

1 UNITED STATES DISTRICT COURT
 2 MIDDLE DISTRICT OF TENNESSEE
 3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA)

5 vs)

6 DEUNTA FINCH)

Case No. 3:16-cr-00019-1

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8
 9 BEFORE THE HONORABLE
 10 MARVIN E. ASPEN, U.S. DISTRICT COURT

11 TRANSCRIPT OF PROCEEDINGS

12 October 12, 2022

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15 APPEARANCES:

16 For the Government:

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19 For the Defendant:

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I N D E X

DEFENDANT'S PROOF**DR. LYN McRAINEY**

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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:

5
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 McRaine.

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

1 state that I have read earlier today Dr. McRaine'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. McRaine.

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 McRaine, M-C, capital
14 R-A-I-N-E-Y.

15 DIRECT EXAMINATION

16 BY MR. HOLLEY:

17 Q. Dr. McRaine, 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. McRaine as
25 an expert in psychology.