14 THE COURT: The matter is before the Court this
15 morning for sentencing.

16 Ms. Vidal, have you received a copy of the
17 presentence report, and a copy of the U.S. probation
18 officer's calculation of the United States Sentencing
19 Guidelines?

20 MS. VIDAL: I have, Your Honor.

21 THE COURT: Focusing first on the presentence
22 report. Are there any additions or corrections to the
23 report that you would like to bring to my attention?

24 MS. VIDAL: No, Your Honor.

25 THE COURT: Additions or corrections, Ms. Wood?

1 MS. WOOD: No, Your Honor.

2 THE COURT: All right. The report will be
3 ordered filed, made a part of the record in the case. And
4 this Court will adopt the probation officer's factual
5 findings and conclusions.

6 Turning to the U.S. Sentencing Guidelines, the
7 U.S. probation officer has determined, based upon his
8 review of the record, that the defendant has a Total
9 Offense Level of 17, he's in Criminal History
10 Category III, and his guideline range, as calculated, is
11 30 to 37 months.

12 Ms. Vidal, you believe the guidelines are
13 properly computed, is that correct?

14 MS. VIDAL: That is correct, Your Honor.

15 THE COURT: All right.

16 And, Ms. Wood, you have filed an objection to
17 the computation, is that correct?

18 MS. WOOD: Yes, Your Honor.

19 THE COURT: All right.

20 Ms. Wood, do you have any evidence you want to
21 put on this morning before I hear argument?

22 MS. WOOD: Yes, Your Honor.

23 THE COURT: All right. You go right ahead.

24 MS. WOOD: I would call Detective Dietrick.

25 THE COURT: Detective Dietrick. Okay.

1 Detective, if you would come on up and raise
2 your right hand, place your left hand on the Bible, and
3 face the Clerk of the Court.

4 THE CLERK: You do solemnly swear that the
5 testimony which you are about to give, in this case,
6 before this Court, shall be the truth, the whole truth,
7 and nothing but the truth, so help you God?

8 DETECTIVE DIETRICK: I do.

9 THE COURT: Detective, have a seat on the
10 witness stand, please.

11 Detective, you may lower your mask.

12 Detective, would you please give us your full
13 name, and spell your last name for my court reporter,
14 please.

15 DETECTIVE DIETRICK: Yes, Your Honor. My name
16 is Detective Dennis Patrick Dietrick, Jr. Last name is
17 D-I-E-T-R-I-C-K.

18 THE COURT: All right.

19 Ms. Wood, you may inquire.

20 Whereupon, **DETECTIVE DENNIS P. DIETRICK, JR.**,
21 having been duly sworn in, testifies as follows:

22 **DIRECT EXAMINATION**

23 BY MS. WOOD:

24 Q Good morning, Detective Dietrick. Are you the lead
25 detective in the case involving the defendant, Mr. Kalvin

1 Walker?

2 A Yes, ma'am.

3 Q What was your objective in this investigation?

4 A Our objective was to target individuals who attempt
5 to act as traffickers or pimps for women soliciting
6 prostitution online.

7 Q In that vein, did you post an ad online?

8 A Yes. The vice investigations team posted an
9 undercover ad.

10 Q What website did you post that ad on?

11 A It was posted to listcrawler.com.

12 THE COURT: Could you repeat that for me,
13 Detective?

14 DETECTIVE DIETRICK: Listcrawler.com.

15 THE COURT: L-I-S-T?

16 DETECTIVE DIETRICK: Yes, sir.

17 THE COURT: Okay.

18 BY MS. WOOD:

19 Q So L-I-S-T-C-R-A-W-L-E-R?

20 A That's correct.

21 Q And what kind of website is that?

22 A It is an ad based website solely for the purpose of
23 prostitution.

24 MS. WOOD: And I have the ad for the detective,
25 and copies for everyone else as well.

1 THE COURT: Do you have a copy for the Court as
2 well?

3 MS. WOOD: Did I hand you two? I'm sorry.

4 THE COURT: Just bring that up to me, please.

5 Thank you very much.

6 Ms. Wood, go right ahead.

7 BY MS. WOOD:

8 Q So, Detective Dietrick, we're looking at an ad that's
9 marked as Government's Exhibit 1. Is this the ad you
10 posted in relation to this case?

11 A It is.

12 Q If you're looking at the top, the menu bar to me
13 looks like it says "escortalligator.com.listcrawler."

14 THE COURT: Excuse me.

15 Ms. Vidal, is there any objection to
16 Government's Exhibit 1?

17 MS. VIDAL: No, Your Honor.

18 THE COURT: It will be received.

19 Go right ahead.

20 MS. WOOD: Thank you, Your Honor.

21 (Government's Exhibit 1 is received.)

22 BY MS. WOOD:

23 Q So, we're looking at the top. It says,
24 escortalligator.com.listcrawler. What does that mean?

25 A It's just the URL for it. If you type in

1 listcrawler, or escortalligator, this is the cite that it
2 will take you to.

3 Q And looking at the top of the ad it says, "Looking
4 for a daddy." What does that mean?

5 A "Daddy" is a common euphemism used for pimps or
6 traffickers. Typically, they will ask their girls who are
7 working for them to call them that, or they'll be listed
8 as that in their phones under contact information.

9 Q And beside that it says, "28." What does that mean?

10 A That is an age.

11 Q Of the female?

12 A Yes.

13 Q Then below it looks like this ad was posted on May 7,
14 2020, at 2:31 p.m., is that correct?

15 A That's correct.

16 Q And looking at the content of the ad it says, "Lost
17 my job and need to make money. Willing to hustle. I am
18 new to thea and I need" - misspelled someone, I think -
19 "to show me how to do this safe. I'm desperate."

20 What does that mean?

21 A That means that they're looking --

22 MS. VIDAL: Your Honor, objection. I think the
23 ad speaks for itself and the officer shouldn't be
24 testifying --

25 THE COURT: I don't think he can necessarily

1 translate the ad; however, if there are terms and
2 expressions in here that need defining, the detective
3 certainly may do so.

4 MS. WOOD: Yes, Your Honor. Thank you.

5 BY MS. WOOD:

6 Q So when it says, "willing to hustle," does that have
7 a meaning to you in your investigations in context like
8 this?

9 A Yes. That would be the context of willing to work as
10 a prostitute.

11 Q What about, "Show me how to do this safe"?

12 A Requesting someone to make sure that they're not
13 robbed or put in any danger from johns, or to protect them
14 from law enforcement.

15 Q And is the word after need that says A-O-M-W-O-N-W,
16 was that intended to be someone?

17 A Yes.

18 Q And then it says to and then A-H-O-W. Was that
19 intended to be show?

20 A Yes.

21 Q Is there a reason it was mistyped?

22 A Not that I can think of.

23 Q And then the phone number is listed as (804) 376-9176.
24 Is that a number monitored by the Henrico County Police
25 Department?

1 A Yes.

2 Q All right. Moving on from the ad. Did Mr. Walker
3 respond to that ad?

4 A Yes.

5 Q And as part of the phone number that you were keeping
6 track of, were you able to keep track of text messages and
7 calls that Mr. Walker sent to the undercover agent?

8 A Yes. All text content and phone content was
9 monitored that was sent to our undercover line.

10 MS. WOOD: I have copies, Your Honor, of the
11 text messages I'd like to provide now.

12 THE COURT: All right. You may do so. I think
13 they're attached to the defendant's pleading.

14 MS. VIDAL: That is correct, Your Honor.

15 MS. WOOD: They are, Your Honor. Would you
16 prefer just to refer to those?

17 THE COURT: No, you can submit another copy.
18 That's fine.

19 Any objection, Ms. Vidal, to Government's
20 Exhibit 2?

21 MS. VIDAL: No, Your Honor.

22 THE COURT: All right.

23 (Government's Exhibit 2 is received.)

24 BY MS. WOOD:

25 Q So, Detective Dietrick, looking at this Government's

1 Exhibit 2 it says, "Detail for 804-376-9176." Was that
2 the number that was posted on the listcrawler ad?

3 A Yes, it was.

4 Q And so when we're looking at these text messages,
5 there also appears on the first line to be a number
6 "804-904-0026." Is that Mr. Walker's number?

7 A Yes.

8 Q So when we're looking at the text messages, we're
9 looking kind of from the perspective of the agent's phone?

10 A Yes.

11 Q So incoming would be incoming to the agent's phone.
12 So incoming would be text messages sent from Mr. Walker to
13 the agent?

14 A That's correct.

15 Q And outgoing would be text messages sent from the
16 agent to Mr. Walker?

17 A Yes.

18 Q It appears that the texts begin on May the 7th at
19 approximately 2:41 p.m. Is that the same day that the ad
20 was posted, and about 10 minutes after it was posted?

21 A It appears that way, yes.

22 Q And I know the Court, and everyone, has these text
23 messages so I'm not going to go through them text by text,
24 but generally can you tell us what they were discussing on
25 the texts?

1 A The discussion started off with an introduction of
2 how Mr. Walker found the undercover's ad. Looking to set
3 up a meeting with the undercover. And then the
4 conversation transitions into discussing how Mr. Walker
5 can give the UC some game and come as a client as well.
6 How to move, how to set up the ads, and so forth. And it
7 continues on from there.

8 Q Did the undercover officer specifically ask him,
9 "Tell me exactly what you can do for me and how I'll
10 benefit from it" on Page 2?

11 A Yes.

12 Q And the defendant responded, "I can spend
13 75\$ everytime i see you an if you already got a location in
14 mind I'll be security for you your people wont even know
15 I'm wherever you choose to conduct business"?

16 A Yes.

17 Q Also on the bottom of Page 2 did they discuss how
18 much the undercover would be paying Mr. Walker when she
19 saw clients?

20 A Yes.

21 Q How much was that?

22 A It would be \$20 off of every two dates, or \$10 off of
23 every date.

24 Q Continuing on to Page 6. This is --

25 THE COURT: Excuse me a second.

1 Detective, you're a vice investigator, are you
2 not?

3 DETECTIVE DIETRICK: Yes, sir.

4 THE COURT: In your experience, what is the
5 normal payment that a person in this particular business
6 would pay someone like the defendant to oversee the
7 operation and to provide protection?

8 DETECTIVE DIETRICK: It varies significantly.

9 It comes down to whatever the parties agree to whenever it
10 comes down to each individual situation. For example, if
11 there were drugs involved, most of the time there would be
12 an agreement to pay half and then the user of the drugs,
13 normally the prostitute, would pay the rest of her money
14 that she earned to the pimp in the form of getting drugs.

15 So this, to me, seems like a typical arrangement
16 for something that doesn't have anything else involved
17 other than protection.

18 THE COURT: All right.

19 You may inquire.

20 MS. WOOD: Sure. Thank you.

21 BY MS. WOOD:

22 Q So going on to Page 6, it looks like this was
23 May 18th of 2020. This is the day before Mr. Walker's
24 arrest?

25 A That's correct.

1 Q And it looks like at about 1:31 p.m. the undercover
2 agent says, "Hey im getting a room tomorrow," is that
3 correct?

4 A That's correct.

5 Q Then continuing on to Page 7 at the top, it looks
6 like she says, "Im gonna make an ad for tomorrow," is that
7 correct?

8 A Yes.

9 Q And she and the defendant discuss about what she
10 should put in her ad, right?

11 A That's correct.

12 Q Then going down towards the bottom of Page 7 she
13 asks, "What should my prices be?"

14 And the defendant responds, "40 qv." What's qv?

15 A It's an abbreviation for "quick visit." Which
16 prostitution is sold in allotments of time. QV being a 15
17 minute allotment of time, a half hour being 30 minutes
18 allotments of time, and one hour being 60 minutes
19 allotments of time.

20 Q So then it says, "40 qv 15 min,80 hh," is that half
21 hour?

22 A Yes.

23 Q Then "120 hr." Is that an hour?

24 A Correct.

25 Q Then "20 for every 10 mins over your time."

1 And then it says, "no bare ANYTHING." What does
2 that mean?

3 A That would mean no sexual activity without a condom.

4 Q Then going on to Page 11 where they're getting ready
5 to meet on the day of the arrest they're talking about him
6 being there by 6:00, is that right?

7 A Yes.

8 Q And then she says, "Okay I said one come at 6 but
9 I'll tell him a little later," is that right?

10 A Yes.

11 Q Then she says, "My shits blowing up lol." What does
12 that mean?

13 A That would be her phone being hit or contacted
14 constantly by johns.

15 Q And "lol" is laugh out loud?

16 A Yes.

17 Q And then she says, "Hurry up so I can make this
18 bread!" What does that mean?

19 A To make money.

20 Q Did Mr. Walker also have phone calls with the
21 undercover agent?

22 A Yes.

23 Q And specifically on the day of the arrest when they
24 were getting ready to meet at the hotel, did the
25 undercover agent say something about she was just trying

1 to see when to tell people to come?

2 A Yes.

3 Q So after Mr. Walker was arrested, a firearm was
4 recovered in the backpack he was wearing?

5 A Yes, it was.

6 Q Was that firearm loaded?

7 A It was.

8 Q And did you know whether the firearm was functional
9 or not?

10 A At the time, no.

11 Q What about afterwards?

12 A Yes. It was tested with the ATF.

13 Q And found to be functional?

14 A Yes.

15 Q Were you also able to speak with Mr. Walker after you
16 advised him of his *Miranda* rights?

17 A I was.

18 Q Tell us briefly what he said about why he was talking
19 to the undercover agent and what their purpose was?

20 A May I refer to my case file with my notes in it?

21 Q Yes.

22 THE COURT: Go right ahead and refer to your
23 notes, detective.

24 DETECTIVE DIETRICK: Thank you.

25 A So during his interview he explained that he

1 contacted the undercover off of the website called
2 listcrawler. He stated that he contacted her because he
3 was looking for a friend. That he had never done anything
4 like this before. It was the first time he was contacting
5 anyone off the Internet.

6 He stated that the nature of their conversation
7 was that the undercover wanted someone to help keep her
8 safe while she did what she did. And that's all he was
9 planning to do. He stated he was not trying to be a pimp.

10 He stated he may have had a conversation with
11 the undercover about money or a transaction, but he
12 couldn't recall anything specific. He stated that he did
13 remember having a conversation about pricing with the UC,
14 and he stated that he had found the numbers which he had
15 suggested for pricing to be numbers that he found from
16 other ads that he had researched.

17 Q Did he make an additional statement -- an additional
18 statement, too, about his conversation with her was about
19 her wanting someone to keep her safe?

20 A Yes, he stated that was the nature of their
21 conversation.

22 Q And does he also state that he could use the extra
23 money, too?

24 A Yes.

25 MS. WOOD: Thank you. I have no further

1 questions right now.

2 THE COURT: Cross-examination, Ms. Vidal.

3 **CROSS-EXAMINATION**

4 BY MS. VIDAL:

5 Q Good morning, Detective Dietrick.

6 A Good morning, ma'am.

7 Q To be clear, you are not the one that did this ad, is
8 that correct?

9 A That's correct.

10 Q Okay. But the goal of this ad was to attract people
11 who were potentially wanting to be daddies, is that right?

12 A That's correct.

13 Q That's the reason why the word "daddy" was listed on
14 here?

15 A Yes, ma'am.

16 Q And that was the hope and the scope of that
17 investigation, is that right?

18 A That's correct.

19 Q So I'm just going to refer first to Government's
20 Exhibit Number 2. You have reviewed all these text
21 messages?

22 A I have.

23 MS. VIDAL: One moment, Your Honor.

24 BY MS. VIDAL:

25 Q And you will agree with me that these messages occur

1 over six days, is that correct?

2 A Yes.

3 Q Not six consecutive days, but a total of six days,
4 right?

5 A Yes, ma'am.

6 Q And there are a total of 178 messages, correct?

7 A Yes.

8 Q And you will agree with me that a significant number
9 of these messages are just about touching base and getting
10 to know each other, correct?

11 A Yeah, they are.

12 Q Okay. And in fact, there are a number of messages
13 where Mr. Walker suggests having a date with the woman he
14 believes is a prostitute, is that correct?

15 A There are.

16 Q So if I can take you to, first, Page 1. Actually,
17 let me back up.

18 This ad was placed on listcrawler.com, is that
19 correct?

20 A It is.

21 Q Okay. And so it's fair to say that that particular
22 website is for people who are advertising sexual services,
23 correct?

24 A Yes.

25 Q And they're advertising them to individuals who would

1 like to receive sexual services, is that correct?

2 A Yes.

3 Q And so it's not just targeted towards individuals
4 looking for daddies, correct?

5 A No.

6 Q Okay. All right. So going back to Government's
7 Exhibit 2, Page 1, if I can direct you toward the middle
8 of the page outgoing message time of 2:49. Do you see
9 that? About the middle.

10 A Yes.

11 Q Where it says, "I don't wanna show my face yet.
12 Seriously are you trying to help me work or you just
13 looking to hook up?" is that correct?

14 A Correct.

15 Q So you will agree with me at this point it's the
16 undercover officer who is initiating the conversation
17 about helping him -- or helping her work, correct?

18 A That's correct.

19 Q So none of the prior text messages are about
20 Mr. Walker saying, hey, I'm looking to be your daddy,
21 correct?

22 A Correct.

23 Q Or I'm looking to help you work, is that correct?

24 A That's correct.

25 Q Or I'm looking to help make money off of you,

1 correct?

2 A Up to this point, yes, that's correct.

3 Q Okay. And then the next message says, "I'm tryin to
4 do both honestly," is that correct?

5 A It is.

6 Q Okay. And he mentions helping her with "game," is
7 that right?

8 A Correct.

9 Q And then she asked him to describe what that means,
10 and he does so, correct?

11 A Correct.

12 Q All right. Now, at this point he's talking about
13 what he can do to help her but he hasn't actually done
14 anything, correct?

15 A As far as actually helping her?

16 Q Correct.

17 A That's correct. Yeah.

18 Q In fact, he never does that, did he?

19 A True.

20 Q He never places an ad, is that correct?

21 A No. Correct.

22 Q Okay. Now, if I can direct you to the bottom of
23 Page 2 where he talks about being security, is that right?

24 A Yes.

25 Q And that's on May 7th, which is the first day of

1 contact, correct?

2 A That's correct.

3 Q And there are no other conversations about Mr. Walker
4 providing security, correct?

5 A That's correct.

6 Q You have listened to the four phone calls between the
7 UC and Mr. Walker, correct?

8 A I have.

9 Q And there's no mention of Mr. Walker providing
10 security to the UC, is that correct?

11 A Yes.

12 Q And there's no conversation or no discussion in any
13 of those calls about him helping her to place an ad?

14 A There is not.

15 Q And there's nothing in those conversations about
16 helping her set prices, is that correct?

17 A That's correct.

18 Q All right. So going back to Page 2, the bottom, when
19 the UC asks --

20 THE COURT: Excuse me. Let me just follow-up,
21 if I could?

22 MS. VIDAL: I'm sorry.

23 THE COURT: Later, though, in the dialogue
24 between the two of them, were there conversations about
25 helping to set prices and who would get how much money,

1 detective?

2 DETECTIVE DIETRICK: There were in the text
3 conversations, yes.

4 THE COURT: Those occurred later?

5 DETECTIVE DIETRICK: They did.

6 THE COURT: All right.

7 Excuse me. Go right ahead, Ms. Vidal.

8 BY MS. VIDAL:

9 Q Well, if I can follow-up on that. In terms of how
10 much money Mr. Walker would receive, that only occurs on
11 the bottom of this page, correct, Page 2?

12 A Yes, that's correct.

13 Q And the UC is asking, "How much do I need to kick
14 back to you?"

15 And his response is, "You can give me 20 off
16 every 2," is that right?

17 A Yes.

18 Q And so her response was, "So \$10 to you for every
19 date?" right?

20 A Yes.

21 Q Okay. And his response is that's not that bad, which
22 is to say it's a low price, is that right?

23 A Yes, that's correct.

24 Q And you testified that these prices can range
25 greatly?

1 A Significantly, yes.

2 Q Significantly. Okay.

3 When you -- now, did you personally participate
4 in the interview with Mr. Walker?

5 A I did. I conducted the interview.

6 Q You conducted the interview. And so when you were
7 testifying earlier and referring to your notes, you're
8 referring to a document, essentially a report, I guess,
9 that you wrote?

10 A Yes. My Report of Investigation.

11 Q Okay. And so -- and there are a number of bullet
12 points on that report?

13 A There are.

14 Q But it's just a summary. It doesn't list everything
15 that Mr. Walker says, is that correct?

16 A It is not a verbatim accounting. It is just a
17 summary of the interview.

18 Q Okay. But that interview was recorded, correct?

19 A It was.

20 Q And when is the last time you watched that interview?

21 A It's been a while. I haven't listened to it
22 recently.

23 Q Okay. So your testimony is just referring to a
24 summary which is not complete, is that right?

25 A Yes.

1 Q All right. So can you give the Court some idea of
2 the last time you looked at this video of the interview?

3 A Probably when we were -- had our last meeting with
4 Ms. Wood.

5 Q When would that have been? Just approximate. Two
6 weeks, three weeks?

7 A A couple months.

8 Q A couple months ago, even then you knew you were
9 going to be testifying today?

10 A Yes, I did not have a chance to review it before
11 today.

12 Q Okay. Well, isn't it true that during that interview
13 Mr. Walker tries to distance himself away from having any
14 sexual contact with the UC?

15 A Yes, he does.

16 Q And you would agree that that was not an honest
17 statement based on the scope of the text messages, is that
18 right?

19 A I'm sorry. Could you say that again?

20 Q You would agree that Mr. Walker's statement, his
21 postarrest statement that he wasn't trying to have sex
22 with the UC, was not a correct statement, is that right,
23 based on these text messages?

24 A Yes.

25 Q You would also agree that Mr. Walker never said that

1 he had this firearm to protect the UC, is that right?

2 A There was no mention of a firearm prior to us
3 encountering him.

4 Q I'm sorry? When you say, "prior to", I'm talking
5 about the actual postarrest interview. There was no
6 mention during that interview of his purpose of having the
7 firearm, is that correct?

8 A Yes, that's correct.

9 Q And in fact, you testified earlier that at the time
10 it was not even functional, is that right?

11 A I didn't know if it was functional or not.

12 Q You didn't know if it was functional?

13 A No.

14 Q Okay. Isn't it correct that it was being held
15 together by Scotch Tape?

16 A There was Scotch Tape around the grip of the gun that
17 held a small piece of plastic onto it.

18 Q All right. So I'm going to direct your attention
19 back to the text messages, which you have in front of you.
20 I'm just going to ask you to verify a couple of things.

21 So it's true that Mr. Walker said to the UC "it
22 would be nice to see you today," is that right?

23 A Which page are we referring to?

24 Q One moment. Actually, let me start this with one on
25 Page 4, top of the page, at 11:29.

1 A Okay.

2 Q And this is an incoming message. "It's cool cause
3 like i said my freedom WAY MORE IMPORTANT lol you tryin to
4 blow wit me later if you free," correct?

5 A Yes.

6 Q Okay. And "blow wit me" means using marijuana,
7 correct?

8 A Yes.

9 Q Okay. He didn't say are you trying to prostitute for
10 me?

11 A No, he did not.

12 Q And this conversation is occurring now on
13 May 15th, is that right?

14 A Yes.

15 Q Okay. And then going down the next few lines on the
16 same page at 11:36 it said, -- it says -- an incoming
17 message, "Please do it would be nice to see you today,"
18 correct?

19 A Yes.

20 Q At this point, he's still not mentioning earning
21 money from her, is that correct?

22 A Yes.

23 Q Just that he wants to see her?

24 A Yes.

25 Q And then the next couple lines down on the same page

1 at 11:39, incoming message, "Thats cool love just dont
2 disappear on me lol so when im gonna talk to you."

3 THE COURT: What page are you on, Ms. Vidal?

4 MS. VIDAL: Your Honor, this is the same page.

5 THE COURT: Page 4?

6 MS. VIDAL: Yes. It's the lower half of the
7 page. The time is 11:39:15, and it's an incoming message.

8 THE COURT: I got it. Okay. Thank you.

9 BY MS. VIDAL:

10 Q Do you see that, Detective Dietrick?

11 A Yes, ma'am.

12 Q So, again, this is just about him wanting to see her,
13 is that correct?

14 A That's correct.

15 Q And not disappearing on him, right?

16 A Correct.

17 Q And then if we go over to the next page, Page 5,
18 again, these are all text messages that are just about
19 catching up and what's going on in their day and with
20 their family, correct?

21 A That's correct.

22 Q And how they get around. Whether they use Uber or
23 Lyft, is that correct?

24 A Yes, ma'am.

25 Q Okay. So, again, no conversations about

1 prostituting, is that correct?

2 A That's correct.

3 Q Going over to Page 6, the upper half of the page.

4 Time stamp is 12:41:17. It's an incoming message. "Fasho

5 but i jive wanna see you tho lol my interest is REALLY

6 piqued with you lol," correct?

7 A Correct.

8 Q Again, he just wants to see her, is that right?

9 A That's correct.

10 Q Okay. And then the next message, which is an
11 outgoing message, this is time stamped 1:31:44. This is
12 from the UC, correct?

13 A It is.

14 Q Okay. And she says, "Hey im getting a room tomorrow.
15 U wanna chill wit me," correct?

16 A That's correct.

17 Q And his response is, "That's cool, where at?"

18 A Yes.

19 Q But she doesn't say I'm going to prostitute, I need
20 your help for protection, does she?

21 A No.

22 Q She says, "U wanna chill," right?

23 A Correct.

24 Q Which means do you want to hang out, do you want to
25 spend some time together, is that right?

1 A Correct.

2 Q Same page, Page 6, this is the lower half now, time
3 stamped 2:01:03, incoming message. "That's what's up you
4 need me get anything." Do you see that?

5 A Yes.

6 Q And that's an incoming message, so it was sent by
7 Mr. Walker?

8 A That's correct.

9 Q And then the very next message is the responding
10 outgoing message from the UC saying, "U got any weed?"
11 correct?

12 A That's correct.

13 Q Doesn't say do you have a gun?

14 A No.

15 Q Doesn't say do you have anything else to protect me?

16 A No, it does not.

17 Q So, again, more conversation about hanging out?

18 A Yes, ma'am.

19 Q Is that correct?

20 A Yes, ma'am.

21 Q Turning now to Page 7, the very top outgoing message
22 time stamped 4:11:56. It says, "Im gonna make an ad for
23 tomorrow....I don't have shit going on and need some
24 money."

25 The responding message does not say anything

1 about, okay, I'm going to help you make an ad, correct?

2 A Correct.

3 Q And then going down to the middle, again, this is

4 6:23:27. It's an outgoing message from the UC saying,

5 "What should I put in my ad?" correct?

6 A Correct.

7 Q So this is the UC directing this line of

8 communication, is that correct?

9 A Yes.

10 Q At no point is Mr. Walker saying, hey, you need to

11 get on this ad and this is what you need to put in your

12 ad, correct?

13 A I would not characterize it as he is encouraging her.

14 Q Okay. And then, again, the same page. This is

15 6:25:11. Again, I'm on Page 7. It's an outgoing message,

16 so this is the UC. And she's stating at this point, "I

17 won't do anal and nothing without condoms," is that

18 correct?

19 A That's correct.

20 Q So the time -- or it's the same page. This is

21 10:00 and 11 seconds, incoming, where there are prices

22 listed and then it says, "no bare ANYTHING no anal." That

23 comes from -- and that information comes from what the UC

24 expressed earlier, is that correct?

25 A That's correct.

1 Q And you will agree that during the postarrest
2 interview when you were -- when Mr. Walker was asked about
3 these prices, he just said he got them off line, correct?

4 A Yes. His statement to me was that he found them off
5 of other ads.

6 Q Okay. So not because he's engaged in this line of
7 work, correct?

8 A Correct.

9 Q And in fact, you had his phone that he gave you
10 consent to search, is that right?

11 A Yes.

12 Q And there is nothing in his phone other than these
13 text messages that would suggest that he's in the line of
14 business involving commercial sex trafficking, is that
15 correct?

16 A Yes, that's correct.

17 Q All right. So, again, we can go to Page 9 now, the
18 top. And this is at 12:44:31. An outgoing message, which
19 is from the UC. It says, "Not much....my girl was gonna
20 get me soon so I can get a room," is that right?

21 A Yes.

22 Q So it's the UC saying that she's going to get a room?

23 A Correct.

24 Q Not Mr. Walker directing her to get a room?

25 A Correct.

1 Q All right. Now going back, same page, at 12:56:02,
2 the outgoing message that says, "What time u think u can
3 meet? I might try and set up a few dates," correct?

4 A Yes.

5 Q And his response is, "Im tryin to get my shit
6 together now"?

7 A Correct.

8 Q His response is not, hold on, don't set any dates
9 yet, I'll be there, correct? He just saying I'm trying to
10 get together now?

11 A Yes.

12 Q Then she says -- this is at 12:57:31. "Okay well let
13 me know what time so I don't plan them for the same time,"
14 is that correct?

15 A It is.

16 Q And his response is, "Fasho so do you want me to meet
17 you before you get the room or after," correct? That's
18 what he says at 12:59 on the bottom page.

19 A Yes. That's correct.

20 Q Okay. So, again, he's just trying to time when he
21 arrives at the hotel room to meet her, correct?

22 A Correct.

23 Q Doesn't make any definitive statement that he's
24 trying to get there in time to assist her with security,
25 does he?

1 A No, he does not.

2 Q All right. Now going to Page 11, which is the final
3 page. The beginning of these text messages on this page
4 the UC is telling Mr. Walker that she's gotten the room,
5 correct?

6 A That's correct.

7 Q And the room numbers?

8 A Yes.

9 Q Or the room number, rather.

10 And then at 4:36:51 she says, "When should I set
11 dates up? I was gonna wait til u got here."

12 His response, "Fasho im ready be OTW," which
13 means on the way, correct?

14 A That's correct.

15 Q Okay. So he doesn't give her any directions about
16 when to set the dates up, is that right?

17 A He does not.

18 Q He doesn't tell her to wait until he gets there?

19 A No, he does not.

20 Q Just says he's on the way?

21 A Correct.

22 Q And then she sends another message. Now, this is at
23 4:45:27 where she asks, "How long you gonna be?"

24 And he responds, I'll be there -- "I'll ve dere
25 by 6."

1 And then the next test message is, "Okay I said
2 one come at 6." So she's talking about a date, correct?

3 A That's correct.

4 Q "But I'll tell him a little later."

5 His response was simply, "Ok," correct?

6 A Correct.

7 Q Then she sends another message saying, "My shits
8 blowing up lol" at 5:25, is that correct?

9 A Correct.

10 Q There's no response at that point from Mr. Walker, is
11 that correct?

12 A That's correct.

13 Q And in fact, she sends another message at 5:26 that
14 says, "Hurry up so I can make this bread!" correct?

15 A Correct.

16 Q And he just simply responds, "Lol," correct?

17 A That's actually an outgoing from us. Or are you
18 referring to --

19 Q You're right. I'm sorry. But the final message from
20 him is, "Already lol im otw," correct?

21 A Yes.

22 Q So every message about setting up dates, hurry up,
23 get here, my phone is blowing up, I want to make the
24 bread, is all the UC, is that correct?

25 A That's correct.

1 MS. VIDAL: No further questions.

2 THE COURT: All right.

3 Redirect, Ms. Wood?

4 MS. WOOD: Briefly, Your Honor.

5 MS. VIDAL: One moment, Your Honor.

6 THE COURT: Excuse me. Go right ahead.

7 **REDIRECT EXAMINATION**

8 BY MS. WOOD:

9 Q So, Detective Dietrick, if we refer to the first page
10 of the text messages, at the bottom of the page the
11 defendant says, "Understood well set a good reasonable
12 price an you'll get it in no time," is that correct?

13 A It is.

14 Q Then on Page 2 is when they talk about how much money
15 he's going to give her off every date, is that correct?

16 A Yes.

17 Q So then every conversation after that from Pages 3 to
18 11 had to have occurred after those first initial
19 conversations, correct?

20 A That's correct.

21 Q And when Ms. Vidal was asking you about the text
22 messages towards the end on pages, like, 9 and 11, and
23 talked about the undercover kind of initiating all the sex
24 talk, is it also true that each time she initiates sex
25 talk the defendant responds, "Fasho" or "Ok"?

1 A That's correct.

2 Q What does fasho mean?

3 MS. VIDAL: Your Honor, objection to the
4 question.

5 THE COURT: I don't know that he can opine as to
6 what the intent of that particular language was. Go back
7 over that one more time for me.

8 MS. WOOD: Yes, Your Honor. And I'm not
9 intending to get intent. In terms of text speak, what
10 does the word fasho mean, is what I was getting at.

11 THE COURT: The word fasho?

12 MS. WOOD: Yes, Your Honor.

13 THE COURT: Objection is overruled as to that
14 narrow question.

15 Go right ahead, detective.

16 DETECTIVE DIETRICK: Fasho would be an
17 abbreviation for "for sure."

18 THE COURT: For sure.

19 BY MS. WOOD:

20 Q And what does for sure mean?

21 MS. VIDAL: Your Honor, it's common language,
22 for sure. I think the government at this point is trying
23 to get him to interpret Mr. Walker's intent.

24 THE COURT: No, objection is overruled. I think
25 the detective can testify as to the parlance in this

1 particular type of industry what that term would mean.

2 Objection is overruled.

3 You may respond.

4 A It would be an affirmative response.

5 Q And when you previously testified that when you
6 recovered the gun you did not know whether it was
7 functional or not, why did you say that?

8 A Because we did not test fire it or test it for any
9 sort of functionality in the room when we were -- we
10 recovered it.

11 Q But you later did so?

12 A Yes.

13 Q And you found it to be functional?

14 A Yes.

15 MS. WOOD: I don't have any --

16 THE COURT: You mentioned that a portion of the
17 gun was secured by tape. Could you go over that again,
18 detective.

19 DETECTIVE DIETRICK: So on the grip of the gun,
20 on the handle, there would be two plastic plates that
21 cover where the magazine is inserted so that you couldn't
22 see the skeletal framework of the pistol. The tape was
23 holding those plastic pieces together.

24 THE COURT: All right.

25 Any follow-up questions based upon my question?

1 MS. WOOD: Just one question.

2 BY MS. WOOD:

3 Q So did you have to manipulate the gun at all in order
4 for it to become functional when you test-fired it?

5 A As far as?

6 Q Did it fire as it was?

7 A It fired. It fired as it was.

8 THE COURT: Ms. Vidal, do you have additional
9 questions?

10 MS. VIDAL: I do, Your Honor.

11 THE COURT: Yes, ma'am. I'll let you do that.

12 MS. VIDAL: Just about the gun, Your Honor.

13 THE COURT: Yes, ma'am. Go right ahead.

14 MS. VIDAL: Your Honor, unfortunately, I only
15 have one copy of this. So if I can offer this as Defense
16 Exhibit 1, which I showed to Ms. Wood. If the officer can
17 take a look at it and then show it to Court, I would
18 appreciate it.

19 THE COURT: Sure. Yes, ma'am.

20 MS. WOOD: No objection.

21 THE COURT: All right.

22 MS. VIDAL: If you can take it to the officer
23 first, sir. Thank you.

24 **RECROSS-EXAMINATION**

25 BY MS. VIDAL:

1 Q Detective Dietrick, if you can just quickly look
2 through these pictures and let me know if you recognize
3 them?

4 THE COURT: Are these the ones attached to your
5 exhibit?

6 MS. VIDAL: They're not, Your Honor. They are
7 additional pictures.

8 THE COURT: That's fine.

9 A I do recognize them.

10 Q And as the Court Security Officer is handing them to
11 the Judge, it's fair to say that that was the gun that was
12 recovered from Mr. Walker's backpack, is that correct?

13 A That's correct.

14 Q So there are pieces of Scotch Tape that are holding
15 part of the grip together, is that right?

16 A That's correct.

17 Q And they came off easily, is that correct?

18 A Yes.

19 MS. VIDAL: No further questions.

20 THE COURT: These will be received as your
21 Exhibit 1, I believe?

22 MS. VIDAL: Number 1, yes. Since the exhibit
23 attached to my position on sentencing was Defense
24 Exhibit 1; however, it's Government's Exhibit 2.

25 And then also attached to the position is

1 Defense Exhibit 2, and I would ask that that be admitted.

2 THE COURT: Well, hold off. I've got to clarify
3 this a little bit.

4 MS. VIDAL: Yes, sir, Your Honor.

5 THE COURT: Your exhibit that you submitted as
6 part of your pleading is not an exhibit for the purpose of
7 the hearing?

8 MS. VIDAL: That is correct, Your Honor.

9 THE COURT: So they turn on independent axis.
10 So your Exhibit Number 1 is Exhibit Number 1 for the
11 purpose of this hearing?

12 MS. VIDAL: Yes, sir.

13 THE COURT: All right. It will be received.

14 (Defendant's Exhibit 1 is received.)

15 MS. VIDAL: And then for purposes of the hearing
16 as well, Defense Exhibit 2 would be additional photographs
17 that are attached to the defense position on sentencing.
18 I'm sorry I'm confusing you.

19 THE COURT: No, I'm not confused. I just want
20 to make sure that we're on the same page.

21 MS. VIDAL: Yes, sir.

22 THE COURT: All right.

23 Do you have independent copies of these so that
24 we can make these a part of the record?

25 MS. VIDAL: I can provide independent copies of

1 them.

2 THE COURT: Yes. Yes. Provide them to the
3 clerk, please.

4 MS. VIDAL: Yes, sir.

5 (Defendant's Exhibit 2 is received.)

6 THE COURT: Any other questions of the
7 detective?

8 MS. WOOD: Not from us, Your Honor.

9 MS. VIDAL: No, Your Honor.

10 THE COURT: All right.

11 Detective Dietrick, you may step down, sir.

12 Thank you for your testimony today.

13 DETECTIVE DIETRICK: Thank you, Your Honor.

14 **WITNESS STOOD ASIDE**

15 THE COURT: Any additional government witnesses?

16 MS. WOOD: No additional witnesses, Your Honor.

17 THE COURT: Any additional witnesses, Ms. Vidal?

18 MS. VIDAL: None, Your Honor.

19 THE COURT: All right. Then I'll hear argument.

20 MS. WOOD: And, Your Honor, may I see the gun
21 photos?

22 THE COURT: Yes, ma'am.

23 MS. WOOD: I'm sure I have them. I just want to
24 make sure I see them again.

25 THE COURT: Yes, ma'am. You certainly may.

1 MS. WOOD: Your Honor, the government in this
2 case does think that the defendant should receive the
3 four-point enhancement for possessing the firearm in
4 connection with another felony offense pursuant to
5 2K2.1(b)(6)(B). And the purpose of that enhancement is
6 when a firearm facilitated or had the potential of
7 facilitating another felony offense.

8 And the *Perez* case I quoted in my brief, it
9 states, "This requirement is satisfied if the firearm had
10 some purpose or effect with respect to the other offense,
11 including if the firearm was present for protection or to
12 embolden the actor."

13 And further case law states that it doesn't
14 matter whether the firearm was actually used as long as it
15 had the potential to facilitate the other felony offense.

16 And "The purpose of the enhancement is to
17 'punish more severely a defendant who commits a separate
18 felony offense that is rendered more dangerous by the
19 presence of a firearm.'"

20 In this case, the defendant possessed the
21 firearm in connection with the felony offense of
22 commercial sex trafficking in violation of Virginia Code
23 Section 18.2-357.1. And basically, Your Honor, this code
24 section punishes someone who, with the intent to receive
25 money from prostitution, solicits, invites, recruits,

1 encourages, causes, or attempts to cause prostitution.

2 And we believe that the facts of this case
3 certainly support the enhancement.

4 First, I'd point to the facts that are
5 stipulated to in the statement of facts and the
6 presentence report. That is: That it was an ad targeting
7 suspects to recruit persons into prostitution.

8 That the agent and the defendant discussed the
9 defendant assisting the prostitution activities of the
10 fictional woman, including how much money defendant would
11 spend each time he saw her, how much she should charge
12 clients, how much of a cut defendant would take when she
13 met with clients, and how much defendant -- excuse me, and
14 how defendant would provide security while she saw
15 clients.

16 Also stipulated to is that the firearm was
17 loaded with five rounds of ammunition. And also that the
18 defendant possessed the firearm for protection.

19 Then we look at the ad, Your Honor. Right at
20 the top it says escortalligator.com. The detective
21 testified that the ad was "looking for a daddy." There's
22 no mistake that it was a daddy. It wasn't simply
23 soliciting sex. It was looking for a pimp or a daddy.

24 The ad said, "Needed to make money. Willing to
25 hustle. I'm new to this and I need someone to show me how

1 to do this safe."

2 THE COURT: Go back, if you don't mind, because
3 I don't have it directly in front of me right now -

4 MS. WOOD: Sure.

5 THE COURT: - and refresh my recollection as to
6 the statement of facts supporting the plea of guilty.
7 Could you go back and recite that again for me? I don't
8 have it in court with me right now.

9 MS. WOOD: Yes, Your Honor.

10 THE COURT: The relevant portions. And of
11 course I'll let Ms. Vidal go into it as well.

12 MS. WOOD: And it's contained in Paragraph 6 of
13 the presentence report, and the subparagraph Number 2. It
14 says, "On May 7, 2020, an undercover detective with the
15 Henrico County Police Department posed as a 28 year old
16 female and posted an ad on Listcrawler.com targeting
17 suspects who recruit persons into prostitution."

18 COURT REPORTER: Ms. Wood, please slow down.

19 MS. WOOD: The defendant responded to the ad via
20 text message and conversed with the undercover agent from
21 May 7th to May 18th, 2020. The agent and defendant
22 discussed the defendant assisting the prostitution
23 activities of the fictional woman, including how much
24 money defendant would spend each time he saw her, how much
25 she should charge clients, how much of a cut defendant

1 would take when she met with clients, and how defendant
2 would provide security while she saw clients. And that's
3 from the statement of facts, Your Honor.

4 Then also in the presentence report, paragraph
5 -- it's also in the statement of facts, Paragraph 6,
6 subparagraph --

7 THE COURT: Yes, I knew in the presentence
8 report. I just wanted to clarify that it was in the
9 statement of facts, which the defendant agreed to.

10 MS. WOOD: Yes, Your Honor.

11 Also Paragraph 5 of the statement of facts says
12 that the firearm was loaded with five rounds. And then in
13 Paragraph 7 of the presentence report, to which they have
14 not objected, it stated that the defendant possessed the
15 firearm for protection.

16 And then going on, as I discussed the ad, it was
17 targeting people who were going to be a daddy, not just
18 people looking for sex.

19 And then we go to the text messages, Your Honor.
20 Those are very clear as to what the defendant's intentions
21 were from the very first day he talked to the prostitute.
22 He was talking about taking her proceeds. He said, "You
23 can give me 20 off every 2."

24 He said, "well set a good reasonable price."

25 He said, "i can help you set your prices an try

1 to help you with some clientele as well."

2 He said, "I'll be security for you your people
3 wont even know I'm wherever you chose to conduct
4 business."

5 And, Your Honor, even though some of the sex
6 talk was initiated by the undercover agent, he never
7 objected. He never said, no, that's not the plan. Never
8 said, no, that's not what I'm talking about. He always
9 went along with it in the affirmative saying, okay, or
10 fasho, meaning for sure.

11 The day before the arrest the undercover agent
12 said she was going to make an ad for the next day. And he
13 even went and helped her with the content talking about
14 prices, talking about sexual acts she would or would not
15 perform.

16 And the day of the arrest between the text
17 messages and the calls, there were six references to how
18 she was going to be meeting with clients that day. She
19 said I might try to set up a few dates.

20 She said, "let me know what time so I don't plan
21 them for the same time."

22 She said, "When should I set dates up? I was
23 gonna wait til u got here."

24 She said, "I said one come at 6 but I'll tell
25 him a little later."

1 She said, "My shits blowing up lol. Hurry up so
2 I can make this bread!" Meaning her phone was ringing off
3 the hook and she needed to make the money.

4 And she said, I was just trying to see when to
5 tell people to come.

6 So it was clear her purpose for getting the
7 hotel room that day was to meet with clients and he was
8 there to do what he promised he would do - to provide her
9 security while she saw clients.

10 When he was interviewed by Henrico, he said that
11 the undercover had wanted someone who would make sure she
12 was safe. His conversation with her was about wanting
13 someone to keep her safe. And with the interview with the
14 ATF he says he possessed the firearm for protection.

15 When he arrived at the hotel meeting a
16 prostitute who was going to meet with clients, he carried
17 a loaded, functional, firearm that was easily accessible
18 and ready for use. As promised, he was there to be her
19 security while she saw clients. The firearm was present
20 to protect himself, to protect her, and to protect the
21 prostitution proceeds.

22 We believe we have established by a
23 preponderance of the evidence that the firearm had the
24 potential of facilitating these commercial sex trafficking
25 offense, and would ask you to find that the enhancement

1 applies.

2 THE COURT: All right. Very well. Thank you.

3 Ms. Vidal.

4 MS. VIDAL: Your Honor, I'm talking to the side
5 a little bit while this dries off.

6 THE COURT: Sure. Yes, ma'am. Go right ahead.

7 MS. VIDAL: So, Your Honor, as I indicate in my
8 sentencing position, I do not believe that there is enough
9 evidence to show intent. And to show Mr. Walker's intent,

10 --

11 THE COURT: Is that consistent with the
12 statements of facts that you acknowledge to be correct?
13 It does indicate in there - I had it in my notes, but I
14 don't have the document in front of me - that one of his
15 roles with respect to the undercover officer would be to
16 provide protection for the business relationship they
17 appeared to be negotiating.

18 MS. VIDAL: Yes. On Page 3 of the presentence
19 report, which lists the offense conduct in the statement
20 of facts verbatim, Paragraph 2, which the government
21 referred to earlier, is a summary of the text messages
22 which I agree that's what these text messages say.

23 I think this is a factual statement as to what
24 some of these text messages say, but it doesn't
25 necessarily mean that that was his intent to engage in

1 commercial sex trafficking.

2 THE COURT: Well, if they were discussing his
3 cut in the proceeds of the operation, and what hotels they
4 were going to use, and things like that, what other
5 conclusion could the trier of fact draw?

6 MS. VIDAL: Well, Your Honor, you have to look
7 at the entire scope. And the entire scope is 178
8 messages, where most of the messages are not about
9 security, are not about his cut. These first -- security
10 is only mentioned one time in 178 messages, and not at all
11 in four phone calls.

12 THE COURT: Didn't he also tell Detective
13 Dietrick that that was going to be his role?

14 MS. VIDAL: Yes. Again, it's talk, Your Honor,
15 because he also, as the detective said, tried to distance
16 himself away from engaging -- or the intent or the desire
17 to engage in any sexual activity where that's belied by
18 the majority of the text messages here. So in those
19 postarrest statements, what Mr. Walker is trying to do is
20 distance himself away from saying, hey, I wasn't trying to
21 be a pimp. But, again, that is belied by the rest of the
22 text messages.

23 What is here is discussion. There are no steps
24 taken that shows that Mr. Walker truly intended to receive
25 money from the UC. There is just simply none, Your Honor.

1 THE COURT: You don't think that having an
2 appointed time for him to show up there, based upon the
3 conversations that she was going to be seeing potential
4 clients at the time, even showing up there isn't an act in
5 furtherance of the conspiracy using a conspiracy analysis?

6 MS. VIDAL: Your Honor, he's telling -- in the
7 text messages, he telling the UC when he's going to be
8 there, the approximate time that he's going to arrive. He
9 knows that she's going to engage in sexual activities, and
10 is hoping that she engages in said activities with him.

11 I don't think you can glean from him saying,
12 okay, I'll be there around 6:00, to let her know when he's
13 going to be there that he intends to be there to serve as
14 security, or to make any money from her. Again, that
15 conversation happened on May 7th in terms of security.

16 And I think it's important to point to the fact
17 -- two facts that shows that this was all talk from
18 Mr. Walker. First is that the pricing, basically \$10 per
19 date, is a ridiculously low amount of money. And it's
20 hard to glean that from the text messages from the UC's
21 response: "So \$10 to you for every date?" But the
22 officer testified that that is a low amount.

23 In addition, when Mr. Walker was interviewed
24 they asked him where did you get these prices from? He
25 said from, you know, the websites of what other people are

1 charging. Again, no indication that he really was serious
2 about getting involved in this.

3 I mean, we have to understand what is happening
4 here. This is someone who is going to a website that is
5 designed to sell -- that's designed for prostitution. And
6 it's not a far stretch to say that someone is trying to
7 convince this woman, a UC, hey, yeah, I'll help you out,
8 but just trying to get there to get a date. So there has
9 got to be something more to suggest that Mr. Walker
10 intended to commit commercial sex trafficking.

11 As I indicate in the sentencing position, this
12 is a new statute. It's relatively new. It was enacted in
13 2015. There are only two published opinions in the
14 Commonwealth in the state courts, the Court of Appeals,
15 that talk about this particular criminal statute. Both
16 cases that I cite, *Carr* and *Johnson*, talk about acts that
17 indicated the intent of the defendants in that case.

18 So they helped set up ads. They got two hotel
19 rooms in both cases. And there was expert testimony, at
20 least in *Carr*, that when two hotel rooms are purchased
21 that that is a signal that these individuals are involved
22 in commercial sex trafficking because one room is used for
23 the dates, and the other room is used for people to wait
24 for the dates.

25 And the person -- or the defendants were

1 collecting the money for those particular cases. So
2 there's at least some affirmative steps to show the intent
3 to collect money. The purpose of the statute is to target
4 people who are essentially pimps, and trying to encourage
5 women or men to engage in prostitution while they are
6 receiving money.

7 And there is just simply insufficient evidence
8 in this case, even by a preponderance. And a
9 preponderance is more than reasonable suspicion. It's
10 more than probable cause. So I understand that there was
11 an arrest warrant issued on probable cause, but concluding
12 that there's a preponderance of the evidence that simply
13 by showing up to the door, that's really the only
14 affirmative act that Mr. Walker did was show up to this
15 hotel room door. He didn't suggest to her, hey, you go
16 get a room.

17 The UC kept saying she was going to get a room,
18 which was part of her sexual acts. Mr. Walker simply
19 suggested where are you going to go? Which hotel? What
20 about this one?

21 Again, that's not him trying to assist her.
22 It's him having a conversation with her, which is -- which
23 goes along with the rest of the messages. They're having
24 conversations. They're getting to know each other.
25 They're talking about hanging out. They're talking about

1 smoking weed together. He's saying I really want to see
2 you. My interest is peaked.

3 She says, "U wanna chill wit me?"

4 So I don't think that Your Honor can conclude by
5 a preponderance that the simple act of him showing up to a
6 room where -- when you have messages that suggests that he
7 just wants to have a sexual relationship with her, that he
8 -- that there was the intent to engage in commercial sex
9 trafficking activity, so I would ask that you overrule the
10 government's objection.

11 THE COURT: All right. Thank you very much.

12 Ms. Wood, I'll give you the rejoinder.

13 MS. WOOD: Your Honor, briefly. I would just
14 say that he certainly was engaged in commercial sex
15 trafficking. All that is required there is to solicit,
16 invite, recruit, encourage, cause, or attempt to cause
17 prostitution. And he didn't just show up. He showed up
18 with a gun ready to do what he told her he would do, and
19 that's provide security.

20 He did that after responding to the ad that
21 talked about daddies. Someone being a pimp. Someone
22 being a trafficker. He -- and also asked how to do this
23 safe. To not be robbed. To not get involved with the
24 police.

25 He did it after all the texts about him telling

1 her how much to charge, him telling her what to put in her
2 ad, him telling her how much of a cut he would take, and
3 him telling her he would provide security. We would ask
4 you to give him the four-level enhancement.

5 THE COURT: All right. I thank counsel for the
6 argument and presentation.

7 Before the Court is the government's objection
8 to the probation officer's calculation of the United
9 States Sentencing Guidelines in this case. The government
10 contends that a four-level enhancement should have been
11 applied to the base offense level because the firearm the
12 defendant is charged with possessing was used in
13 connection with another felony; namely, commercial sex
14 trafficking.

15 In support of his argument that a four-level
16 enhancement is appropriate, the United States points out
17 that the defendant in this case responded to an ad posted
18 by an undercover Henrico County police officer soliciting
19 people to engage in prostitution.

20 The defendant responded and exchanged a number
21 of text messages with the undercover officer. During the
22 course of the text message exchange, which is attached to
23 the defendant's amended position with regard to sentencing
24 factors, and response in opposition to government's motion
25 for upward variance, as well as Government's Exhibit

1 Number 1, the defendant specifically discussed with the
2 officer how much they would charge for prostitution
3 services, how much they would divide the proceeds, where
4 the prostitution should be performed, and how the
5 defendant could help her solicit clientele.

6 They agreed they wanted to get started quickly.
7 Most importantly, the defendant indicated that he could
8 provide her with security.

9 The defendant argues that if you look at all of
10 the text messages between him and the undercover officer,
11 that he also indicated a personal interest in her. That
12 probably is a logical deduction from the trafficking --
13 from the communication; however, there seems to be no
14 doubt in his mind that at the time he also intended to
15 work with her in soliciting customers for prostitution,
16 and assisting her in that way. And that he was going to
17 provide security. And when Detective Dietrick interviewed
18 the defendant postarrest, he agreed again that he would
19 provide security.

20 He also -- it was also in the statement of
21 facts, which this Court accepted as part of the plea
22 agreement in this case, the defendant indicated that he
23 intended to engage in prostitution activities with the
24 undercover officer, and would provide security.

25 So when the defendant arrived at the appointed

1 location to meet with the individual he thought was a
2 prostitute to launch their joint venture, he was arrested
3 by the Henrico County Police Department. Incident to
4 arrest, the officer searched the backpack in his
5 possession, which contained a loaded .32 caliber
6 semi-automatic handgun.

7 In the defendant's opposition to the four-level
8 enhancement, he also contends, although it wasn't
9 developed too much in oral argument today, that the
10 relevant conduct related to commercial sex trafficking
11 occurred before the defendant met with the undercover
12 officer. Therefore, he concludes in that context that the
13 possession of the firearm is merely coincidental and not
14 an integral part of the proposed prostitution operation.
15 A careful review of the communication between the
16 defendant and the undercover officer do not support this
17 contention.

18 In Application Note 14(A), accompanying section
19 2K2.1(b)(6)(B) of the U.S. Sentencing Guidelines manual,
20 which is applicable to the immediate case, it states in
21 pertinent part, "If the firearm or ammunition facilitated,
22 or had the potential of facilitating another felony
23 offense," the four-level enhancement pursuant to 2K2.1
24 applies.

25 Given the role that the defendant assumed in

1 what he thought would be a prostitution venture, his
2 possession of a firearm at his meeting with the undercover
3 officer is sufficient to demonstrate by a preponderance of
4 the evidence that it was the defendant's intention to use,
5 or possess, the firearm in connection with the proposed
6 commercial sex trafficking operation that had been
7 discussed with the undercover Henrico County officer.

8 The Court, therefore, concludes that the
9 four-level enhancement should apply. The defendant's
10 Total Offense Level is recalculated to 21, his Criminal
11 History Category remains III, and the guideline range is
12 56 to 57 months.

13 MS. WOOD: Your Honor, I think you just
14 accidentally misspoke. I think it's 46 to 57.

15 THE COURT: Right. What did I say?

16 MS. WOOD: I think you said 56.

17 THE COURT: Thank you for correcting me. It's
18 46 to 57 months.

19 Does either side have any evidence they wish to
20 put on this morning?

21 MS. WOOD: No, Your Honor.

22 THE COURT: Any other evidence, Ms. Vidal?

23 MS. VIDAL: None from the defense.

24 THE COURT: All right.

25 I will then hear from the United States as to

1 what sentence would be appropriate in this case.

2 MS. WOOD: Your Honor, we do think a sentence
3 within these new guidelines is appropriate in this case,
4 46 to 57 months, given all the factors in 3553. First,
5 when you look at the nature and circumstance of the
6 offense, Your Honor, this is not the typical felon in
7 possession of a firearm case where a car is stopped for a
8 traffic violation and the defendant has a gun in a
9 backpack in his car. As we thoroughly discussed this
10 morning, he had the gun because he was going to meet a
11 prostitute and provide security for her, thereby making
12 the already inherent dangerous activity of prostitution
13 even more dangerous.

14 The firearm was loaded and functional, and he
15 was a prohibited person since 2000. This is following two
16 prior sentencing events he had involving firearms. And
17 when he showed up, he was also illegally possessing 12 and
18 a half grams of marijuana.

19 If you look at his criminal history, he's almost
20 40 years old. He's been committing crimes for over 20
21 years. He has 15 convictions on his record, yet, if you
22 liberally count it, he's only been receiving points for
23 three of them of the 20 -- excuse me, of the 15. He began
24 his criminal history with a conviction for a felony sex
25 offense. Shortly thereafter, he committed grand larceny,

1 attempted robbery, and use of a firearm.

2 While incarcerated for those offenses, he
3 committed 14 disciplinary actions in the Department of
4 Corrections. He was released in 2003, and in 2004 he
5 committed a number of crimes for which he received no
6 criminal history points: Two driving on suspended,
7 trespassing, two obstruction of justice, and one identity
8 fraud. Also in 2005, an assault and battery of a family
9 member.

10 Next, we finally get to the convictions for
11 which he did receive criminal history points, and this was
12 his second sentencing event involving a firearm. In that
13 case, he shot the victim and left him lying there in the
14 street bleeding with life-threatening injuries. He
15 received three convictions as a result of that event, two
16 were reduced charges, and he got a nine-year active
17 sentence.

18 While incarcerated that time he received three
19 disciplinary actions. He was released in 2017, and when
20 he committed the instant offense, he was still under a
21 period of good behavior for those convictions.
22 Unfortunately, nothing thus far has deterred him from
23 continuing to carry a firearm. Not his childhood
24 experiences where he witnessed shootings and homicides,
25 not being convicted of armed robbery, not shooting someone

1 who almost died, and unfortunately not his prior prison
2 sentences followed by periods of good behavior, which he
3 violated.

4 And unfortunately, he not only illegally
5 possessed these firearms, but he uses them to commit
6 crimes of violence. So we think a sentence of 46 to 57
7 months is necessary to protect the public for the period
8 of time the defendant is incarcerated.

9 It's clear that the defendant, who has 15 prior
10 convictions, 17 disciplinary actions while in prison, and
11 who continues to carry a firearm in this case, after being
12 a prohibited person for 20 years, has no respect for the
13 law, and we'd ask you to sentence him accordingly.

14 THE COURT: All right.

15 Ms. Vidal.

16 MS. VIDAL: Your Honor, notwithstanding Your
17 Honor's decision with respect to the enhancement, it's
18 still my position that a sentence of 30 months is
19 appropriate in this case. As the guidelines were
20 initially calculated, as I indicated in my sentencing
21 position, his guideline range is already high. The base
22 offense level is a 20 because of the prior conviction for
23 malicious wounding which, again, that's a six-level
24 enhancement for what it would otherwise be. And all of
25 his accountable criminal history points also comes from

1 that conviction, which puts him in a category of III. So
2 the -- that aggravating fact is already accounted for in
3 that guideline range.

4 But, again, there are other facts about
5 Mr. Walker outside of his criminal history. First of all,
6 with respect to the criminal history and the government
7 saying he has 15 convictions and 17 infractions when he
8 was serving his sentence, there is a reason why the
9 guidelines stop counting prior convictions. That's most
10 obviously illustrated by his first conviction when he was
11 just 18 years old, his first adult conviction went he was
12 just 18 years old. And he had just turned 18 when he was
13 charged with that offense. So he was very young when he
14 went into an adult prison.

15 And serving time as a young person in an adult
16 prison, a person gets tested. And so I noted that out of
17 those violations, the only violation that potentially
18 involved any violence was a fight. And it was earlier on.
19 And so there's no -- with no indication of what happened
20 with the fight, if there were any injuries. We didn't
21 know if he was the aggressor or if he was simply trying to
22 protect himself and prevent future assaults because if you
23 don't -- it's just prison culture. If you don't back
24 down -- if you back down from a fight and don't protect
25 yourself, you're inviting future attacks.

1 So, again, he was just 18. He was young. As I
2 mentioned by citing *Mathena v. Malvo*, that as you are
3 aware, Your Honor, through the *Miller v. Alabama*
4 jurisprudence, there is lots of research that indicates
5 that a mind that is young is prone to impulsive
6 activities.

7 So after he was released from there, he does
8 have additional convictions. But, Your Honor, these are
9 minor misdemeanor convictions. He really did not engage
10 in any troubling criminal activity until his last felony
11 conviction for unlawful wounding which, again, as I
12 described, was already accounted for in the previous
13 guideline range of 30 to 37 months.

14 But I endeavor to give the other part of
15 Mr. Walker because here sits a complete person, not just a
16 person that has a criminal history, but a person who has
17 lived for almost 40 years. And most of his life was not
18 easy. You're dealing with someone who is an adult, but
19 just because he's an adult doesn't mean that the trauma
20 that begins from a child, up through his adulthood,
21 doesn't just go away. It has a certain impact on the way
22 that he behaves and certain decisions that he makes.

23 So, yes, he grew up in Whitcomb Court. He was
24 the oldest child in a household of 11 children living in
25 Whitcomb Court in the '90s. And he experienced and saw a

1 lot that is going to have a substantial impact on him and
2 the way he views life. Yes, he saw people shot. Yes, he
3 saw people killed. And while the government, I guess
4 understandably, says that, well, that should teach him
5 about having a gun, perhaps it can also say, well, if I
6 don't protect myself then I could be a victim, too.

7 And of course that's not the right decision
8 under the law because he was convicted of a felony when he
9 was 18 years old, but, again, that explains his mentality
10 because after seeing so much violence and being subject to
11 that violence as well, he felt the need to protect
12 himself.

13 Again, when he's coming up as a child, he's
14 abandoned. He's abandoned by his biological mother, and
15 eventually abandoned by his father who started serving a
16 sentence because of his heroin use. And it just was not
17 easy. And Mr. Walker struggled. He had mental health
18 issues. He, again, was suffering from trauma that he was
19 experiencing just growing up in that environment.

20 He became a young father at the age of 17 and
21 again at the age of 18. So he had a one-year old and an
22 infant. And that's where his issues really started with
23 his contact with a criminal justice system; however, he
24 has made efforts to do better.

25 So when he was released from prison the last

1 time, he immediately got a job and was working. And he
2 started working at the Croaker's Spot Restaurant, and he
3 also started working at Buffalo Wild Wings and Victory
4 Grill at the same time until he decided to start going to
5 Virginia College to pursue a culinary degree.
6 Unfortunately, he couldn't get that, as the PSR indicates,
7 because the school closed down. But he was trying to
8 improve his life, and was doing well until he made this
9 decision, which is unfortunate.

10 But, again, when you balance what he was trying
11 to accomplish at the time prior to him deciding to pick up
12 this gun, and the rest of his history, it's not necessary
13 to give him such a lengthy sentence.

14 I think what's also important is after he was
15 arrested by the state for this commercial sex trafficking
16 charge, he eventually made bond. He started working again
17 at another restaurant called Sugar's Crab Shack. And he
18 started working there because of a man named Ralph Fields
19 who worked with him at the Croaker's Spot. And Ralph
20 Fields hired him to work at Sugar's Crab Shack because
21 Mr. Walker was such a good worker and a good employee.
22 Such a good employee, and Mr. Fields thought so highly of
23 him, that he took his own time out to come here to this
24 court and testify at Mr. Walker's detention hearing.

25 So Mr. Walker has potential. He was on the

1 right path. He made a decision that he should not have
2 made, and he acknowledged that by pleading guilty and
3 accepting responsibility for his offense. I would ask
4 that Your Honor consider sentencing him to 30 months in
5 prison.

6 THE COURT: Thank you very much.

7 Ms. Wood, any rejoinder on that?

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

9 THE COURT: All right. Very well.

10 Turning first to the 18, United States Code,
11 Section 3553(a) factors, which I'm required to put on the
12 record by the Fourth Circuit. The nature and
13 circumstances of the offense, I think, are well developed
14 by the evidence we have heard today.

15 Looking at his upbringing and family
16 obligations, he was born in Richmond, Virginia. As
17 Ms. Vidal pointed out, he was raised by his father until
18 his father was convicted of a felony offense and served a
19 period of time in the penitentiary. During that period of
20 time, he resided with his grandmother.

21 He has an extensive medical history. He has
22 been diagnosed with asthma, irregular heartbeat,
23 hypertensive heart, depression, anxiety, bipolar disorder,
24 and cannabis dependence. He received mental health
25 treatment in 2019.

1 During the periods he was not in confinement, he
2 was employed as a cook at several restaurants and worked
3 at the Richmond Parks & Recreation agency. While
4 attending public school, he was placed in a special
5 education program. And he did complete his GED.

6 As counsel have pointed out, he has a rather
7 extensive prior record. He has eight prior felony
8 convictions, two including firearms and one unlawful
9 wounding with a firearm. He has had two extended periods
10 of confinement from September 2000 to October of 2003 on a
11 grand larceny, burglary, attempted robbery, and firearm
12 charge. And again from 2009 to 2017 for malicious
13 wounding, use of a firearm, and malicious wounding and
14 possession of a firearm by a convicted felon.

15 He has had a number of disciplinary actions
16 while confined. But as Ms. Vidal pointed out, not all of
17 them are of a serious nature.

18 I believe, based upon the review of the 3553(a)
19 factors, that a proper sentence can be found within the
20 U.S. Sentencing Guidelines as calculated.

21 Ms. Vidal, if you and your client would come
22 forward, please.

23 Mr. Walker, I agree that it was a close call as
24 to whether or not you intended to use the firearm as a
25 part of a prostitution operation. But my decision is

1 based upon your own comments that you made, and your
2 showing up at the hotel that day with the firearm. When
3 you look over the conversations between you and the
4 undercover agent, I think a reasonable person, by a
5 preponderance of the evidence, could conclude that at
6 least at some point you had an intention to work with her
7 in her apparent prostitution operation. And based upon
8 that conversation, and the text conversations, this Court
9 did find that it was sufficient to show that you had the
10 intent to provide security, and that the firearm, by a
11 preponderance of the evidence, was to be used for that
12 purpose.

13 Mr. Walker, before I decide what sentence is
14 appropriate, I want to hear from you, sir. You may lower
15 your mask and address the Court.

16 MR. WALKER: How are you doing today?

17 THE COURT: Fine, sir.

18 MR. WALKER: All right. I just want to say,
19 like, I accept my responsibility for what happened, but
20 that was not my intent.

21 THE COURT: Slow down just a little because this
22 young lady has got to take it, okay?

23 Go ahead.

24 MR. WALKER: I accept responsibility for
25 possession of the firearm, but the sex trafficking, that

1 was really not my intent, all right? I'm 40 years old. I
2 just had a granddaughter. My step-mom and my dad just
3 died a couple months ago.

4 I'm really not a bad person. I mean, like, I'm
5 a good person, got a good heart, and I just want to take
6 care of my family and spend time with my family and just
7 live my life, I mean, without being -- getting into any
8 trouble, know what I mean? Like I've spent a lot of time
9 in prison. I mean, more than half my adult life.

10 Since I came home in 2017, I really was trying
11 to be on the right path. And, I mean, like, this was the
12 only slip up I had. Like it's a terrible slip up, but
13 that's all it was, a slip up. But it was a costly one.

14 I've been to college. I'm trying -- just trying
15 to better myself. That's it.

16 THE COURT: All right. Well, you are obviously
17 a good person but, unfortunately, you have done some bad
18 things in the course of your lifetime. I believe a
19 sentence at the low end of the guidelines is appropriate
20 based upon what I've heard today.

21 So after having reviewed and recited all the
22 factors set forth in 18, United States Code, Section
23 3553(a), which guide my hand in determining what sentence
24 is appropriate, and I've considered the U.S. Sentencing
25 Guidelines as now properly calculated as advisory only, I

1 believe that a sentence that satisfies both 18, United
2 States Code, Section 3553(a), and all of the requirements
3 of the U.S. Sentencing Guidelines, would be commitment to
4 the U.S. Bureau of Prisons for a term of 46 months.

5 I'm going recommend to the Director of the
6 Bureau of Prisons that you be designated to a facility as
7 close to the Richmond area as possible so you can maintain
8 contact with your family.

9 Upon your release from confinement, you will be
10 placed on supervised release for a term of three years.

11 Within 72 hours of your release, wherever you may be, you
12 will be required to report to the U.S. Probation Office in
13 that district. Your supervised release begins at that
14 time. It is for a period of three years.

15 While on supervised release you may not violate
16 any federal, state or local law. You can't have in your
17 possession any kind of firearm or dangerous destructive
18 device. Nor can you have any kind of narcotic drug or
19 controlled substance in your possession without a valid
20 prescription issued by a licensed doctor.

21 Keep in mind, Mr. Walker, that what you may have
22 experienced in the state system is somewhat different than
23 in the federal system. You will be required to follow the
24 instructions of the probation officer very, very
25 carefully. Any violation of those conditions of

1 supervised release, in all probability, will result in an
2 additional period of confinement.

3 If you want to be true to your word that you're
4 giving me today, follow his or her instructions. Get out,
5 get yourself a good job, further your education, be a good
6 father. And you still have plenty of time. You're a
7 young man. You still have the time to do a lot of good
8 things. I hope you do that.

9 Now, in addition to the standard terms and
10 conditions of supervised release there will be a couple of
11 special conditions. I'm going to require that you
12 complete your GED under the direction of the U.S.
13 probation officer. That means -- you already have your
14 GED?

15 MR. WALKER: Yes.

16 THE COURT: Okay. I'm sorry. I didn't realize
17 that.

18 You will also be required to provide the
19 probation officer with access to any financial information
20 that he or she feels is necessary in order to supervise
21 you. If the probation officer concludes that you are in
22 need of any kind of drug treatment or drug counseling, you
23 will be required to participate in that if he or she feels
24 it is necessary.

25 You will also be required, if the probation

1 officer feels it's necessary, to participate in any kind
2 of mental health counseling or treatment. And if you're
3 required to do so, you will be required to sign a waiver
4 of confidentiality so that the U.S. probation officer will
5 be able to communicate with your mental health counselor
6 to make sure that you are participating appropriately in
7 the program.

8 I have considered your net worth, your earning
9 capacity, and the sentence you're receiving. I don't
10 think you're capable of paying a fine. No fine will be
11 imposed in this case.

12 You are required by law to pay a special
13 assessment of \$100. That \$100 is due and payable today.
14 If it's not paid by the time you complete your period of
15 confinement you will be required to make payments of not
16 less than \$25 per month beginning 60 days after you begin
17 your supervised release.

18 Any forfeiture order entered in this case will
19 become a part of the final judgment and commitment order.

20 Mr. Walker, you have entered a plea of guilty
21 today without a plea agreement, I believe?

22 MS. VIDAL: Yes, sir.

23 THE COURT: You have an absolute right to appeal
24 the sentence you received to the U.S. Court of Appeals for
25 the Fourth Circuit, if you wish to do so. That appeal

1 must be noted within 14 days. So if you decide that you
2 wish to appeal, after talking to Ms. Vidal, please let her
3 know so that that appeal can proceed as quickly as
4 possible.

5 You will receive credit for all the time you
6 have served awaiting disposition of this case.

7 This Court also believes that should the U.S.
8 Court of Appeals find that the guidelines in this case
9 have been improperly calculated, this Court believes that
10 a nonguideline sentence of 46 months would be appropriate
11 based upon your background and the facts and circumstances
12 of this case.

13 Anything further today, Ms. Vidal?

14 MS. VIDAL: No, Your Honor.

15 THE COURT: Ms. Wood, anything further today?

16 MS. WOOD: I would just like to put on the
17 record, Your Honor, with Ms. Vidal's permission, that the
18 defendant has reviewed the standard conditions of
19 supervision.

20 MS. VIDAL: That is correct, Your Honor. I have
21 reviewed the conditions as outlined in the presentence
22 report with Mr. Walker.

23 THE COURT: All right. Thank you very much.

24 Sir, you have reviewed those conditions, is that
25 correct?

1 MR. WALKER: Yes.

2 THE COURT: All right. Very well.

3 If there is nothing further, Court will stand in
4 recess.

5 You're remanded to the custody of the U.S.
6 Marshals.

7 (The proceeding concluded at 11:10 a.m.)

8 REPORTER'S CERTIFICATE

9 I, Krista Liscio Harding, OCR, RMR,
10 Notary Public in and for the Commonwealth of
11 Virginia at large, and whose commission expires
12 March 31, 2024, Notary Registration Number 149462,
13 do hereby certify that the pages contained herein
14 accurately reflect the notes taken by me, to the
15 best of my ability, in the above-styled action.

16 Given under my hand this 25th day of July, 2021.

17 /s/

18 Krista Liscio Harding, RMR
19 Official Court Reporter

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