

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

BEFORE THE HONORABLE

MARVIN E. ASPEN, U.S. DISTRICT COURT  
TRANSCRIPT OF PROCEEDINGS

October 12, 2022

15 | APPEARANCES:

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1                   The above-styled cause came to be heard on  
2 October 12, 2022, at 2:05 p.m., before the Honorable Marvin  
3 E. Aspen, District Judge, when the following proceedings were  
4 had, to-wit:

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6                   THE COURT: We're here for the resentencing of  
7 Deunta Finch. And if you'd state your names for the record,  
8 counsel.

9                   MR. DEAN: Good afternoon, Your Honor. Rascoe  
10 Dean on behalf of the United States.

11                  MR. HOLLEY: And, Your Honor, I'm Michael Holley.  
12 I'm here on behalf of Mr. Finch.

13                  THE COURT: Okay, thank you. The defendant was  
14 sentenced after a plea of guilty on November 16, 2017, to the  
15 charges in the indictment. Counts One and Four related to  
16 the shooting where the defendant exchanged fire with a driver  
17 of another vehicle. Counts Two and Three related to a  
18 November 15 shooting, where the defendant shot and  
19 pistol-whipped a rival drug dealer, took some of the dealer's  
20 cocaine and left with the dealer's car.

21                  The original sentence on April 13, 2018, was for  
22 290 months' custody, 170 months for Counts One and Two and  
23 Four to run concurrently, and 120 months for Count Three to  
24 run consecutively.

25                  Later, there was -- on July 1, 2022, we vacated

1 the defendant's conviction and sentence for Count Three under  
2 28 USC Section 2255 because the predicate conviction,  
3 defendant's attempted Hobbs Act conviction under Count Two,  
4 no longer qualifies as a crime of violence under  
5 Section 294(c). Both sides, the government and the  
6 defendant, have asked for a resentencing.

7 Is this the correct recitation of the status of  
8 the case at this time?

9 MR. DEAN: From the government's perspective, it  
10 is, Your Honor.

11 MR. HOLLEY: Your Honor, yes, although I believe  
12 Count Four is actually tied to Counts Two and Three, if  
13 I'm -- I think they were all the same date. Isn't that --  
14 just make sure I'm not confused. It doesn't make a major  
15 difference, but -- Count Four was a 922(g) gun count that  
16 went with Counts Two and Three.

17 THE COURT: Okay.

18 MR. HOLLEY: But, you know, it's immaterial.

19 THE COURT: Government agree?

20 MR. DEAN: Yes, Your Honor.

21 THE COURT: Okay, thank you.

22 A revised sentencing report has been prepared by  
23 the probation department, and the defendant has some  
24 objections to that report; is that correct?

25 MR. HOLLEY: Yes, Your Honor.

1                   THE COURT: Let's deal with those now.

2                   MR. HOLLEY: Okay. Yes, Your Honor. One  
3 objection is the denial of acceptance of responsibility. And  
4 as I mention in the memo -- I don't want to repeat  
5 everything, but as I mention in the memo, last time there  
6 were a couple of countervailing considerations.

7                   One consideration is, does the defendant admit to  
8 all the charged conduct. And Mr. Finch definitely did that.  
9 He did it twice. After his plea agreement was taken away, he  
10 chose to come in again and plead to everything. And, you  
11 know, normally that is all that's required to get acceptance  
12 of responsibility, but there were a couple other factors that  
13 the guidelines talk about. One is voluntary termination or  
14 withdraw from criminal conduct or associations.

15                  And, you know, at the time because of his fight in  
16 jail and all that, I can understand that that was weighing  
17 against him, but now that certainly weighs very heavily in  
18 his favor. And we'll talk more about this later, but, you  
19 know, he had the insight to recognize he needed to get away  
20 from the gang, and he also had the courage to do it. It's  
21 one thing to see what you should do, the other to do it at  
22 the risk of really your own life. So there's some really  
23 dramatic shift there in his situation.

24                  And another thing for the Court to consider is  
25 under the guidelines post-offense rehabilitation. And I

1 think those efforts are, you know, really, like I said,  
2 dramatic and very significant.

3 So we would ask that the Court at this time grant  
4 him a two-level reduction.

5 THE COURT: Okay. Government?

6 MR. DEAN: Your Honor, the government's position  
7 on this is the same that it was at the May 29, 2018, hearing,  
8 which is that the assault activity of Darrell Starks, while  
9 the defendant was in jail pretrial, should negate acceptance  
10 of responsibility here, which the Court, although considered  
11 it a close question, ruled on that at Page ID No. 991, Docket  
12 Entry 89.

13 I understand Mr. Holley's point regarding  
14 rehabilitation since that sentence was imposed. I would  
15 argue that to the extent the Court considers that  
16 rehabilitation while the defendant was serving a sentence  
17 that should be considered in the context of other 3553(a)  
18 factors and not in regards to acceptance of responsibility.

19 THE COURT: Okay. All right, I agree with the  
20 government. And for those reasons and for the reasons I  
21 stated in his prior sentence, that objection will be  
22 overruled.

23 MR. HOLLEY: The other objection, Your Honor, is  
24 to the imposition of the carjacking enhancement, which, of  
25 course, it's the government's burden to prove that this force

1 or intimidation was used in order to take the car. You know,  
2 originally, if this was a carjacking, the government could  
3 have charged him with federal carjacking, presumably. It  
4 wasn't charged that way because this wasn't a carjacking.  
5 This was he was robbing a man of his drugs, and then he stole  
6 the car. It was a theft of a car.

7 I think the guideline enhancement is to get at  
8 someone who goes about with the purpose of assaulting someone  
9 to steal their car. I just don't think that's what happened  
10 here. So that's why we oppose that.

11 THE COURT: Okay. Government's response?

12 MR. DEAN: Your Honor, the government's response  
13 to that objection is that several things happened here. The  
14 defendant assaulted someone with a handgun and shot them, and  
15 in doing so, stole drugs and a car. Brandishing a firearm at  
16 someone, putting them in fear for their lives and shooting  
17 them and then stealing a car, from the government's  
18 perspective falls neatly within the guideline enhancement for  
19 carjacking.

20 THE COURT: Okay. I agree with the government.  
21 That objection will be overruled.

22 Are there witnesses?

23 MR. HOLLEY: Yes, Your Honor. We would call  
24 Dr. Lyn McRainey.

25 THE COURT: Okay. And for the record, let me

1 state that I have read earlier today Dr. McRainey's report.

2 MR. HOLLEY: Thank you.

3 COURTROOM DEPUTY: Please raise your right hand.

4 DR. LYN McRAINEY,

5 called as a witness, having been duly sworn, was examined and  
6 testified as follows:

7 THE WITNESS: I do.

8 COURTROOM DEPUTY: Please be seated.

9 THE COURT: Good afternoon, Dr. McRainey.

10 THE WITNESS: Good afternoon.

11 COURTROOM DEPUTY: Please be sure to speak into  
12 the microphone. State your full name, spell your last name.

13 THE WITNESS: Lyn McRainey, M-C, capital  
14 R-A-I-N-E-Y.

15 DIRECT EXAMINATION

16 BY MR. HOLLEY:

17 Q. Dr. McRainey, would you briefly describe your education  
18 and credentials to the judge.

19 A. Yes, thank you. Your Honor, I graduated 40 years ago.  
20 I've been a psychologist for 40 years. I got my master's  
21 degree from Peabody College and my doctorate from Vanderbilt  
22 in psychology and have been working since that time.

23 Q. Thank you.

24 MR. HOLLEY: I would like to offer Dr. McRainey as  
25 an expert in psychology.