

No.

In the Supreme Court of the United States

Sean Robert Wathen, Petitioner

vs.

United States of America, Respondent

APPENDIX

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 27 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-30138

Plaintiff-Appellee,

D.C. No.
2:20-cr-00117-BLW-3

v.

SEAN ROBERT WATHEN,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Argued and Submitted October 16, 2023
Portland, Oregon

Before: KOH and SUNG, Circuit Judges, and EZRA, ** District Judge.

Sean Wathen appeals his conviction and sentence for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Sufficient evidence supports Wathen's conviction. Where a defendant

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

moves for a judgment of acquittal during trial and renews the motion at the close of trial, we consider the evidence on appeal “in the light most favorable to the prosecution” and determine whether it is “adequate to allow ‘*any* rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt.’” *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (alterations in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Wathen did not move for a judgment of acquittal during trial, and so his challenge is reviewed for plain error. *United States v. Ross*, 338 F.3d 1054, 1057 (9th Cir. 2008) (per curiam). Still, “the distinction is largely academic, given that . . . we must give great deference to the jury verdict” under either standard of review. *United States v. Pelisamen*, 641 F.3d 399, 408–09 & n.6 (9th Cir. 2011).

Four coconspirators directly implicated Wathen in the conspiracy. Gohl testified that Wathen purchased large quantities of methamphetamine. Delewese and Carlson testified that Wathen gave them methamphetamine to smuggle to the South Pacific, and Carlson added that Wathen had indicated that coconspirator Hillbroom was financing Wathen’s methamphetamine purchases. Finally, Duncan testified that Wathen proposed that she help smuggle methamphetamine to the South Pacific and introduced her to Hillbroom. Wathen contends that these witnesses were all lying or mistaken. Having observed the testimony firsthand, however, a rational jury could find their testimony credible and sufficient to

establish the essential elements of the crime.

2. The district court did not violate Wathen's Sixth Amendment right to a fair trial when it declined to halt the jury's deliberations due to potential safety concerns raised by a juror. Wathen contends that the district court's investigation into the juror's concerns was insufficiently thorough. Wathen did not object to the court's response below, though, so we review his objection now for plain error.

United States v. Ramirez, 537 F.3d 1075, 1081 (9th Cir. 2008).

The district court did not err. When the court received evidence that jurors were discussing an incident in which a person believed to be affiliated with Wathen may have been filming the jurors outside the courthouse, the court questioned each juror individually and received assurances from each juror that the incident would not affect their deliberations in any way. This course of action was prudent. *See United States v. Sarkisian*, 197 F.3d 966, 982 (9th Cir. 1999) (“[I]ndividually questioning the jurors to make sure that they could proceed impartially” dispelled any potential prejudice). Later, when the court received a handwritten note from a juror seeking clarification about that same incident, the court, with the agreement of the parties, permissibly concluded that a response (1) stating that there was no reason for any juror to be concerned about their personal safety, and (2) inviting any juror to express concerns directly to the court, would suffice. The court was not required to question each juror individually, a second

time, particularly where no party requested it.

3. The district court did not abuse its discretion in permitting the United States to present undisclosed rebuttal testimony. A district court's evidentiary rulings are reviewed for an abuse of discretion and will be reversed only if "manifestly erroneous." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141–42 (1997) (citation omitted). In support of this contention, Wathen asserts only that the prosecution is required to disclose expert testimony "during its rebuttal to counter testimony that the defendant has timely disclosed under (b)(1)(C)." Fed. R. Crim. P. 16(a)(1)(G)(i). Rule 16(b)(1)(C), however, refers to a defendant's own obligation to disclose expert testimony. The rule did not require the United States to disclose rebuttal testimony whose sole purpose was to contradict Wathen's own trial testimony.

4. Because Wathen has failed to demonstrate an instance of error, he cannot show that his trial suffered from cumulative errors. *United States v. Spangler*, 810 F.3d 702, 711–12 (9th Cir. 2016).

5. The district court did not err in calculating Wathen's sentencing range. We review the court's factual findings for clear error and its application of the Sentencing Guidelines to those facts for an abuse of discretion. *United States v. Harris*, 999 F.3d 1233, 1235 (9th Cir. 2021).

a. The district court did not clearly err in concluding that Wathen

was responsible for between 500 grams and 1.5 kilograms of methamphetamine. Although a court must “err on the side of caution” in calculating drug quantity, *United States v. Mancuso*, 718 F.3d 780, 797 (9th Cir. 2013) (citation omitted), trial testimony established that (at a bare minimum) Wathen purchased three pounds of methamphetamine over two occasions, or roughly 1.35 kilograms. The district court permissibly concluded that this methamphetamine was attributable to the conspiracy, *see* U.S. Sentencing Guidelines (“U.S.S.G.”) § 1B1.3(a)(1)(B), and so it does not matter if Wathen did not personally smuggle any methamphetamine to the South Pacific.

b. Nor did the district court clearly err in concluding that Wathen was an organizer, leader, manager, or supervisor of the conspiracy. U.S.S.G. § 3B1.1(c). The evidence at trial supports the conclusion that Wathen procured drugs for the conspiracy and recruited one or more members of the conspiracy. Either can justify a role enhancement. *See, e.g., United States v. Doe*, 778 F.3d 814, 824–26 (9th Cir. 2015) (collecting cases applying enhancement both to defendants who “organize[ed] others in the commission of the criminal activity” and to defendants who coordinated the procurement of drugs).

c. Although a closer call, the district court did not clearly err in concluding that Wathen possessed a dangerous weapon in connection with the offense. U.S.S.G. § 2D1.1(b)(1). Gohl testified that Wathen sold or gave Garcia

(Gohl's methamphetamine supplier) one or two guns during a methamphetamine transaction. Delewese added that, during the same transaction, she heard the transaction participants discussing a gun (but did not see the transaction or a gun). Wathen did not cross-examine either witness on this point, did not deny possessing a gun when he took the stand, and did not present at trial or at sentencing any argument other than that Gohl was a liar whom Wathen had never met.

We stress that it would have been prudent for the district court to inquire further and make specific findings, at sentencing, to clarify that Wathen himself actually possessed the gun. *See United States v. Briggs*, 623 F.3d 724, 731 (9th Cir. 2010) (“[T]he plain language of § 2D1.1(b)(1) requires possession of a weapon.”). Gohl’s testimony was no model of clarity. However, we cannot say, given our deferential standard of review, that the district court, which presided over the entire six-day trial, clearly erred in crediting this unchallenged testimony. *See* 18 U.S.C. § 3742(e) (“The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses”); *United States v. Baker*, 58 F.4th 1109, 1126 (9th Cir. 2023) (“[T]he district court did not commit clear error in choosing between permissible views of the evidence” to apply a two-level enhancement).

d. Lastly, the district court did not clearly err in concluding that Wathen obstructed or attempted to obstruct the administration of justice. U.S.S.G.

§ 3C1.1. Obstructive conduct includes “producing or attempting to produce a false, altered, or counterfeit document or record” at trial. *Id.* cmt. n.4(C) (2021). The district court found that Wathen had introduced a forged invoice to explain away a suspicious payment from Hillbroom. Wathen does not present any argument on appeal that the invoice was authentic, and the district court did not clearly err in rejecting Wathen’s contention at sentencing that the invoice somehow could have been printed and purchased before the design for the invoice was ever approved.

6. Wathen’s final contention, that his sentence was substantively unreasonable, is also meritless. Wathen does not contend that the district court failed to consider any of the sentencing factors under 18 U.S.C. § 3553(a). Nor does he explain how his sentence, which included a fifty month downward variance from the Guidelines range, was so much greater than necessary as to make his sentence unreasonable. *See United States v. Bendtzen*, 542 F.3d 722, 729 (9th Cir. 2008) (“Because a Guidelines sentence will usually be reasonable, [defendant’s] below-Guidelines sentence, supported by the district court’s specific reasoning, is reasonable.”) (cleaned up).

AFFIRMED.

UNITED STATES DISTRICT COURT

District of Idaho

UNITED STATES OF AMERICA)	JUDGMENT IN A CRIMINAL CASE
)	
v.)	
SEAN ROBERT WATHEN)	Case Number: 0976 2:20CR00117-003
)	USM Number: 20352-023
)	Steven Frampton
)	Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) One of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 §§ 841(a)(1) and (b)(1)(C), and 21 § 846	Conspiracy to Distribute Methamphetamine	02/01/2016	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 9, 2022

Date of Imposition of Judgment



Signature of Judge

B. Lynn Winmill, United States District Judge

Name and Title of Judge

August 10, 2022

Date

DEFENDANT: Sean Robert Wathen
CASE NUMBER: 0976 2:20CR00117-003

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 138 months.

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

The defendant will be credited with all time served in federal custody and will be placed in a facility in Sheridan, Oregon. It is recommended that the defendant participate in the RDAP program while incarcerated.

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

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
 at _____, with a certified copy of this judgment.

 UNITED STATES MARSHAL

By: _____ DEPUTY UNITED STATES MARSHAL

DEFENDANT: Sean Robert Wathen
CASE NUMBER: 0976 2:20CR00117-003

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 5 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on supervision and to a maximum of 10 periodic drug tests a month thereafter for the term of supervision as directed by the probation officer. The cost to be paid by both the defendant and the government based upon the defendant's ability to pay.
 - The above drug testing condition is suspended, based on the courts determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
4. The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
5. The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
6. The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*
7. You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(Check, if applicable.)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Sean Robert Wathen
CASE NUMBER: 0976 2:20CR00117-003

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer, unless legitimately asserting your Fifth Amendment right against self-incrimination as to new criminal conduct.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of supervision or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

A U.S. probation officer has instructed me on the conditions specified by the Court. I fully understand the conditions and have been provided with a written copy of this judgment containing these conditions.

Defendant's Signature _____

Date _____

U.S. Probation Officer/Witness _____

Date _____

DEFENDANT: Sean Robert Wathen
CASE NUMBER: 0976 2:20CR00117-003

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall pay any special assessment or other financial obligation that is imposed by this judgment in accordance with the Schedule of Payments as ordered by the Court.

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

The defendant shall participate in a program of testing and treatment for drug and alcohol abuse, as directed by the probation officer. The cost to be paid by both the defendant and the government based upon the defendant's ability to pay.

The defendant shall abstain from the use of alcohol and shall not be present in any location where alcohol is the primary item of sale.

The defendant shall participate in a program of mental health treatment, as directed by the probation officer. The cost to be paid by both the defendant and the government based upon the defendant's ability to pay.

As directed by a mental health professional, the defendant shall take all medications as prescribed. The cost of medication to be paid by both the government and the defendant based upon the defendant's ability to pay.

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

Special Conditions of supervised release shall supersede any standard condition that is inconsistent with the special conditions.

DEFENDANT: Sean Robert Wathen
CASE NUMBER: 0976 2:20CR00117-003

CRIMINAL MONETARY PENALTIES

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

TOTALS **Assessment** **Fine** **Restitution** **AVAA Assessment*** **JVTA Assessment****
\$100 \$1,000 fine No restitution Not applicable Not applicable

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
----------------------	----------------------	----------------------------	-------------------------------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Sean Robert Wathen
CASE NUMBER: 0976 2:20CR00117-003

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after the date of this judgment; or
- D Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 60 days*) after release from imprisonment to term of supervision; or
- E Payment during the term of supervised release will commence within _____ (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
While in custody, the defendant shall submit nominal payments of not less than \$25 per quarter pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

During the term of supervised release, the defendant shall submit nominal monthly payments of 10% of gross income, but not less than \$25 per month, unless further modified by the Court. The defendant shall pay any special assessment or financial obligation owing to the Clerk of the Court, 550 West Fort Street, Boise, Idaho 83724.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number

Defendant and Co-Defendant Names Total Amount
(including defendant number)

Joint and Several Amount

Corresponding Payee, if appropriate

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE B. LYNN WINMILL
TUESDAY, AUGUST 9, 2022, 2:42 P.M.
COEUR D'ALENE, IDAHO

FOR PLAINTIFF

Bryce Ellsworth
US ATTORNEY'S OFFICE
6450 N. Mineral Drive, Suite 210
Coeur d'Alene, ID 83815

FOR DEFENDANT

Steven P. Frampton
Attorney at Law
157 W. Hayden Avenue, Suite 103
Hayden, ID 83835

Proceedings recorded by mechanical stenography, transcript produced by computer.

TAMARA I. HOHENLEITNER, CSR 619, CRR

FEDERAL OFFICIAL COURT REPORTER

550 WEST FORT STREET, BOISE, IDAHO 83724

I N D E X

AUGUST 9, 2022

Date	Proceeding	Page
08/09/22	Sentencing Hearing	1
	Recommendations By the Government.....	8
	Recommendations By the Defense.....	19
	Statement By the Defendant.....	29
	Court's Comments and Sentence.....	29

1 P R O C E E D I N G S

2 August 9, 2022

3 THE CLERK: The Court will now hear Criminal Case
4 20-117, *United States of America vs. Sean Robert Wathen*, for
5 sentencing.

6 THE COURT: Good afternoon, Counsel.

7 I apologize. I'm going to need a minute to get
8 plugged in here.9 All right. Mr. Wathen was convicted following a jury
10 trial of Count 1 of the superseding indictment. The Court
11 ordered a presentence investigation report, which has been
12 provided to Court and counsel.13 Mr. Wathen, I assume you would confirm that you have
14 reviewed the presentence report?

15 THE DEFENDANT: I have.

16 THE COURT: And, Mr. Frampton, you have gone over the
17 report with your client, I trust.

18 MR. FRAMPTON: Yes, Your Honor.

19 THE COURT: All right. There were objections filed to
20 the presentence report with regard to the drug quantity, role
21 enhancement, and weapon enhancement. The firearm and the role
22 enhancement, the Government objected to those not being included
23 in the original presentence report, and the probation officer
24 agreed after reviewing the trial transcript and other materials
25 in the record.

1 At this time, Counsel, I'll hear your arguments.

2 Let's start off just arguing about the guideline issues, and
3 then I'll have you separately address your recommendation.

4 So I think, Mr. Frampton, I might hear you first
5 because you're the one who is objecting to those three
6 enhancements. Just generally, I will indicate I have reviewed
7 all the sentencing materials that have been submitted, the
8 letters, including Mr. Wathen's letter that was just given to
9 me.

10 So I have reviewed everything that's been submitted,
11 but let's just address those issues. Again, three issues: One
12 is the drug quantity involved; second would be the role in the
13 offense enhancement; and the firearm enhancement.

14 MR. FRAMPTON: Your Honor, my argument is so
15 integrated into --

16 THE COURT: You want to just do it all at once?

17 MR. FRAMPTON: Yes, I would.

18 THE COURT: All right. That's fine.

19 Mr. Ellsworth, did you want to raise an issue?

20 MR. ELLSWORTH: Your Honor, there was also an
21 obstruction enhancement.

22 THE COURT: That's true. I think there was an
23 objection on that issue as well.

24 All right. Well, that's fine. That's normally the
25 way I proceed, but there are three, I thought, now four separate

1 objections that I need to address. So if counsel is willing, we
2 will just work that in together.

3 Let me express where my concerns are. And this is for
4 counsel's benefit. I do this more in civil cases, but in
5 criminal matters I do this as well. I'm going to take just a
6 few minutes and kind of outline where my concerns are in this
7 case.

8 I went back and compared the various criteria, thanks
9 to Ms. McDonald; she just, before we came in, provided me with
10 his presentence report so I could compare notes.

11 This addresses first -- I guess a number of the
12 issues. One was the drug quantity. Mr. Hillbroom was held
13 accountable for 350 to 500 grams of methamphetamine; Mr. Wathen
14 was held responsible for a larger quantity.

15 Since it appeared to me that Mr. Hillbroom was
16 involved in every aspect of the -- at least it appeared to be
17 that Mr. Hillbroom was involved in every aspect of any drug
18 trafficking that Mr. Wathen was involved in, I'm having a hard
19 time reconciling that. And that's a two-level difference. The
20 base offense level for Mr. Hillbroom was 28, and for Mr. Wathen
21 is 30. So that's one issue I would like to have, I guess, the
22 Government address.

23 The other difference is Mr. Hillbroom received a
24 two-level enhancement, as is Mr. Wathen receiving that under the
25 probation officer's presentence report. So that raises a

1 question of how they compared in terms of role in the
2 conspiracy.

3 Acceptance of responsibility, that's straightforward.

4 The choice to go to trial kind of resolves that issue in almost
5 every case.

6 The firearm enhancement, that was another difference.

7 Mr. Hillbroom was not held responsible for any firearm. My
8 understanding is that, in this case, one of the witnesses
9 testified that Mr. Wathen had actually traded firearms as part
10 of a drug-trafficking arrangement of sorts. So I need to hear
11 about that. That certainly qualifies under the guidelines for
12 that enhancement.

13 And then there was the obstruction. That could apply
14 in two different aspects. One would be the very specific
15 statement offered by Mr. Wathen about a receipt that was
16 submitted into evidence.

17 And the Government did a very good job on
18 cross-examining and then submitting a witness who testified that
19 the form on which this -- that was supposed to be a receipt with
20 Mr. Hillbroom actually wasn't created until months after the
21 date on the receipt, which suggests that it was fabricated after
22 the fact.

23 The other difference between the two was that
24 Mr. Hillbroom had a prior criminal record, a criminal history
25 category 3 versus criminal history category 1 with Mr. Wathen

1 with really no prior criminal record.

2 The range for Mr. Hillbroom was 87 to 108 months. He
3 received a 96-month sentence, which is right squarely in the
4 middle of the guidelines. And Mr. Wathen's guideline range,
5 assuming that I overrule all objections, is 188 to 235.

6 Now, the other things I would comment on, you know,
7 other than the very specific items I have alluded to, is I have
8 always been concerned that we be very careful that there not be
9 a trial penalty; that a defendant's choice to go to trial should
10 not result in their somehow being penalized for that decision.

11 Now, that does not mean that there shouldn't be some
12 difference, because that's what acceptance of responsibility is
13 about. And when a defendant takes the witness stand and there
14 is a suggestion that he perjured himself, that clearly is a
15 substantial difference, which will always justify a substantial
16 difference in the sentence.

17 So those are my initial thoughts. I would also note,
18 I guess, that another major difference between Mr. Hillbroom and
19 Mr. Wathen is that Mr. Wathen seems to have contributed a great
20 deal to his community. I read the letters that were submitted,
21 and it's clear that Mr. Wathen has tried very hard to, in some
22 way, be a good neighbor.

23 Another difference is that Mr. Wathen has two
24 children, one of whom I think is 6 or so, and then I think his
25 daughter is maybe 18 or just graduated from high school. And I

1 don't know that Mr. Hillbroom -- I don't recall. I didn't read
2 the presentence report. I don't recall whether Mr. Hillbroom
3 had any dependents or what role he was playing in their life,
4 but it does seem to me that that's a mitigating factor for
5 Mr. Wathen.

6 So those are my thoughts. I am comparing the two in
7 some ways because I do think that, from the trial testimony,
8 that they were kind of in this together in some way and
9 maybe -- maybe -- you know, I have handled -- I have been
10 involved in a lot of trials, certainly at least a lot of trial
11 days in other cases. So I may have gotten things confused, and
12 my memory may have failed me a bit in that regard.

13 So those are my concerns. One is the drug quantity
14 issue. Second would be kind of a general comparison to
15 Mr. Hillbroom and Mr. Wathen. A concern that we have to be
16 careful the trial penalty is not playing its way out in this
17 case and that we're only enhancing the sentence for things that
18 would not constitute a penalty simply for a decision to go to
19 trial. And then just generally a comparison of the sentence
20 with Mr. Hillbroom receiving a 96-month sentence.

21 So, with that, let me hear first from the Government,
22 then from the defense as far as your recommendations and your
23 argument about the objections to the presentence report.

24 MR. ELLSWORTH: Thank you, Your Honor.

25 Your Honor, the Government does agree with the final

1 PSR calculation, that it is offense level 36, criminal history
2 category of 1, with a guideline range of 188 to 235 months. The
3 Government does support a recommendation at the low end of the
4 guideline range of 188 months, followed by three years of
5 supervised release, \$100 special assessment. The Government is
6 not seeking restitution, forfeiture, or a fine in this case.

7 Your Honor, I'll just dive into the objections and the
8 issues at hand right out of the gate.

9 Your Honor, the offense level calculation in this case
10 is based off of the testimony of Craig Gohl, Kelly Jo, and Leah
11 Delewese. Now, it is true that Jr. Hillbroom did come to a
12 resolution with the Government in which he agreed that he was
13 involved in distributing at least a pound.

14 This is a historical drug case. No drugs were ever
15 seized. However, I think there is a difference between
16 Hillbroom's situation in which he came to a resolution and
17 agreed to a pound and the defendant's in that we had three
18 witnesses take the stand in front of a jury and explain to them
19 exactly what happened.

20 These individuals had --

21 THE COURT: Just a moment. There was no 5K1 with
22 Mr. Hillbroom; is that correct?

23 MR. ELLSWORTH: There was not, Your Honor.

24 THE COURT: All right.

25 MR. ELLSWORTH: And so the only difference, I think,

1 between the defendant's calculations and Junior Hillbroom's
2 calculations, the Court has accurately cited the fact that he
3 did come to a plea agreement in which he was held responsible
4 for a pound. He did not have a gun enhancement, but there is no
5 facts in the record to support that at this point. He does not
6 have an obstruction enhancement.

7 Just because I'm going through the list that the Court
8 was talking about the differences, he does have children. He
9 has young children that are in elementary and I believe middle
10 school at this time. I want to say there is three or four, but
11 I would have to go back and check the record.

12 THE COURT: Has he played a role in their lives or is
13 he just --

14 MR. ELLSWORTH: He's played an active role in their
15 lives is my understanding. They travel back and forth with him
16 to Palau. And he was living with them at the time that he was
17 arrested.

18 He does have -- he is not married, but he has a
19 longtime girlfriend who is the mother of those children; they
20 are their children in common. And to my understanding, he does
21 play an active role.

22 But, Your Honor, I think there is a difference in the
23 historical drug case like this where we don't have witnesses who
24 have taken the stand and an individual reaches an agreement with
25 the Government and takes responsibility, and the defendant's

1 situation where, if I'm being honest -- and I think I pointed
2 out in the sentencing recommendation the Government filed -- 500
3 to 1500 grams is very conservative based off the testimony we
4 heard.

5 Craig testified that the smallest that he dealt with
6 when he went up to Hope was 2 pounds; and at times, it was 5
7 pounds. That alone would bump him to 34 and possibly 36 if we
8 were going to go off of Craig Gohl's testimony presented to a
9 jury, and the defense counsel had an opportunity to cross.

10 But I think recognizing that other individuals had
11 different weights, the Government came to the conclusion that 30
12 is appropriate in this case. That would be the smaller quantity
13 that Craig said, and we are not seeking to seek an offense level
14 greater than that.

15 Craig Gohl has yet to be sentenced. He will be
16 sentenced based off of an offense level 30, the same as this
17 defendant. And that's based off of Craig Gohl's own testimony.
18 We only bought, I believe, 2 ounces from Craig Gohl. He is
19 being sentenced at offense level 30 because of his testimony,
20 because of his cooperation.

21 And so not only did he testify to it under oath, but
22 he is going to be sentenced to that based off of his own words
23 essentially condemning him.

24 So, Your Honor, though I recognize there is a
25 disparity there -- it's two levels -- I would also note that

1 Junior agreed to not a low-end guideline recommendation. It was
2 a mid to high guideline recommendation, and that's what he asked
3 for during his sentencing. So I think we are even closer when
4 you consider that. We are maybe off a few months.

5 But, Your Honor, ultimately, as noted in my sentencing
6 recommendation -- and I cited exactly in the record where
7 weights were discussed -- Craig Gohl again talked about dropping
8 off 2 to 5 pounds at a time on multiple occasions. Leah
9 Delewese confirmed, when she was with him during that first trip
10 up to the defendant's trailer, that she saw a bag that contained
11 a couple of bags.

12 Kelli Jo confirmed that, when she was with Craig Gohl
13 on August 26 of 2015 during the Viper incident, that she was
14 waiting around while they tried to collect thousands of dollars
15 for Craig. The amount that they are short is \$9,000 -- over
16 \$9,000. That's consistent with them purchasing multiple pounds
17 of drugs.

18 And so when you look at the testimony that was
19 presented, I think they all support at least an offense level
20 30, if not greater. I recognize the Court's ability to look at
21 Junior and compare that; and if that's the direction the Court
22 goes, I understand that. But I think it's clear from the record
23 that offense level 30 is appropriate in this case.

24 Your Honor, in regards to the possession of a firearm
25 during the offense, again, the two-level enhancement is

1 appropriate because the defendant traded a gun to Bebe, also
2 known as Gabriel Garcia, during a drug transaction that both
3 Craig Gohl and Leah Delewese testified about. Those are on the
4 trial transcripts that I have submitted in Attachment A and B
5 with the page numbers cited.

6 Craig Gohl said that he witnessed the transaction.
7 Leah Delewese testified that she heard the transaction. They
8 were talking about trading a gun. She heard them discussing the
9 firearm. And it's on the same day, same incident.

10 Craig Gohl and Leah Delewese haven't seen each other
11 or talked to each other for five years; and yet, throughout
12 this, their testimony, along with Kelli Jo and Zach Carlson,
13 their testimony is all consistent.

14 None of these individuals have seen each other or hung
15 out with each other; and yet, they have the same story. They
16 are able to tell the same things about each other and about each
17 other's involvement. And they also know what Sean Wathen did,
18 and they testified to that.

19 And so, based off the trial testimony, which defense
20 counsel could have crossed about -- they never once asked
21 questions about those firearms. Instead, they chose to focus on
22 other things.

23 The defendant's role in the offense. Your Honor,
24 under 3B1.1, it notes --

25 THE COURT: Counsel, on that issue, do you see a

1 difference between Mr. Hillbroom and Mr. Wathen in terms of
2 their role?

3 Here's -- my sense of it was that Mr. Hillbroom, I'll
4 say, is the one who came up with the brilliant idea of kind of
5 leveraging the market between -- in methamphetamine between
6 North Idaho -- you know, it's pure economics: buy low, sell
7 high. And methamphetamine can be obtained a lot cheaper in
8 North Idaho than it could in Palau, Guam, Saipan, the Pacific
9 islands.

10 And so that was the genesis of this, and Mr. Hillbroom
11 is the one who had connections in that area. And my sense was
12 that Mr. Wathen became involved as kind of a conduit for
13 supplying those drugs and arranging for transit.

14 How would you characterize that, or where did I get it
15 wrong?

16 MR. ELLSWORTH: I think you have it completely
17 accurate, Your Honor. Junior is the moneyman. He has obviously
18 got the money to facilitate this. Sean was the connection as
19 far as the drugs are concerned.

20 But the thing that they both have in common, which the
21 guidelines note as something to consider when determining what
22 level of leader they are, is the fact that they are both
23 recruiting accomplices.

24 Kelli Jo Duncan testified that she was recruited by
25 Sean to go on these trips. Leah Delewese testified that she was

1 recruited by either Sean or Morgan and eventually Junior to go
2 on these trips. But both of them are very clear that this
3 wasn't an idea they came up with.

4 The defendant was involved in presenting this idea to
5 others and recruiting them to do so. He told Kelli Jo Duncan:
6 Hey, you can go on vacation, and you can make up for the money
7 you are losing from the job you just lost. And then he
8 introduces her to Junior in the process of recruiting her to go
9 on a trip.

10 And so, though they definitely played different roles
11 within the conspiracy, he is definitely, as 3B1.1C points out,
12 an organizer, leader, manager, or supervisor in that he
13 organizes these drug trades, he acquires the drugs, and he's
14 recruiting others to participate. And so I think it's clear,
15 based off the record, that an enhancement here does apply.

16 Your Honor, the last one is the obstruction of justice
17 enhancement. And I think -- and as I laid out in my sentencing
18 memo, the clearest one is the invoice.

19 Defense counsel has had months to come up with some
20 explanation as to how this invoice might be legitimate. He
21 argues in his memo that he hasn't had the opportunity. He has.
22 He could present today the explanation as to how Sean wrote out
23 an invoice on a form that never existed at the time that he
24 wrote the invoice out.

25 The Government presented the manufacturer of that

1 form, the person who approved it, and showed on the form itself
2 how it's marked to indicate that this form didn't exist at the
3 time that Mr. Wathen testified it did. It's clearly a lie.
4 There is no doubts about that.

5 But even then -- it wasn't just that the defendant lied about. He lied about the text messages. And I
6 have laid out those examples where he won't admit that the text
7 messages are his. Yet, the text message, as testified to by
8 Leah Delewese, is between Leah and an individual named Sean who
9 is dating a person by the name of Nicole, also sometimes
10 referred to as "Ginger," and that Sean has a daughter that's in
11 gymnastics and so does Leah.

12 And the defendant agrees with all that. He was dating Nicole at the time. He did have a daughter in gymnastics with Leah. And all that's fleshed out in these text messages. This is Leah Delewese talking to Sean Wathen. And even that he can't admit to.

13 The Government is not nearly as concerned about that as the invoice. The invoice is clearly a fabrication, and there
14 is no justification or explanation of that. And I think an
15 enhancement should apply.

16 But I think the text messages -- pretty much throughout this process, the defendant has shown an inability to
17 accept responsibility, and he has attempted multiple times to
18 try and convince other people, through lies, that he wasn't

1 involved.

2 And I think the jury saw through that, and I think the
3 witnesses that testified clearly show that that's what this is;
4 this is the defendant failing to take responsibility and
5 continuing to lie.

6 Your Honor, ultimately, I think all four of those
7 adjustments should apply. And I recognize that that does result
8 in a disparity between the sentences of others and this
9 defendant. Some of that is the three-point acceptance of
10 responsibility which this Court already mentioned. But if
11 anyone has never accepted responsibility in a case in my time
12 prosecuting cases, I think Mr. Wathen is a clear example of
13 that.

14 This is the clearest example I have ever seen of
15 obstruction. And as I think I have already talked to defense
16 counsel about, it's the reason that the Government was concerned
17 about possible perjury charges in this case. And at this point,
18 though the Government hasn't chosen to pursue that, I think it's
19 clear that we could base off the testimony we saw.

20 Your Honor, and so I think the discrepancies
21 represented by -- or the discrepancy in this case is based off
22 of the defendant's role, the fact that he had a gun, the fact
23 that he lied, and that he hasn't taken responsibility, and
24 obstructed.

25 For those reasons, Your Honor, I do believe a sentence

1 within the guidelines -- and the guidelines being 188 to 235 --
2 is appropriate. I have looked at the other factors, and we have
3 already discussed the nature and circumstances.

4 The history and characteristics of the defendant -- he
5 is a crim category 1; but, again, I think his criminal history
6 is underrepresented in the guidelines.

7 He has multiple prior DUIs. He has a prior violation
8 of a no-contact order, a disturbing the peace. He had a felony
9 drug charge in Bonner County at the time that he was arrested
10 for this charge, and that case was only dismissed because they
11 knew he was convicted on the federal side.

12 So he is a criminal history category 1, but I think it
13 underrepresents his prior involvement with law enforcement.

14 THE COURT: Refresh my memory about the Bonner County
15 charge. That was a separate charge but dismissed when these
16 charges were instituted?

17 MR. ELLSWORTH: No. It was dismissed last month, once
18 they learned that he had been convicted and was facing a felony
19 sentence in federal court.

20 THE COURT: But it was totally unrelated?

21 MR. ELLSWORTH: Completely unrelated. It involved the
22 defendant being in a car in the parking lot of I think a grocery
23 store up in Bonner with methamphetamine.

24 Your Honor, when you look at the need to reflect the
25 seriousness of the offense, the adequate deterrence, the need

1 for treatment, I think all those support a guideline sentence.
2 Ultimately, I think it will be up to the Court to decide what
3 exactly that range is. But I think based off the trial
4 testimony we heard and the evidence we have seen and was
5 submitted, the enhancements the Government is arguing for I
6 believe are supported by the record. I would ask that the Court
7 find that they are supported by the record and ultimately impose
8 a sentence within that guideline.

9 Unless the Court has additional questions,

10 Your Honor...

11 THE COURT: No. That's fine. Thank you very much.

12 MR. ELLSWORTH: Thank you.

13 THE COURT: Mr. Frampton.

14 MR. FRAMPTON: Thank you, Your Honor. If I could just
15 make my statement. I think I addressed most of the concerns
16 that you brought out, but maybe what I could do is circle back
17 at the end and then answer some questions or point out some
18 other things.

19 This is a first-time felony conviction for Mr. Wathen.
20 That is the fact of the matter. If he was such a bad person, as
21 the Government seems to think he is, he would have a much worse
22 record as a 50-year-old person.

23 Disturbing the peace in 2009 is the extent of his
24 criminal history score under the guidelines, and the disturbing
25 the peace was 13 years ago.

1 Here we have a first-offense felony drug conviction
2 for events that occurred approximately seven years ago. The
3 Government continues a narrative that he was this terrible
4 person heavily involved in this conspiracy. However, the
5 credible evidence shows that he was hardly involved and hardly
6 even around during the commission of the conspiracy. The
7 evidence shows that he was not involved in the way the
8 Government narrative asserts.

9 The evidence is lengthy for the co-conspirators, who
10 testified about their involvement and their dealings and their
11 travels. However, Mr. Wathen is hardly even involved with these
12 people except for a few moments in time.

13 We heard testimony from Mr. Gohl. He says that an
14 honest man deals drugs; transcript page 54, line 15. He gives
15 drugs to his children; page 54, line 17. His daughter -- he has
16 his daughter traffic drugs for him; page 54, line 20. He
17 deceives law enforcement; page 54, line 21. He has multiple
18 fraud theft felonies; page 55 on. That he could not be trusted;
19 page 55, line 21.

20 And then he can tell us when he decided not to be an
21 honest man; page 56, line 10. And he stated he is only
22 dishonest when he was convicted of those felonies but not when
23 he actually did the felonies; page 58, line 2.

24 He testified that he was under -- taking a test while
25 he was testifying, a test for the prosecutor; page 65, line 23.

1 He said, "I am not an honest person"; page 69, line 18. He said
2 he is a good liar. He makes people believe the truth when he is
3 actually lying; page 76, line 5.

4 The first interview he had with law enforcement, he
5 didn't even mention the defendant, Mr. Wathen; page 17,
6 line 1 -- page 78, line 1. He stated he was heavily, heavily
7 into drugs; page 79, line 11. He told people that he told
8 someone, "I will have a contract on you by noon"; page 84,
9 line 6. And he said, "I love Satan"; page 84, line 10.

10 He is doing drugs at a halfway house. As part of his
11 sentence on a state charge, he's living at a halfway house;
12 page 87, line 25. He threatened to beat up people if they don't
13 pay; page 88, line 4. He would sneak out of the halfway house;
14 page 88, line 13.

15 He had a slumber party with his kids, and he sold
16 drugs at the slumber party; page 88, line 10. He provided drugs
17 to his addicted daughter; page 88, line 16.

18 Then we heard from Ms. Delewese. She testified, "I
19 never witnessed any drug deals"; page 90, line 14. She
20 testified that Sean did everything in his room and never saw any
21 deals go on; page 91, line 8. She stated that Sean is not her
22 drug dealer; page 91, line 11.

23 She testified she knew Hillbroom since 2009; page 91,
24 line 17. She never saw Hillbroom and Mr. Wathen deal drugs
25 between each other; page 92, line 1.

1 That she went into her room and did not see anything
2 when Gohl and Bebe were at Sean's. This was the time of this
3 alleged gun incident and this alleged drug deal, but she said
4 she didn't see anything; page 92, line 13.

5 Kenney Morgan told her about the Guam/Palau adventure;
6 page 92, line 15. She worked for a detailing business at
7 Hillbroom's before they went to Guam or Palau; page 100,
8 line 13. She knew Duncan before she went to Guam and Palau;
9 page 100, line 16.

10 She met Morgan through Hillbroom. Then she didn't
11 remember events; page 101. She said Sean was gone a lot;
12 page 104, line 8. She stayed at Ms. Duncan's a few times.
13 Then she had difficulty remembering other events; page 106.

14 And then she testified she was just doing her own
15 thing in Guam on her third trip; that's page 108, line 10.
16 And then she doesn't remember other things; that's page 109,
17 line 10.

18 She stated that she was doing her own thing in Guam
19 again this third trip; that's page 113, line 16. And that's the
20 time when Sean allegedly gave her an ounce, which would be a
21 separate from the conspiracy because she is doing her own thing
22 on that trip.

23 She would recruit friends to come over; page 114,
24 line 20. She calls Duncan -- Duncan's trip to Guam her vacay,
25 asked her about her vacay. And then she testified that she was

1 trying to get out of trouble by testifying; page 121, line 25.

2 Gohl admitted he planted the drugs on her; page 122,
3 line 11. And that she lived with Morgan, Kenney Morgan, since
4 July of 2015; page 124, line 18.

5 Then we heard testimony from Ms. Duncan. She stated
6 that she started meth with her -- Andrew Dearmin -- excuse me --
7 with Andrew Dearmin, her boyfriend; that would be page 57,
8 line 6 of her transcript. She testified Dearmin is her drug
9 dealer; page 57, line 9.

10 She stated that Gohl and Dearmin were old friends;
11 page 57, line 16. That she used with Dearmin; page 58, line 22.
12 She started using with Dearmin and Gohl; page 58, line 24. She
13 would hang out with Gohl after Dearmin passed away; page 59,
14 line 22. She never saw Gohl do any actual transactions;
15 page 61, line 1.

16 She knew Delewese before Dearmin died; page 61,
17 line 5. She can't remember if Gohl or Sean introduced her to
18 Hillbroom; page 61, line 9. She did not see any transactions
19 between Gohl and Hillbroom; page 61, line 12 plus line 15.

20 She went outside of the house; page 61, line 22. She
21 saw no transactions at Hillbroom's; page 62, line 7.

22 She interrogated Hillbroom about Guam and Palau, and
23 Hillbroom was the one that told her it was just like a vacation;
24 page 62, line 20. Hillbroom gives her drugs to put inside her
25 body; page 64, line 3. Auntie gives her drugs -- Delewese drugs

1 to put inside her body; page 65, line 11.

2 The first person that Duncan talks to when she gets
3 back -- the first person she talks to upon returning to the
4 United States from Guam and Palau is Leah; page 65, line 23.

5 Hillbroom and Carlson were friends already; that would
6 be page 3 of the next volume for Duncan because it's a separate
7 day; so this would be page 3, line 23.

8 Leah asked Duncan to come to Guam or Palau; page 5,
9 line 4. She had difficulty remembering things seven years ago;
10 page 6, line 21. All her money was invested in this thing;
11 page 8, line 9. Leah and her talk about it being -- going on
12 vacay; page 9, line 13.

13 These people all knew each other before the time
14 period charged in the conspiracy and had no need of Mr. Wathen.
15 These co-conspirators, other than Mr. Wathen, already knew each
16 other.

17 That at the time Delewese, she said she got an ounce
18 from Mr. Wathen was her third trip and she was just doing her
19 own thing outside of the conspiracy charged.

20 Mr. Wathen's involvement was minor, at most, and
21 certainly not to the extent presumed by the Government.

22 Mr. Wathen has the least role of these conspirators, and the
23 Government wants to impose the heaviest sentence of anyone,
24 given even the leader of this conspiracy, Mr. Hillbroom.

25 Mr. Wathen was not a leader/organizer but got swept up

1 in this thing hanging around the people who were leaders or
2 organizers. Duncan never saw a drug deal involving Mr. Wathen
3 and could not corroborate this alleged deal with Gohl and
4 Hillbroom. She waited around outside and then left. She knew
5 nothing of the Viper or the drug deal with Gohl and Hillbroom.

6 And she started drugs with Dearmin and had no idea if
7 Mr. Wathen introduced her to Hillbroom. She testified it could
8 have been Gohl who introduced her to Hillbroom. She could not
9 remember. That is not recruitment.

10 The gun thing is a fiction that Gohl dreamed up to
11 make it sound good. Gohl testified an honest person deals
12 drugs, gives drugs to his children, and has his daughter traffic
13 drugs for him. Gohl stated he is not an honest person.

14 He has been convicted of multiple felony fraud,
15 theft-type offenses. Gohl's memory was all over the place, and
16 he repeatedly said it was a long time ago and he was having
17 difficulty remembering.

18 We never got a final answer at trial from Gohl on drug
19 amounts. He stated he was heavily, heavily into drugs. On
20 cross-examinations, he agreed to being a good liar, threatening
21 people with death or physical violence while telling them, "I
22 love Satan." The same -- this man straight-up told us he was
23 not credible, and now we are supposed to believe him for this
24 most important of affairs.

25 Delewese testified she went in her room and did not

1 see anything on cross-examination. She told us on cross, in
2 plain language, she did not see anything; and we are now
3 supposed to believe she saw drugs and a gun seven years ago for
4 sentencing purposes.

5 Mr. Wathen is not the terrible person the Government
6 is telling us about. Mr. Wathen has a huge heart and a huge
7 positive impact on his community. He really cares about his
8 community, and his community cares about him.

9 I have submitted all those letters, community support
10 letters to the Court, which the Court has reviewed. There is
11 also people present here from his community in the courtroom
12 here today to support him.

13 Mr. Wathen has a 6-year-old and a 17-year-old who
14 desperately need him. He has been the primary care provider for
15 his children for a long time. Sending him away on such a
16 sentence proposed by the Government would be a tragedy not only
17 to Mr. Wathen but to his children and the community.

18 I addressed the obstruction issue in my brief, and I
19 really don't have any --

20 THE COURT: Counsel, that's a tough one. I mean,
21 there really has been no explanation as to why an invoice shows
22 up two or three weeks before trial that's dated at a time that
23 provides a defense for the defendant but at a date that predated
24 when that form was even available. I mean, that's just a real
25 hard one to swallow.

1 MR. FRAMPTON: I guess I can give you some background
2 a little bit. But, you know, I was asking Mr. Wathen do you
3 have any invoices or anything like that and for some --

4 THE COURT: I don't want to get into attorney-client
5 communications. So...

6 MR. FRAMPTON: But I guess the discrepancy is 11 days.
7 I guess it's 11 -- the beginning of the 12th day would be
8 September 1. So what they are saying is --

16 MR. FRAMPTON: I guess the date on the invoices begins
17 September 1 of 2015, and the date handwritten was August 20th of
18 2015. So it's, like, an 11-day discrepancy there. That's what
19 we're talking about.

20 THE COURT: Okay. Well, that's all right. Go ahead.
21 I don't --

22 MR. FRAMPTON: Yeah. And I did address that in my
23 brief. And there are economic learned treatises and things if
24 you really want to look into it. But the factories don't just
25 stop; they keep moving. And 11 days, I would argue in any

1 challenge on that, I guess, that it just doesn't make economic
2 sense to just stop everything and wait for that to happen.

3 That's all I have, Your Honor.

4 THE COURT: All right. Thank you.

5 MR. ELLSWORTH: Your Honor, as to the date, can I just
6 clarify one thing?

7 THE COURT: You may.

8 MR. ELLSWORTH: The date of September 2015 is the date
9 that the art was approved, as testified by the expert. They
10 hadn't been printed yet.

11 THE COURT: That's kind of what I was alluding to, is
12 that I think the witness -- I wish I could remember his name. I
13 thought Armstrong, but I don't think that's right.

14 MR. ELLSWORTH: Hamilton. Scott Hamilton.

15 THE COURT: Hamilton. Not even close.

16 But he indicated a process that had to occur before it
17 ever found its way onto a shelf of a store where it could be
18 purchased and used.

19 MR. ELLSWORTH: I outlined it in my sentencing memo,
20 and I highlighted his testimony. From the date that the art was
21 approved, the plates had to be created. Those plates had to be
22 sent to Mexico, where it could be printed; then it would come
23 back to TOPS's facilities, where they would ship it to their
24 distributors, who would ship it to the big-box distributors, who
25 would ship it to the individual stores.

1 THE COURT: Right. That's essentially what I was
2 alluding to.

3 All right. Mr. Wathen, I did read your letter. Is
4 there anything else you want to say? This is your time, and I
5 don't want to cut you off. But I just wanted to assure you that
6 I did read your letter.

14 Thank you.

15 THE COURT: All right. Thank you.

16 Well, let me address the objections. I am going to
17 essentially overrule all the objections.

18 I sat through the trial. The evidence was
19 substantial. The one area where I do have some pause would be
20 with regard to the drug quantity simply because the Government
21 agreed to let Mr. Hillbroom plead to a charge and agreed that a
22 certain offense level would be used as the base offense level
23 which reflects a lesser quantity of drugs.

24 On the other hand, the evidence clearly supported the
25 probation officer's finding; but I think, by way of a variance,

1 I intend to take that into account.

2 That the Government agreed to let Mr. Hillbroom plead
3 to a lesser quantity, I think this is to some extent where the
4 trial penalty comes into play; that choosing to go to trial
5 should never be penalized beyond the kind of things that are the
6 natural consequences of that decision, such as loss of
7 acceptance of responsibility and, if you take the witness stand
8 and perjure yourself, obstruction of justice.

9 So, for that reason, I think that is a concern I have,
10 but I'm going to overrule that objection but take it into
11 account in terms of what is an appropriate sentence in this
12 case.

13 So the base offense level was properly established at
14 30. I'll overrule the objection to role in the offense. The
15 exchange I just had with Mr. Ellsworth I think captures my
16 thinking as to what the evidence was, which is that both
17 Mr. Wathen and Mr. Hillbroom had leadership roles in this.

18 They had, to some extent, overlapping responsibilities
19 but also different responsibilities. I think Mr. Wathen was the
20 connection for the drug supply; Mr. Hillbroom provided the
21 money; and they both were involved in recruiting individuals to
22 transport the drugs to Palau and other Pacific islands.

23 The acceptance of responsibility, I think that just --
24 I mean, there is a rare case where a defendant allows a case to
25 go to trial and still qualifies for acceptance of responsibility

1 because they are trying to preserve the record or something of
2 that sort. But where the defendant simply denies involvement
3 even after being convicted, as is the case here, there is just
4 no way I can find acceptance of responsibility.

5 The firearm enhancement. Two witnesses testified
6 clearly that firearms were used in a drug exchange. That is
7 clearly what the guidelines envision where the enhancement
8 applies.

9 The obstruction of justice. Mr. Wathen took the
10 witness stand. He denied any responsibility. The jury,
11 nevertheless, convicted him beyond a reasonable doubt. I think
12 that, almost in and of itself, suggests perjury.

13 But in this case, we have the additional matter that
14 he claimed that a receipt for work explains the money that
15 exchanged hands with Mr. Hillbroom and provided a receipt. But
16 that receipt clearly -- that form did not exist at the time that
17 the receipt was dated. That's just -- you know, it's almost a
18 matter of physics. Time moves in one direction, and you can't
19 sign something that doesn't exist at the time you sign it.

20 So, for those reasons, I will overrule all objections
21 to the presentence report based upon the evidence presented at
22 trial. I will, however, accept that I think the drug quantity
23 is -- I won't say it's overstated. I'll say that in terms of
24 trying to be proportional in terms of sentencing and
25 Mr. Hillbroom and Mr. Wathen, that it would be appropriate for

1 the Court to consider a downward variance to reflect that.

2 So the guideline range is 188 to 235 months. I will
3 adopt the presentence report as my own findings in this matter.

4 I'm now going to spend a few minutes, Mr. Wathen,
5 going through the general sentencing factors that Congress has
6 directed us to consider in imposing sentence. It's a statutory
7 framework that I've found not only required by Congress in terms
8 of our approach to sentencing but is also, I think, appropriate
9 as a way to force a judge to kind of channel and direct their
10 thinking as to the things that really are important and the
11 things that are really not important.

12 The first such factor is the nature and circumstances
13 of the offense. This is a case in which Mr. Wathen became
14 involved in a conspiracy to distribute methamphetamine;
15 essentially, as I suggested earlier, taking advantage of a price
16 differential between methamphetamine as it is sold in the
17 Spokane, Washington/North Idaho area and how much that same drug
18 is sold for in Palau and Guam and perhaps Saipan.

19 Based upon that, Mr. Wathen began purchasing large
20 amounts of methamphetamine from Mr. Gohl; and Mr. Gohl testified
21 to that and conceded that point. The purchases were being made
22 on behalf of Mr. Hillbroom, who provided the financing based
23 upon money that he had inherited.

24 In addition, Mr. Wathen was also recruiting Kelly
25 Duncan to assist in transporting the drugs to Palau and Guam.

1 Then, in late August and September of 2015, Kelly
2 Duncan, Leah Delewese, Mr. Hillbroom, Mr. Carlson, and others
3 began moving this methamphetamine from Hope, Idaho, to Guam and
4 Palau. And for the next several months, people were traveling
5 back and forth from North Idaho to those islands smuggling
6 methamphetamine on or in their person or in their luggage.

7 And so that, in essence, is the charge which the jury
8 listened to and then found beyond a reasonable doubt that
9 Mr. Wathen was guilty.

10 Turning next to the history and characteristics.
11 There are some notable mitigating factors, as I suggested
12 earlier. Mr. Wathen is 50 years old, raised in a loving and
13 stable environment by both parents, never suffered from any
14 abuse during his childhood.

15 His family relocated to Montana and then to
16 Washington; and then ultimately, while in elementary school, he
17 relocated to Idaho, where he has resided since.

18 He is single, having never been married, but he has
19 been involved in prior long-term relationships and has two minor
20 children, ages 6 and either 17 or 18. He has been the primary
21 care provider for both of his children prior to his
22 incarceration on this offense.

23 He has no physical health concerns, no mental health
24 concerns, not currently taking any medication. He has admitted
25 to a serious methamphetamine addiction, which obviously has had

1 some impact upon his conviction here. His position is that he
2 wasn't involved in this drug trafficking and he was, in essence,
3 just using and not selling drugs. But a jury of your peers
4 found otherwise.

5 I would note that I have received a large number of
6 letters from those who support, like, and admire Mr. Wathen.
7 And I have taken note of that, and I think that is also another
8 mitigating factor.

9 You know, it's hard to read a criminal history and
10 sort things out. I think, you know, the criminal history
11 category 1 suggests that an individual has absolutely no prior
12 criminal record; that's not the case in Mr. Wathen's situation.
13 But on the other hand, it's also true that these convictions
14 were somewhat dated. It is troubling that there was a separate
15 drug offense for which he had been charged but was not
16 prosecuted after he was convicted on these charges.

17 I would note that for many years, he lived a
18 law-abiding life but then had the DUIs. There is also a
19 no-contact order, criminal contempt of court, a domestic
20 disturbance and then, of course, that drug charge that I alluded
21 to but, of course, there is no conviction.

22 So after I consider those factors, I'm directed by the
23 statute to consider and then impose a sentence which is
24 sufficient but not greater than necessary to achieve certain
25 very specific objectives: reflecting the seriousness of the

1 offense, promoting respect for the law, providing for just
2 punishment, adequate deterrence, protection of the public, and
3 any needed training, care, or correctional treatment.

4 In this case, I am very mindful of the impact that a
5 sentence of incarceration will have upon Mr. Wathen's children
6 and particularly his young 6-year-old son. I'm mindful of that.
7 And nothing is harder, I think, for a judge than to impose
8 sentence knowing that there is going to be collateral
9 consequences.

10 But on the other hand, when I look at these factors,
11 this is a serious offense. I have commented repeatedly about
12 how methamphetamine specifically and drugs generally are a
13 poison in our society. They have destroyed countless lives.

14 I think your own life experience is a reflection of
15 how methamphetamine can simply destroy an individual, destroy
16 relationships, destroy their family, destroy their community.

17 And when one engages in trafficking, you simply are
18 bringing poison into the community, and I think there has to be
19 a serious consequence to reflect how serious that crime is to
20 provide for a just sentence, to deter people from engaging in
21 this conduct, and hopefully, at the end of the day, protecting
22 the public.

23 Now, I'm mindful, Mr. Wathen, that you completely deny
24 criminal responsibility here. I read your letter, and it was
25 emphatically a denial of any criminal liability, criminal

1 responsibility. And I wish more than anything that I had the
2 ability to know with certainty every fact that is at issue in
3 any case before me. Unfortunately, I don't have that ability;
4 no one does.

5 So what we're left with are facts, and we're left with
6 a jury's verdict. And while you have suggested that these
7 individuals who testified against you are lying, the jury found
8 them credible. The jury was fully aware of their checkered
9 pasts, their own agreement with the Government to cooperate.
10 And they looked beyond that and found beyond a reasonable doubt
11 that you engaged in this drug conspiracy.

12 I am not in a position to think that they got it
13 wrong. I know that you deny it and probably will deny it the
14 day you walk out of prison. But that's something that is simply
15 beyond my capability of second-guessing, and I have to accept
16 the jury's verdict.

17 I sat and listened to the testimony, and I can't say
18 the jury got it wrong. I think the evidence was very
19 substantial, if not overwhelming, in support of the jury's
20 verdict in this matter.

21 So after considering those matters and taking into
22 account all of the issues I have expressed concern about -- the
23 need for proportionality in sentencing, understanding your
24 contributions to your small community in Hope, your family
25 responsibilities but also taking into account an obstruction of

1 justice, failure to accept responsibility -- I have settled upon
2 the following sentence, which I think is reasonable and just and
3 sufficient but not greater than necessary to achieve the
4 objectives of 18 U.S. Code Section 3553(a)(2).

5 If you'll stand, I'll pronounce sentence.

6 The defendant, Sean Robert Wathen, having been
7 convicted following a jury trial of Count 1 of the superseding
8 indictment, and the Court being satisfied that you are guilty as
9 charged, I hereby order and adjudge as follows:

10 Pursuant to the Sentencing Reform Act of 1984, it is
11 the judgment of the Court that you be committed to the custody
12 of the Bureau of Prisons for a term of 138 months.

13 It is further ordered that you pay to the
14 United States a special assessment of \$100, which will be due
15 immediately. It is further ordered that you pay to the
16 United States a fine of \$1,000, which will also be due
17 immediately.

18 After considering your financial resources, I will
19 order payment under the following schedule unless modified by
20 the Court:

21 While in custody, you will submit nominal payments of
22 not less than \$25 per quarter pursuant to the Bureau of Prisons
23 Inmate Financial Responsibility Program. During the term of
24 supervised release, you will submit nominal monthly payments of
25 10 percent of your gross income but not less than \$25 per month.

5 During the term of supervised release, you will comply with all
6 of the mandatory, standard, and special terms of supervision or
7 supervised release as stated in the sentencing recommendation
8 filed by Ms. McDonald as Docket No. 294.

9 I assume, Mr. Frampton, you have gone over those
10 conditions with your client.

11 MR. FRAMPTON: I think they were in the paperwork,
12 weren't they?

13 THE COURT: They were in the presentence report --

14 MR. FRAMPTON: Yes.

15 THE COURT: -- and definitely in the recommendation.

16 MR. FRAMPTON: Yes.

17 THE COURT: You went over those with your client?

18 MR. FRAMPTON: Yes.

19 THE COURT: Were there any objection to those

20 conditions?

21 MR. FRAMPTON: I don't believe so, Your Honor

22 NOVEMBER 2000

1 be imposed?

2 THE DEFENDANT: I understand, Your Honor.

3 THE COURT: I'm sorry?

4 THE DEFENDANT: I understand.

5 THE COURT: All right. Let me advise you that you
6 have the right to appeal your conviction or sentence. If you
7 decide to appeal, you must file a notice of appeal within
8 14 days after judgment is entered in your case.

9 If unable to pay the cost of an appeal, you may apply
10 for leave to appeal in forma pauperis. If you so request and
11 qualify, the clerk of the court will arrange for legal
12 representation and will prepare and file a notice of appeal on
13 your behalf.

14 I'm assuming that any forfeiture issues will not be
15 pursued by the Government.

16 MR. ELLSWORTH: That's correct, Your Honor.

17 THE COURT: All right. I will recommend to the Bureau
18 of Prisons, Mr. Wathen, that you receive credit for all time in
19 federal custody. I'll recommend you be allowed to participate
20 in the RDAP drug treatment program.

21 Is there a recommendation as to a place of
22 confinement? Sheridan, Oregon, is the closest facility, but I
23 don't know --

24 THE DEFENDANT: I thought there was another one in
25 maybe Wyoming --

THE COURT: Colorado.

THE DEFENDANT: -- Colorado that had a really good working -- like, you could work --

THE COURT: Well, it's either Englewood or Florence.

Florence has the full range, from a work camp all the way -- that's where supermax is. So it has the broadest range of -- could I ask, Mr. Frampton, if you will confer with Mr. Wathen -- and perhaps even Ms. McDonald might be able to help you out trying to sort out what may be the facility that had the broader range of treatment and work programs. We can adjust that recommendation through maybe the end of the day today. We need to get the judgment out; but if you can confer, we will try to incorporate that.

Just what I know of, Englewood, Colorado, is one facility. But I know that that's also a facility used to house inmates who are there on sex offenses, which I don't know that -- it's probably not exclusively for that, but it's a facility where they provide special treatment.

Florence, Colorado, has a very broad range, and that's just south of Colorado Springs. And then Sheridan, Oregon, is closest, and it has just medium and minimum security facilities.

Ms. McDonald, am I getting it right, or do you have some other thoughts on that?

THE PROBATION OFFICER: Yes, Your Honor. Florence is an ad max, a high, and FCI. Englewood is an FCI. And you also

1 said Sheridan as well. And Sheridan is an FCI.

2 MR. FRAMPTON: What's FCI? What is that?

3 THE PROBATION OFFICER: Medium-security correctional
4 institution.

5 THE COURT: Why don't you work with Ms. McDonald after
6 we get done today, and then you can let us know. I'm willing to
7 make any recommendation that would fit. I just don't know
8 exactly what they provide.

9 They all provide RDAP, which I think is most critical.
10 It's a drug treatment program. The ones that would provide the
11 better work environment and opportunities like that, that I
12 think would be something beyond what I know at the drop of my
13 hat. But I think Ms. McDonald may be able to help you out in
14 that regard.

15 So I'll recommend at this point -- I actually think
16 Sheridan, Oregon, would be the best recommendation because it's
17 close, and your family could visit there. So I think I'll make
18 that as my recommendation as a default; but if you get with
19 Ms. McDonald and want me to recommend something else, I'll make
20 that change. All right?

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: All right. I think, Mr. Frampton, you
23 moved to withdraw as counsel and to appoint appellate counsel.
24 That's appropriate and usually done at this point. So I'll
25 grant that motion.

1 And we will need to have -- I think you were retained,
2 and so we will need to have the affidavit of indigency and
3 things of that sort if Mr. Wathen wants to have a
4 court-appointed attorney to represent him on the appeal.

5 But I'm going to leave it up to you, Mr. Frampton, to make sure
6 that's submitted.

7 MR. FRAMPTON: Do you have a form here we could fill
8 out right now?

9 THE COURT: I usually don't handle it during the
10 sentencing. It's usually handled right after.

11 MR. FRAMPTON: I think there is an affidavit on file.

12 THE COURT: Ms. Gearhart is -- you say it has been
13 filed?

14 MR. FRAMPTON: I think there is one on file from
15 originally.

16 THE COURT: Go ahead and be seated. Go ahead and be
17 seated.

18 Mr. Frampton.

19 MR. FRAMPTON: He was appointed counsel --

20 THE COURT: Previously.

21 MR. FRAMPTON: -- previously.

22 THE COURT: Well, if a magistrate judge has already
23 made a determination of indigency, then presumably I can just
24 excuse you and then have the clerk's office appoint --

25 MR. FRAMPTON: That's the way I look at it.

5 MR. FRAMPTON: Okay.

6 THE COURT: I think I have covered everything.

7 Mr. Ellsworth, was there something that I overlooked?

8 MR. ELLSWORTH: Your Honor, you didn't overlook --

9 THE COURT: Go ahead and be seated.

10 MR. ELLSWORTH: I just wanted to make one
11 clarification for the record in regards to your finding on
12 obstruction and only because I argued the issue in front of the
13 Ninth Circuit recently.

14 You mentioned that his testimony alone in the jury's
15 verdict would implicate possibly obstruction. And there is case
16 law that makes clear that that can't be the basis for an
17 obstruction.

18 THE COURT: No. I'm making a specific finding beyond
19 that.

20 MR. ELLSWORTH: So your finding of the obstruction is
21 specific to the invoice; is that correct?

22 THE COURT: Yes.

23 MR. ELLSWORTH: Thank you.

1 Ninth Circuit. I would quarrel with the Ninth Circuit on that,
2 but it doesn't matter in this case because there is clearly the
3 rather specific statement that was made in the testimony that
4 simply could not be true; and therefore, there is -- that ground
5 for obstruction is clearly there.

6 MR. ELLSWORTH: Thank you, Your Honor.

9 THE PROBATION OFFICER: No, Your Honor.

10 THE COURT: Ms. Dwyer?

12 THE COURT: Ms. Gearhart?

13 THE CLERK: No, Your Honor.

14 THE COURT: Anything else, Mr. Frampton?

15 MR. FRAMPTON: No, Your Honor.

16 THE COURT: All right. You know, as I said,

17 Mr. Wathen, I wish I had perfect knowledge of what goes on in
18 the world. I would like to believe, you know, that you didn't
19 do these things. But the evidence was substantial, was
20 overwhelming, and the jury convicted. And that's what I have to
21 operate under.

22 And regardless, I hope your family is protected,
23 safeguarded, and knows at least the love you have for them in
24 your absence and that you can return. You know, with good-time
25 credit, it won't be I think the full 11-and-a-half-years, I

1 think, but it will be a very substantial sentence no matter how
2 it's calculated. And I do wish you the best of luck.

3 All right. We will be in recess.

4 THE DEFENDANT: Can I say one thing, Your Honor?

5 THE COURT: I'm sorry?

6 THE DEFENDANT: The jury wasn't allowed to see any of
7 those letters either. They never saw any of them.

8 THE COURT: Well, I think it would be better if I
9 don't get into that. There may be issues on appeal concerning
10 that.

11 THE DEFENDANT: Okay. Thank you.

12 THE COURT: All right.

13 (Proceedings concluded at 3:50 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1 REPORTER'S CERTIFICATE
2
3
4

5 I, TAMARA I. HOHENLEITNER, CSR, RPR, CRR, certify that
6 the foregoing is a correct transcript of proceedings in the
7 above-entitled matter.
8
9
10
11
12
13

14 /s/ Tamara I. Hohenleitner

09/30/2022

15 TAMARA I. HOHENLEITNER, CSR, RPR, CRR

16 Date

17
18
19
20
21
22
23
24
25

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-30138

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

SEAN ROBERT WATHEN,
Defendant/Appellant.

DEFENDANT-APPELLANT'S
EXCERPTS OF RECORD

Volume 2

Appeal from the Judgment of the United States District Court
for the District of Idaho
D.C. No. 2:20cr-00117-BLW-3
(Honorable B. Lynn Winmill)

Katherine Ball
KATIE BALL, PLLC
P.O. Box 465
Eagle, Idaho 83616
Telephone: (208) 870-8072
Email: katieballpllc@gmail.com
Idaho State Bar No. 6666

Counsel for Defendant/Appellant

1 Q. So this is where you go?

2 A. Yes.

3 Q. This photo, clearly taken during the winter; is that right?

4 A. Yes.

5 Q. There is snow on the ground?

6 A. Yes.

7 Q. But you said this was during the summer that this meeting
8 happens.

9 A. I believe so. It's been seven years, so I can't guarantee
10 it was definitely in the summertime. I just remember it not
11 snowing, so --

12 Q. So there is no snow on the ground?

13 A. No.

14 Q. Is it hot or cold?

15 A. I believe it was warm out.

16 Q. Okay. What happens when you get to the house?

17 A. They, Craig and Sean and Bebe, all -- and I think the other
18 guy that was with them fell asleep in the car maybe, and they
19 were discussing buying meth.

20 Q. So you arrive at Sean's house.

21 Is Sean there?

22 A. Yes.

23 Q. And do you go in the house, or do you stay out in the car?

24 A. Yes, I go in the house.

25 Q. And there is a discussion regarding methamphetamine?

1 A. Yes.

2 MR. FRAMPTON: Objection. Calls for hearsay.

3 THE COURT: The question is was there a discussion. I
4 think only the -- I'll overrule the objection. But if we get
5 into more detail, I would sustain the objection unless it's an
6 801(d)(2)(E) matter. I just don't know.

7 MR. ELLSWORTH: I can ask a couple of follow-up
8 questions to establish that.

9 THE COURT: Yes, certainly.

10 Q. BY MR. ELLSWORTH: The goal of this meeting was what?

11 A. For Craig and Sean, I believe, to do a drug deal.

12 Q. You set this up; correct?

13 A. Yes.

14 Q. And are you hoping to receive something because of this?

15 A. Yes.

16 Q. At this point, do you recall if you're living at Sean's
17 house or if you're living on the peninsula or if you're in
18 Sandpoint?

19 A. I'm living in Sandpoint.

20 Q. And you know that why?

21 A. Because they picked me up from my apartment.

22 Q. Okay.

23 MR. ELLSWORTH: Your Honor, at this point, I believe I
24 have established that there is a goal here to meet and
25 distribute drugs, and any statements at this point would be

1 co-conspirator statements.

2 MR. FRAMPTON: I object to the speaking in front of
3 the jury.

4 THE COURT: Yeah, I'll sustain that objection.

5 Counsel's -- the jury is instructed to disregard counsel's last
6 statement.

7 I will overrule the objection, though, on hearsay
8 grounds for the reason indicated. I think the witness's
9 statements are sufficient to satisfy -- I want to say it's the
10 Allen requirements. But, in any event, I'll overrule the
11 objection at this point.

12 Go ahead and proceed.

13 Counsel, in so finding, I'm not making any
14 determination as to the broader matters set forth in the
15 indictment, only as to this particular transaction. But I think
16 the rule would still apply even to more limited enterprises.

17 Go ahead and proceed.

18 MR. ELLSWORTH: Thank you, Your Honor.

19 Q. BY MR. ELLSWORTH: So you do go inside the house?

20 A. Yes.

21 Q. Do you see any methamphetamine?

22 A. Yes.

23 Q. What do you see?

24 A. A bag of methamphetamine.

25 Q. When you say "a bag," what are we talking about?

1 A. A bigger bag.

2 Q. Is this a brown paper bag? What type of bag?

3 A. I believe it was, like, a Ziploc bag.

4 Q. Like a clear Ziploc bag?

5 A. Clear, yes.

6 Q. Is this a sandwich bag? A gallon bag? What size bag?

7 A. I would say a gallon bag.

8 Q. And does it have a little bit of methamphetamine or a lot
9 of -- how much methamphetamine are we talking about?

10 A. A lot of methamphetamine.

11 Q. Was actual quantities discussed?

12 A. I think there were a couple pounds, yes.

13 Q. And so it's more than just your normal user amount;
14 correct?

15 A. Yes.

16 Q. Do they discuss payment for these drugs?

17 A. I went -- I kind of left the room, like I said, and went in
18 the front. So I didn't witness any transactions going on. I
19 just brought them out there and then kind of went to the front
20 of the house, so...

21 Q. So you go to the front of the house.

22 Who is still in the house?

23 A. Craig, Bebe, and Sean.

24 Q. Do you see any money exchanged?

25 A. No. I wasn't part of that.

1 Q. Did you ever see any firearms during this transaction?

2 A. No, but I heard. I heard them discussing it.

3 Q. What did you hear discussed?

4 A. Bebe really wanted a gun, I believe, that Sean had. And so
5 he kept asking Craig to ask Sean, but I never witnessed any
6 transaction or any deal being made or anything.

7 Q. You had previously testified that you used meth for an
8 extensive period of time at this point, 15-plus years?

9 A. Yes.

10 Q. When you saw it, based off of your experience and your
11 knowledge of methamphetamine, did it appear to be
12 methamphetamine?

13 A. Yes.

14 Q. After they meet, do you leave?

15 A. Yes.

16 Q. Who do you leave with?

17 A. Craig and Bebe and whoever the other guy was in the front
18 seat.

19 Q. Do they leave with the methamphetamine that they brought?

20 A. I don't believe so.

21 Q. You never saw it again?

22 A. No.

23 Q. Were you paid for your involvement in this transaction?

24 A. Yes.

25 Q. What were you paid for?

OMITTED PAGES 163 TO 224

1 A. Syringe used to shoot methamphetamine up with in your vein.

2 Q. Okay. So you saw him use meth via a syringe?

3 A. He made it up for both of us, and we both went in his back

4 bedroom, the two of us, to do it.

5 Q. Where is Leah during this time?

6 A. In the front room talking to somebody else.

7 Q. But she is not --

8 A. And Bebe -- Bebe doesn't slam dope, or he doesn't use

9 needles.

10 Q. So you used the word "slam." Is that slang for using a

11 needle?

12 A. Yes.

13 Q. All right. And then once that happens, do you actually

14 provide Sean with the meth that was brought?

15 A. Yes.

16 Q. How much?

17 A. 5 pounds.

18 Q. Are you for sure on that? Could it have been less? Could

19 have been more?

20 A. It could have been less, but never more.

21 Q. You never provided more than 5 pounds to Sean?

22 A. Never.

23 Q. Do you know how much money you get from this transaction?

24 A. I'll be honest. At that point, at that specific time, Bebe

25 had arranged and spoke everything to Sean. So, I mean, which

1 was usually a no-no in my world. But, like I said, Sean was a
2 straight-up dude.

3 Most people don't want you to meet their plug, you
4 know, their person. But Sean and him decided something, and
5 Bebe bought a couple guns -- or Sean gave him a gun, and Bebe
6 bought one gun; I can't remember that either. But -- like I
7 said, it was a long time ago. But, yeah, that's --

8 Q. This is all during the drug transaction?

9 A. Yes.

10 Q. You said the word "plug." What's a plug?

11 A. Someone you buy your drugs from.

12 Q. So was Bebe your plug?

13 A. Yes.

14 Q. And you were --

15 A. And I was Sean's plug.

16 Q. And you were Sean's plug?

17 A. At the time, yep.

18 Q. So it's just another word for your dealer?

19 A. Yep.

20 Q. Now, you had mentioned Junior.

21 Do you see Junior at this deal?

22 A. Yeah, briefly, for just a second. He didn't say anything
23 to me.

24 Q. Does Junior talk to Bebe?

25 A. No. He talks to Sean real quick.

1 Q. So when do you see him?

2 A. When Sean and I went back -- I mean, it was casual at the
3 time. You know, it wasn't all corrupt and everything, people
4 running around or nothing crazy. Sean went back to his bedroom.
5 Bebe was in the front room with Leah and maybe another person, a
6 friend of Sean's that I don't know.

7 But Junior popped in, and Sean and I did a shot. And
8 I thought it was strange that -- at that particular time,
9 actually, Junior took the syringe also that he made shots for
10 him, and he didn't take it. But he -- he poked himself, but he
11 didn't draw any blood.

12 And I was weirded out by that, to be honest with you.
13 It stuck in my mind forever. Because that's cop shit. I mean,
14 that's something that someone doesn't do. But he put it in his
15 ear after that and smacked Sean on his shoulder and said, "I
16 think we need to get the rest of it."

17 So I think that was 2 pounds, to be exact, at that
18 time. Because he needed more.

19 Q. All right. Let's pause for a second. Sounds like you
20 might be telling two different stories.

21 A. It might be two different occasions.

22 Q. So you're first talking about you are with Bebe, and it's a
23 5-pound deal, you think?

24 A. Yes.

25 Q. Okay. And now you're talking about a story in which it's a