

Docket No:

UNITED STATES SUPREME COURT

UNITED STATES,
Plaintiff-Respondent,

v.

CODY MERCURE,
Defendant-Petitioner.

On Petition for Writ of Certiorari
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

ROBERT C. ANDREWS
Attorney for Cody Mercure
First Circuit Bar Number 88418
91 Auburn Street Suite J PMB 1155
Portland, ME 04103
Tel. 207-879-9850
Fax 207-879-1883
E-mail rob.andrews.esq@gmail.com

United States Court of Appeals For the First Circuit

No. 23-1414

UNITED STATES,

Appellee,

v.

CODY MERCURE,

Defendant - Appellant.

Before

Barron, Chief Judge,
Kayatta and Montecalvo, Circuit Judges.

JUDGMENT

Entered: June 11, 2024

Defendant was convicted of one count of sexual exploitation of children, 18 U.S.C. §§ 2251(a) and (e), and distribution of child pornography, 18 U.S.C. § 2252A(a)(2)(A). The victim of the sexual exploitation was a toddler in his care. After defendant pleaded guilty, the court sentenced him to 300 months' imprisonment. He appealed and the government moved for summary affirmance.

On appeal, defendant raises an Eighth Amendment claim that was not raised below. Consequently, that claim is reviewed for plain error. Based on the record before this court, defendant's sentence was not grossly disproportionate to the criminal activity for which it was imposed, United States v. Raiche, 50 F.4th 279, 284 (1st Cir. 2022) (preserved Eighth Amendment claim), certainly not clearly or plainly so.

Defendant's substantive reasonableness argument fares no better. "[A] sentence will withstand a challenge to its substantive reasonableness as long as it rests on 'a plausible sentencing rationale' and reflects 'a defensible result.'" United States v. Sansone, 90 F.4th 1, 10 (1st Cir.) (quoting United States v. de Jesús, 831 F.3d 39, 43 (1st Cir. 2016)), cert. denied, 2024 WL 2116483 (5/13/24). "There is no one reasonable sentence in any given case but, rather, a universe of reasonable sentencing outcomes." Id. at 9 (quoting United States v. Clogston, 662 F.3d 588, 592

(1st Cir. 2011)). This universe of reasonable outcomes is "broad." Id. (quoting United States v. Rivera-Morales, 961 F.3d 1, 21 (1st Cir. 2020)). And this court "rarely find[s] a below-guidelines sentence to be substantively unreasonable." United States v. Millán-Machuca, 991 F.3d 7, 32 (1st Cir. 2021).

The aggregate 300-month sentence -- which is significantly below the low end of what the parties agreed was the combined guideline range -- is clearly a defensible result on the facts of this case involving horrific sexual abuse of a child, the videorecording of that abuse, and the distribution of child pornography of unrelated victims. The court's sentencing rationale -- to protect the victim, to protect society against defendant's above-average risk of recidivism, but also to temper the punishment by recognizing that defendant had the deck stacked against him early on - - was entirely plausible.

The government's motion for summary disposition is allowed and defendant's sentence is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:

Donald Campbell Lockhart

Elianna J. Nuzum

Alexandra W. Amrhein

Karen Lisa Eisenstadt

Robert Clayton Andrews

No. 23-1414

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

UNITED STATES OF AMERICA,
Appellee,

v.

CODY MERCURE,
Defendant/Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

APPENDIX

ROBERT C. ANDREWS
Attorney for Cody Mercure
Robert C. Andrews Esquire P.C.
91 Auburn Street Suite J PMB 1155
Portland, ME 04103
Tel. 207-879-9850
Fax 207-879-1883
E-mail rcaesq@maine.rr.com

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**United States District Court
District of Massachusetts (Boston)
CRIMINAL DOCKET FOR CASE #: 1:21-cr-10274-LTS-1**

Case title: USA v. Mercure

Date Filed: 09/15/2021

Date Terminated: 04/27/2023

Assigned to: District Judge Leo T. Sorokin

Appeals court case number: 23-1414 USCA
- First Circuit

Defendant (1)

Cody Mercure

TERMINATED: 04/27/2023

represented by **John L. Calcagni , III**
Law Offices of John L. Calcagni III
72 Clifford Street
Suite 300
Providence, RI 02903
401-351-5100
Fax: 401-351-5101
Email: jc@calcagnilaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

18:2251(a) and (e) - SEXUAL
EXPLOITATION OF CHILDREN
(1)

18:2252A(a)(2)(A) - DISTRIBUTION OF
CHILD PORNOGRAPHY
(2)

Disposition

Original: 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised Release. \$200 Special Assessment. Restitution TBD. Amended: 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised Release. \$200 Special Assessment. Restitution: \$51,000.

Original: 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised Release. \$200 Special Assessment. Restitution TBD. Amended: 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

USA

represented by **Elianna J. Nuzum**
United States Attorney's Office MA
1 Courthouse Way
Suite 9200
Boston, MA 02210
617-748-3100
Email: elianna.nuzum@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
09/15/2021	<u>1</u>	INDICTMENT as to Cody Mercure (1) count(s) 1, 2. (Attachments: # <u>1</u> JS45)(Alves-Baptista, Antonia) (Entered: 09/15/2021)
09/15/2021	3	ELECTRONIC NOTICE of Case Assignment as to Cody Mercure; District Judge Leo T. Sorokin assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Marianne B. Bowler. (Finn, Mary) (Entered: 09/15/2021)
09/15/2021	4	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered. Order Referring Case to Magistrate Judge Marianne B. Bowler Reason for referral: Full Pretrial Proceedings as to Cody Mercure (Alves-Baptista, Antonia) (Entered: 09/15/2021)
09/21/2021	5	ELECTRONIC NOTICE OF HEARING as to Cody Mercure This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible.

		<p>Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov.</p> <p>Initial Appearance/Arraignment set for 9/22/2021 12:00 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. (Belpedio, Lisa) (Entered: 09/21/2021)</p>
09/21/2021	<u>6</u>	NOTICE OF ATTORNEY APPEARANCE: John L. Calcagni, III appearing for Cody Mercure. Type of Appearance: Retained. (Calcagni, John) (Entered: 09/21/2021)
09/21/2021	<u>7</u>	Writ of Habeas Corpus ad Prosequendum Issued as to Cody Mercure for September 22, 2021 (Belpedio, Lisa) (Entered: 09/22/2021)
09/22/2021		Arrest of Cody Mercure (Defendant habed in from state custody)(Belpedio, Lisa) (Entered: 09/22/2021)
09/22/2021	<u>8</u>	Electronic Clerk's Notes for proceedings held before Magistrate Judge Marianne B. Bowler: Initial Appearance/Arraignment as to Cody Mercure (1) Count 1,2 held on 9/22/2021. Case called, counsel, PO Bello & defendant appear by video. After colloquy, the court finds that the defendant knowingly and voluntarily waives his right to be physically present in the courtroom and hearing proceeds by video. Defendant notified of rights, charges and maximum penalties. Defendant sworn and the court inquires about bail questions. Defendant waives the reading of the indictment. Not Guilty Plea entered by Cody Mercure on counts 1 & 2. Government moves for detention, and defendant is Ordered Detained pursuant to USA v. King. Status Conference set for 11/4/2021 02:45 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. COUNSEL ARE DIRECTED TO APPEAR BY PHONE by calling 888-675-2535 approximately five minutes prior to the conference, using Access Code 6641794. If, for some reason, the call is disconnected COUNSEL, dial back in. NOTE that yours may not be the first case called, but please remain on the line until it is. Government anticipates calling 6 witnesses and estimates the trial lasting four to five days. Defendant has no objection to excluding the time from today through November 4, 2021 and the government shall file an assented to motion. Defendant remanded back to state custody, written Order Pursuant to Federal Rule of Criminal Procedure 5 to issue.(Attorneys present: Nuzum, Calcagni.)Court Reporter Name and Contact or digital recording information: James Gibbons at jamesgibbonsrpr@gmail.com. (Belpedio, Lisa) (Entered: 09/22/2021)
09/22/2021	<u>9</u>	Magistrate Judge Marianne B. Bowler: ORDER Pursuant to Federal Rule of Criminal Procedure 5 entered as to Cody Mercure. (Belpedio, Lisa) (Entered: 09/22/2021)
09/22/2021	<u>10</u>	Assented to MOTION for Excludable Delay from 9/22/2021 to 11/4/2021 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 09/22/2021)
09/23/2021	<u>11</u>	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>10</u> Assented to MOTION for Excludable Delay from 9/22/2021 to 11/4/2021 de as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 09/23/2021)
09/23/2021	<u>12</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from September 22, 2021 until November 4, 2021. Reason for

		entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 09/23/2021)
09/23/2021	<u>13</u>	Arrest Warrant Returned Executed on 9/22/2021 as to Cody Mercure. (Pacho, Arnold) (Entered: 09/23/2021)
11/02/2021	<u>14</u>	STATUS REPORT (<i>Joint Initial Status Report and Request to Cancel Hearing</i>) by USA as to Cody Mercure (Nuzum, Elianna) (Entered: 11/02/2021)
11/03/2021	15	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered as to Cody Mercure. Taken as a motion to continue, Docket Entry # 14 is ALLOWED. The status conference is continued until December 16, 2021 at 3:30 PM. The parties are directed to file a separate motion to exclude the time. (Bowler, Marianne) (Entered: 11/03/2021)
11/03/2021	<u>16</u>	Assented to MOTION for Excludable Delay from 11/4/2021 to 12/16/2021 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 11/03/2021)
11/03/2021	17	ELECTRONIC NOTICE OF RESCHEDULING as to Cody Mercure; Status Conference set for 12/16/2021 03:30 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. COUNSEL ARE DIRECTED TO APPEAR BY PHONE by calling 888-675-2535 approximately five minutes prior to the conference, using Access Code 6641794. If, for some reason the call is disconnected, dial back in. NOTE that yours may not be the first case called, but please remain on the line until it is. (Belpedio, Lisa) (Entered: 11/03/2021)
11/29/2021	18	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>16</u> Assented to MOTION for Excludable Delay from 11/4/2021 to 12/16/2021 under the Speedy Trial Act as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 11/30/2021)
11/29/2021	<u>19</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from November 4, 2021 until December 16, 2021. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 11/30/2021)
12/15/2021	<u>20</u>	Joint MOTION to Continue <i>Status Conference and Exclude Time</i> as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 12/15/2021)
12/15/2021	21	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>20</u> Motion to Continue as to Cody Mercure (1). The status conference is continued until January 25, 2022 at 2:30 PM. The parties are directed to file a separate motion to exclude the time. (Bowler, Marianne) (Entered: 12/15/2021)
12/15/2021	22	ELECTRONIC NOTICE OF RESCHEDULING as to Cody Mercure Status Conference set for 1/25/2022 02:30 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. COUNSEL ARE DIRECTED TO APPEAR BY PHONE by calling 888-675-2535 approximately five minutes prior to the conference, using Access Code 6641794. If, for some reason the call is disconnected, dial back in. NOTE that yours may not be the first case called, but please remain on the line until it is. (Belpedio, Lisa) (Entered: 12/15/2021)
12/15/2021	<u>23</u>	Assented to MOTION for Excludable Delay from 12/16/2021 to 01/25/2022 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 12/15/2021)
01/24/2022	24	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>23</u> Assented to MOTION for Excludable Delay from 12/16/2021 to 01/25/2022 as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 01/24/2022)

01/24/2022	<u>25</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from December 16, 2021 until January 25, 2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 01/24/2022)
01/25/2022	<u>26</u>	Assented to MOTION for Excludable Delay from 1/25/2022 to 3/24/2022 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 01/25/2022)
01/25/2022	27	Electronic Clerk's Notes for proceedings held before Magistrate Judge Marianne B. Bowler: Status Conference as to Cody Mercure held on 1/25/2022. Case called, counsel appear by telephone, counsel request a 60 day date, further Status Conference set for 3/24/2022 02:30 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. COUNSEL ARE DIRECTED TO APPEAR BY PHONE by calling 888-675-2535 approximately five minutes prior to the conference, using Access Code 6641794. If, for some reason, the call is disconnected, dial back in. NOTE that yours may not be the first case called, but please remain on the line until it is. Defendant agrees to exclude the time in the interest of justice and government will file an assented to motion. (Attorneys present: Nuzum, Calcagni.)Court Reporter Name and Contact or digital recording information: Linda Walsh at lwalshsteno@gmail.com. (Belpedio, Lisa) (Entered: 01/25/2022)
03/01/2022	28	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>26</u> Assented to MOTION for Excludable Delay from 1/25/2022 to 3/24/2022 as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 03/02/2022)
03/01/2022	<u>29</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from January 25, 2022 until March 24, 2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 03/02/2022)
03/17/2022	<u>30</u>	STATUS REPORT (<i>Joint Status Report and Request to Cancel Hearing</i>) by USA as to Cody Mercure (Nuzum, Elianna) (Entered: 03/17/2022)
03/18/2022	31	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered as to Cody Mercure. Taken as a motion to continue, Docket Entry # 30 is ALLOWED. The status conference is continued until April 21, 2022 at 3:00 PM. The parties are instructed to file a separate motion to exclude the time. (Bowler, Marianne) (Entered: 03/18/2022)
03/18/2022	<u>32</u>	Assented to MOTION for Excludable Delay from 03/24/2022 to 04/21/2022 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 03/18/2022)
03/21/2022	<u>33</u>	MOTION to Continue <i>Status Conference</i> as to Cody Mercure. (Calcagni, John) (Entered: 03/21/2022)
03/22/2022	34	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered finding as moot <u>33</u> Motion to Continue as to Cody Mercure (1) in light of Docket Entry # 31. (Bowler, Marianne) (Entered: 03/22/2022)
03/23/2022	35	ELECTRONIC NOTICE OF RESCHEDULING as to Cody Mercure; Status Conference set for 4/21/2022 03:00 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. COUNSEL ARE DIRECTED TO APPEAR BY PHONE by calling 888-675-2535 approximately five minutes prior to the conference, using Access Code 6641794. If, for some reason, the call is disconnected, dial back in. NOTE that yours may not be the first case called, but please remain on the line until it is. (Belpedio, Lisa) (Entered: 03/23/2022)

04/19/2022	<u>36</u>	Assented to MOTION to Continue to Mid-June 2022 to Continue Status Conference as to Cody Mercure. (Calcagni, John) (Entered: 04/19/2022)
04/20/2022	37	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>36</u> Motion to Continue as to Cody Mercure (1). The status conference is continued until June 22, 2022 at 2:30 PM.. The parties are directed to file a separate motion to exclude the time. (Bowler, Marianne) (Entered: 04/20/2022)
04/20/2022	<u>38</u>	Assented to MOTION for Excludable Delay from 4/21/2022 to 06/22/2022 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 04/20/2022)
04/21/2022	39	ELECTRONIC NOTICE OF HEARING as to Cody Mercure; Status Conference set for 6/22/2022 02:30 PM in Remote Proceeding : Boston before Magistrate Judge Marianne B. Bowler. COUNSEL ARE DIRECTED TO APPEAR BY PHONE by calling 888-675-2535 approximately five minutes prior to the conference, using Access Code 6641794. If, for some reason, the call is disconnected, dial back in. NOTE that yours may not be the first case called, but please remain on the line until it is. (Belpedio, Lisa) (Entered: 04/21/2022)
04/21/2022	40	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>32</u> Assented to MOTION for Excludable Delay from 03/24/2022 to 04/21/2022 under the Speedy Trial Act as to Cody Mercure (1). (Belpedio, Lisa) (Entered: 04/21/2022)
04/21/2022	<u>41</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from March 24, 2022 until April 21, 2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 04/21/2022)
05/09/2022	42	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>38</u> Assented to MOTION for Excludable Delay from 4/21/2022 to 06/22/2022 as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 05/16/2022)
05/09/2022	<u>43</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from April 21, 2022 until June 22, 2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 05/16/2022)
06/21/2022	<u>44</u>	STATUS REPORT (<i>Joint Status Report</i>) by USA as to Cody Mercure (Nuzum, Elianna) (Entered: 06/21/2022)
06/22/2022	46	Electronic Clerk's Notes for proceedings held before Magistrate Judge Marianne B. Bowler: Status Conference as to Cody Mercure held on 6/22/2022. Case called, counsel appear by zoom, counsel request additional time, further Status Conference set for 8/25/2022 02:30 PM in Remote Proceeding by zoom: Boston before Magistrate Judge Marianne B. Bowler. Defendant agrees to exclude the time in the interest of justice and government will file an assented to motion. (Attorneys present: Nuzum, Calcagni.)Court Reporter Name and Contact or digital recording information: Digital Recording 2:25. To order a copy of this Digital Recording, please go to https://www.mad.uscourts.gov/caseinfo/transcripts.htm#audio-recordings . For a transcript of this proceeding, contact Katelyn Coppola by email at mad_transcripts@mad.uscourts.gov. (Belpedio, Lisa) (Entered: 06/24/2022)
06/23/2022	<u>45</u>	Assented to MOTION for Excludable Delay from 06/22/2022 to 08/25/2022 <i>under the Speedy Trial Act</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 06/23/2022)

06/27/2022	<u>47</u>	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>45</u> Assented to MOTION for Excludable Delay from 06/22/2022 to 08/25/2022 as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 06/27/2022)
06/27/2022	<u>48</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from June 22, 2022 until August 25, 2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 06/27/2022)
08/24/2022	<u>49</u>	STATUS REPORT (<i>Joint Final Status Report and Request to Cancel Hearing</i>) by USA as to Cody Mercure (Nuzum, Elianna) (Entered: 08/24/2022)
08/24/2022	50	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered as to Cody Mercure. Taken as a motion to cancel the status conference and return the case to the district judge for the purpose of a conference, Docket Entry # 49 is ALLOWED. This court will issue a Final Status Report. The parties are directed to file a separate motion to exclude the time until the first conference before the district judge. (Bowler, Marianne) (Entered: 08/24/2022)
08/24/2022	<u>51</u>	Assented to MOTION for Excludable Delay from 08/25/2022 to Status Conference <i>before District Judge</i> as to Cody Mercure by USA. (Attachments: # <u>1</u> Text of Proposed Order) (Nuzum, Elianna) (Entered: 08/24/2022)
08/24/2022	52	ELECTRONIC NOTICE CANCELING Status Conference as to Cody Mercure. (Belpedio, Lisa) (Entered: 08/24/2022)
08/24/2022	53	Magistrate Judge Marianne B. Bowler: ELECTRONIC ORDER entered granting <u>51</u> Assented to MOTION for Excludable Delay from 08/25/2022 to Status Conference before District Judge as to Cody Mercure as to Cody Mercure (1) (Belpedio, Lisa) (Entered: 08/25/2022)
08/24/2022	<u>54</u>	Magistrate Judge Marianne B. Bowler: ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belpedio, Lisa) (Entered: 08/25/2022)
08/24/2022	<u>55</u>	Magistrate Judge Marianne B. Bowler: REPORT AND ORDER on Final Status Conference as to Cody Mercure. (Belpedio, Lisa) (Entered: 08/25/2022)
08/25/2022	56	Case as to Cody Mercure no longer referred to Magistrate Judge Marianne B. Bowler. (Belpedio, Lisa) (Entered: 08/25/2022)
08/25/2022	57	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered acknowledging <u>55</u> Report and Order on Final Status Conference by Magistrate Judge as to Cody Mercure (1). Status Conference set for 9/16/2022 02:30 PM in Courtroom 13 (Remote only) before District Judge Leo T. Sorokin. (Belmont, Kellyann) (Entered: 08/25/2022)
09/12/2022	58	ELECTRONIC NOTICE OF RESCHEDULING as to Cody Mercure. Status Conference reset for 9/16/2022 10:00 AM in Courtroom 13 (Remote only) before District Judge Leo T. Sorokin. Note: Change is to time only! This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible. Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address:

		<p>https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov.</p> <p>(Belmont, Kellyann) (Entered: 09/12/2022)</p>
09/16/2022	59	<p>Electronic Clerk's Notes for proceedings held before District Judge Leo T. Sorokin:</p> <p>Status Conference as to Cody Mercure held on 9/16/2022. Discovery is complete. Defendant is charged in state court under same facts and counsel is working toward global agreement of all of the cases. Parties request additional time for plea negotiations and coordination with state court cases. The Court sets a status conference for for 10/13/2022 03:45 PM in Courtroom 13 (In person only) before District Judge Leo T. Sorokin. Parties agree to exclude the time under the Speedy Trial Act. Order to issue. If parties wish for this date to be converted to a Rule 11 hearing they should notify the Court.</p> <p>(Attorneys present: Elianna Nuzum for government and John Calcagni, III for defendant.)Court Reporter Name and Contact or digital recording information: Rachel Lopez at raeufp@gmail.com. (Belmont, Kellyann) (Entered: 09/16/2022)</p>
09/16/2022	<u>60</u>	<p>District Judge Leo T. Sorokin: ORDER entered. ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from 9/16/2022 until 10/13/2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belmont, Kellyann) (Entered: 09/16/2022)</p>
10/12/2022	<u>61</u>	<p>Assented to MOTION to Continue <i>Status Conference</i> as to Cody Mercure. (Calcagni, John) (Entered: 10/12/2022)</p>
10/13/2022	62	<p>District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>61</u> Motion to Continue as to Cody Mercure (1).</p> <p>ALLOWED. Status Conference reset for 11/14/2022 10:30 AM in Courtroom 13 (Remote only) before District Judge Leo T. Sorokin. (Belmont, Kellyann)</p> <p>This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible.</p> <p>Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov.</p> <p>(Entered: 10/13/2022)</p>
10/13/2022	<u>63</u>	<p>District Judge Leo T. Sorokin: ORDER entered. ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from 10/13/2022 until 11/14/2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belmont, Kellyann) (Entered: 10/13/2022)</p>

11/08/2022	<u>64</u>	Joint MOTION to Continue <i>Status Conference</i> to 30 days as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 11/08/2022)
11/09/2022	<u>65</u>	<p>District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>64</u> Motion to Continue as to Cody Mercure (1)</p> <p>ALLOWED. Status Conference reset for 12/14/2022 10:00 AM in Courtroom 13 (Remote only) before District Judge Leo T. Sorokin. (Belmont, Kellyann)</p> <p>This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible.</p> <p>Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov.</p> <p>(Entered: 11/09/2022)</p>
11/09/2022	<u>66</u>	District Judge Leo T. Sorokin: ORDER entered. ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from 11/14/2022 until 12/14/2022. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belmont, Kellyann) (Entered: 11/09/2022)
12/14/2022	<u>67</u>	MOTION for Rule 11 Hearing as to Cody Mercure. (Calcagni, John) (Entered: 12/14/2022)
12/14/2022	<u>68</u>	<p>District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>67</u> Motion to cancel Status Conference and Schedule Rule 11 Hearing as to Cody Mercure (1).</p> <p>ALLOWED. (Belmont, Kellyann) (Entered: 12/14/2022)</p>
12/14/2022	<u>69</u>	ELECTRONIC NOTICE CANCELLING HEARING as to Cody Mercure. Status hearing set for 12/14/2022 is cancelled. (Belmont, Kellyann) (Entered: 12/14/2022)
12/14/2022	<u>70</u>	<p>ELECTRONIC NOTICE OF HEARING as to Cody Mercure: Rule 11 Hearing set for 1/24/2023 03:00 PM in Courtroom 13 (In person only) before District Judge Leo T. Sorokin.</p> <p>Counsel is to contact U.S. Probation and Pretrial Services as soon as possible http://www.map.uscourts.gov/psi-interview-schedule to determine scheduling of the presentence interview. (Belmont, Kellyann) (Entered: 12/14/2022)</p>
12/14/2022	<u>71</u>	District Judge Leo T. Sorokin: ORDER entered. ORDER ON EXCLUDABLE DELAY as to Cody Mercure. Time excluded from 12/14/2022 until 1/24/2023. Reason for entry of order on excludable delay: 18 USC 3161(h)(7)(A) Interests of justice. (Belmont, Kellyann) (Belmont, Kellyann). (Entered: 12/14/2022)
01/19/2023	<u>72</u>	Writ of Habeas Corpus ad Prosequendum Issued as to Cody Mercure for 1/24/2023 (Belmont, Kellyann) (Entered: 01/19/2023)
01/24/2023	<u>73</u>	Electronic Clerk's Notes for proceedings held before District Judge Leo T. Sorokin:

		<p>Rule 11 Hearing as to Cody Mercure held on 1/24/2023. Clerk places Defendant under oath. Court conducts colloquy with Defendant. There is no plea agreement in this case. The government states the maximum potential penalties and factual basis of the plea. Defendant pleads Guilty as to Counts 1 and 2. The court finds the defendant fully competent and capable of entering an informed plea, finds the plea knowing and voluntary, and accepts the plea, the defendant is now adjudged as Guilty. Sentencing set for 4/25/2023 02:00 PM in Courtroom 13 (In person only) before District Judge Leo T. Sorokin. Probation does not need to prepare confidential recommendation. Court goes over the principles of restorative justice. Court informs the parties of the availability of holding a status conference with any victim(s) before sentencing. Government to contact Court to schedule hearing if requested. Defendant is remanded to state custody.</p> <p>(Attorneys present: Elianna Nuzum for government and John Calgani for defendant.)Court Reporter Name and Contact or digital recording information: Rachel Lopez at raeufp@gmail.com. (Belmont, Kellyann) (Entered: 01/24/2023)</p>
01/24/2023	<u>74</u>	District Judge Leo T. Sorokin: ORDER entered. PROCEDURAL ORDER re sentencing hearing as to Cody Mercure (Belmont, Kellyann) (Entered: 01/24/2023)
01/31/2023	<u>77</u>	ELECTRONIC NOTICE OF HEARING as to Cody Mercure: Status Conference set for 2/28/2023 12:00 PM in Courtroom 13 (In person only) before District Judge Leo T. Sorokin. (If the status conference should be occur by video the government should notify the Court.)(Belmont, Kellyann) (Entered: 01/31/2023)
02/06/2023	<u>78</u>	Writ of Habeas Corpus ad Prosequendum Issued as to Cody Mercure for 2/28/2023 (Belmont, Kellyann) (Entered: 02/06/2023)
02/23/2023	<u>79</u>	<p>ELECTRONIC NOTICE OF RESCHEDULING to a virtual hearing as to Cody Mercure: The Status Conference set for 2/28/2023 12:00 PM in Courtroom 13 (Remote only) before District Judge Leo T. Sorokin will now occur by video.</p> <p>This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible.</p> <p>Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov.</p> <p>(Belmont, Kellyann) (Entered: 02/23/2023)</p>
02/28/2023	<u>80</u>	<p>Electronic Clerk's Notes for proceedings held before District Judge Leo T. Sorokin:</p> <p>Status Conference as to Cody Mercure held on 2/28/2023. Defendant present by video. Hearing was set for Court to go over sentencing process with any victim(s). Government to inform the Court if a further status conference is necessary.</p> <p>(Attorneys present: Elianna Nuzum for the government and John Calcagni for defendant.)Court Reporter Name and Contact or digital recording information: Rachel Lopez at raeufp@gmail.com. (Belmont, Kellyann) (Entered: 02/28/2023)</p>

04/05/2023	<u>83</u>	MOTION to Seal <i>Letter re: Sentencing</i> as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 04/05/2023)
04/06/2023	<u>84</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered: re <u>83</u> MOTION to Seal <i>Letter re: Sentencing</i> as to Cody Mercure. ALLOWED. Counsel will receive an email within twenty-four (24) hours of this order with instructions for submitting sealed documents for which leave has been granted in accordance with the Local Rules of the U.S. District Court of Massachusetts. Counsel must include - Leave to file granted on (date of order)- in the caption of the document as to Cody Mercure (1) (Dore, Samantha) (Entered: 04/06/2023)
04/11/2023	<u>86</u>	MOTION for Forfeiture of Property (<i>Preliminary</i>) as to Cody Mercure by USA. (Attachments: # <u>1</u> proposed Preliminary Order of Forfeiture)(Amrhein, Alexandra) (Entered: 04/11/2023)
04/12/2023	<u>87</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered: re <u>86</u> MOTION for Forfeiture of Property (<i>Preliminary</i>) as to Cody Mercure. ALLOWED. (Dore, Samantha) (Entered: 04/12/2023)
04/12/2023	<u>88</u>	District Judge Leo T. Sorokin: ORDER entered. <u>PRELIMINARY ORDER OF FORFEITURE</u> (Dore, Samantha) (Entered: 04/12/2023)
04/12/2023	<u>89</u>	Writ of Habeas Corpus ad Prosequendum Issued as to Cody Mercure for 4/25/2023 (Belmont, Kellyann) (Entered: 04/12/2023)
04/18/2023	<u>90</u>	MOTION to Seal <i>Victim Impact Statements and Restitution Requests</i> as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 04/18/2023)
04/18/2023	<u>91</u>	MOTION to Seal <i>Government's Unredacted Sentencing Memorandum</i> as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 04/18/2023)
04/19/2023	<u>92</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>90</u> MOTION to Seal <i>Victim Impact Statements and Restitution Requests</i> as to Cody Mercure by USA. ALLOWED. (Belmont, Kellyann) (Entered: 04/19/2023)
04/19/2023	<u>93</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>91</u> MOTION to Seal <i>Government's Unredacted Sentencing Memorandum</i> as to Cody Mercure by USA. ALLOWED. (Belmont, Kellyann) (Entered: 04/19/2023)
04/19/2023	<u>94</u>	SEALED <i>Victim Impact Statements</i> by USA. (Belmont, Kellyann) (Entered: 04/19/2023)
04/19/2023	<u>95</u>	SEALED <i>Restitution Requests</i> by USA. (Attachments: # <u>1</u> <i>Restitution Requests</i>) (Belmont, Kellyann) (Entered: 04/19/2023)
04/19/2023	<u>96</u>	SENTENCING MEMORANDUM by USA as to Cody Mercure (Nuzum, Elianna) (Entered: 04/19/2023)
04/19/2023	<u>97</u>	Sealed SENTENCING MEMORANDUM by USA as to Cody Mercure.(Belmont, Kellyann) (Entered: 04/20/2023)
04/21/2023	<u>98</u>	MOTION to Seal <i>Psycho Sexual Evaluation Report</i> as to Cody Mercure. (Calcagni, John) (Entered: 04/21/2023)
04/21/2023	<u>99</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>98</u> MOTION to Seal <i>Psycho Sexual Evaluation Report</i> as to Cody Mercure.

		ALLOWED. (Belmont, Kellyann) (Entered: 04/21/2023)
04/23/2023	<u>100</u>	SENTENCING MEMORANDUM by Cody Mercure (Attachments: # <u>1</u> Exhibit Attachment A - Resume, # <u>2</u> Exhibit Attachment B - School Material, # <u>3</u> Exhibit Attachment C - Volunteer and Boy Scout Info, # <u>4</u> Exhibit Attachment D - Statements of Support, # <u>5</u> Exhibit Attachment E - Photos)(Calcagni, John) (Entered: 04/23/2023)
04/24/2023	<u>101</u>	Sealed Report filed by Cody Mercure. (Belmont, Kellyann) (Entered: 04/24/2023)
04/25/2023	<u>102</u>	Electronic Clerk's Notes for proceedings held before District Judge Leo T. Sorokin: Sentencing held on 4/25/2023 for Cody Mercure (1), Count(s) 1,2. The Court reviews the documents it has reviewed in advance of sentencing. There are no objections to the PSR to resolve. Court goes over calculation of sentencing guidelines. The Court orders restitution with an amount to be determined at a later date. Parties to file a restitution status report by May 25, 2023. Defendant to submit a financial affidavit within one week. Court inquires whether any victims are present and wish to address the court. Court hears argument on sentence. Defendant exercises right to allocution. Defendant sentenced to: 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised Release. \$200 Special Assessment. Restitution TBD. Court advises Defendant of his right to appeal. Defendant remanded to state custody. (Attorneys present: Elianna J. Nuzum for the government, John L. Calcagni, III for the defendant and Luciana Sousa for Probation.)Court Reporter Name and Contact or digital recording information: Rachel Lopez at raeufp@gmail.com. (Belmont, Kellyann) (Entered: 04/25/2023)
04/27/2023	<u>104</u>	MOTION for Leave to Appeal In Forma Pauperis as to Cody Mercure. (Calcagni, John) Modified on 5/4/2023 to Correct Docket Text and CM/ECF Filing Event as Counsel Calcagni Filed the Motion Under the Wrong Event in CM/ECF NextGen (Paine, Matthew). (Entered: 04/27/2023)
04/27/2023	<u>105</u>	District Judge Leo T. Sorokin: ORDER entered. JUDGMENT as to Cody Mercure (1), Count(s) 1 and 2, 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised Release. \$200 Special Assessment. Restitution TBD. (Belmont, Kellyann) (Main Document 105 replaced on 4/27/2023) (Belmont, Kellyann). (Entered: 04/27/2023)
05/01/2023	<u>107</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>104</u> Motion to Proceed In Forma Pauperis as to Cody Mercure (1). ALLOWED. (Belmont, Kellyann) (Entered: 05/01/2023)
05/02/2023	<u>108</u>	NOTICE OF APPEAL as to <u>105</u> JUDGMENT by Cody Mercure (Fee Status: IFP). NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf . Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf . US District Court Clerk to deliver official record to Court of Appeals by 5/22/2023. (Calcagni, John) Modified on 5/3/2023: To link judgement to appeal. (Dore,

		Samantha). Modified on 5/4/2023 to Correct Docket Text (Paine, Matthew). (Entered: 05/02/2023)
05/04/2023	<u>109</u>	Certified and Transmitted Abbreviated Electronic Record on Appeal as to Cody Mercure to US Court of Appeals re <u>108</u> Notice of Appeal. (Paine, Matthew) (Entered: 05/04/2023)
05/05/2023	110	USCA Case Number as to Cody Mercure 23-1414 for <u>108</u> Notice of Appeal. (Paine, Matthew) (Entered: 05/05/2023)
05/18/2023	<u>111</u>	Notice of Service of Process filed by USA as to Cody Mercure. Individual(s)/Entities served: Cody Mercure and John L. Calcagni, III, Esquire. (Attachments: # <u>1</u> Exhibit A) (Amrhein, Alexandra) (Entered: 05/18/2023)
05/25/2023	<u>112</u>	STATUS REPORT <i>Regarding Restitution</i> by USA as to Cody Mercure (Nuzum, Elianna) (Entered: 05/25/2023)
06/14/2023	<u>113</u>	Service by Publication as to Cody Mercure. (Attachments: # <u>1</u> Attachment 1)(Amrhein, Alexandra) (Entered: 06/14/2023)
06/23/2023	<u>114</u>	Final MOTION for Forfeiture of Property as to Cody Mercure by USA. (Attachments: # <u>1</u> proposed Final Order of Forfeiture)(Amrhein, Alexandra) (Main Document 114 replaced on 6/23/2023) (Dore, Samantha). (Attachment 1 replaced on 6/23/2023) (Dore, Samantha). (Entered: 06/23/2023)
06/26/2023	<u>115</u>	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>114</u> Final MOTION for Forfeiture of Property as to Cody Mercure by USA. (Belmont, Kellyann) (Entered: 06/26/2023)
07/24/2023	<u>116</u>	MOTION for Hearing <i>Regarding Restitution</i> as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 07/24/2023)
07/31/2023	117	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>116</u> MOTION for Hearing Regarding Restitution as to Cody Mercure by USA. ALLOWED. (Belmont, Kellyann) (Entered: 07/31/2023)
07/31/2023	118	ELECTRONIC NOTICE OF HEARING as to Cody Mercure: Restitution Hearing set for 9/8/2023 02:00 PM in Courtroom 13 (In person only) before District Judge Leo T. Sorokin. (Belmont, Kellyann) (Entered: 07/31/2023)
07/31/2023	<u>119</u>	Joint MOTION to Alter Judgment <i>to Reflect Agreed-Upon Restitution</i> as to Cody Mercure by USA. (Nuzum, Elianna) (Entered: 07/31/2023)
08/01/2023	120	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered re <u>119</u> Joint MOTION to Alter Judgment to Reflect Agreed-Upon Restitution as to Cody Mercure by USA. ALLOWED. (Belmont, Kellyann) (Entered: 08/01/2023)
08/01/2023	121	ELECTRONIC NOTICE CANCELLING HEARING as to Cody Mercure. The Restitution Hearing set for 9/8/2023 is cancelled. (Belmont, Kellyann) (Entered: 08/01/2023)
08/01/2023	<u>122</u>	District Judge Leo T. Sorokin: ORDER entered. AMENDED JUDGMENT as to Cody Mercure (1), Count(s) 1,2: 300 Months imprisonment. (300 months on Count 1, and 240 months on Count 2, to run concurrently). 15 Years of Supervised Release. \$200 Special Assessment. Restitution: \$51,000. (Belmont, Kellyann) (Main Document 122 replaced on 8/1/2023) (Belmont, Kellyann). (Entered: 08/01/2023)
09/18/2023	124	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's

		Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (Dore, Samantha) (Entered: 09/18/2023)
09/18/2023	<u>138</u>	Transcript of Redacted Sentencing as to Cody Mercure held on April 25, 2023, before Judge Leo T. Sorokin. COA Case No. 23-1414. Court Reporter Name and Contact Information: Rachel Lopez at raeufp@gmail.com The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 10/10/2023. Redacted Transcript Deadline set for 10/19/2023. Release of Transcript Restriction set for 12/18/2023. (Dore, Samantha) (Entered: 10/25/2023)
09/21/2023	<u>125</u>	Transcript of Rule 11 as to Cody Mercure held on January 24, 2023, before Judge Leo T. Sorokin. COA Case No. 23-1414. Court Reporter Name and Contact Information: Rachel Lopez at raeufp@gmail.com The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 10/12/2023. Redacted Transcript Deadline set for 10/23/2023. Release of Transcript Restriction set for 12/20/2023. (Dore, Samantha) (Entered: 09/22/2023)
09/21/2023	126	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (Dore, Samantha) (Entered: 09/22/2023)
09/22/2023	<u>127</u>	Transcript of Status Conference as to Cody Mercure held on January 25, 2022, before Magistrate Judge Marianne B. Bowler. COA Case No. 23-1414. Court Reporter Name and Contact Information: Linda Walsh at lwalshsteno@gmail.com The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 10/13/2023. Redacted Transcript Deadline set for 10/23/2023. Release of Transcript Restriction set for 12/21/2023. (Dore, Samantha) (Entered: 09/22/2023)
09/22/2023	128	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (Dore, Samantha) (Entered: 09/22/2023)
09/22/2023	130	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (Dore, Samantha) (Entered: 09/25/2023)
09/22/2023	<u>137</u>	Transcript of Redacted Status Conference as to Cody Mercure held on September 16, 2022, before Judge Leo T. Sorokin. COA Case No. 23-1414. Court Reporter Name and Contact Information: Rachel Lopez at raeufp@gmail.com The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 10/13/2023. Redacted Transcript Deadline set for 10/23/2023. Release of Transcript Restriction set for 12/21/2023. (Dore, Samantha) (Entered: 10/25/2023)
09/22/2023	139	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at

		https://www.mad.uscourts.gov/caseinfo/transcripts.htm (Dore, Samantha) (Entered: 10/25/2023)
09/25/2023	<u>131</u>	Transcript of Initial Appearance, Arraignment as to Cody Mercure held on September 22, 2021, before Magistrate Judge Marianne B. Bowler. COA Case No. 23-1414. Court Reporter Name and Contact Information: James Gibbons at jamesgibbonsrpr@gmail.com The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 10/16/2023. Redacted Transcript Deadline set for 10/26/2023. Release of Transcript Restriction set for 12/26/2023. (Dore, Samantha) (Entered: 09/25/2023)
09/25/2023	132	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (Dore, Samantha) (Entered: 09/25/2023)
10/10/2023	<u>133</u>	NOTICE of Intent to Request Redaction of 129 Transcript - Appeal,, 123 Transcript - Appeal,, by Elianna J. Nuzum in case as to Cody Mercure (Nuzum, Elianna) (Entered: 10/10/2023)
10/10/2023	<u>134</u>	Transcript Redaction Request in case as to Cody Mercure re 129 Transcript - Appeal,, 123 Transcript - Appeal,, filed by attorney Elianna J. Nuzum (Nuzum, Elianna) (Entered: 10/10/2023)
10/11/2023	135	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered. re <u>134</u> Transcript Redaction Request in case as to Cody Mercure re 129 Transcript - Appeal, 123 Transcript - Appeal. Defendant shall file a response to the government's request for redaction (# <u>134</u>) by October 24, 2023. (Dore, Samantha) (Entered: 10/11/2023)
10/25/2023	136	District Judge Leo T. Sorokin: ELECTRONIC ORDER entered: re <u>134</u> Transcript Redaction Request in case as to Cody Mercure re 129 Transcript - Appeal, 123 Transcript - Appeal. The Government's Transcript Redaction Request, Doc. No. 134, is ALLOWED as unopposed. (Dore, Samantha) (Entered: 10/25/2023)

PACER Service Center			
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01/18/2024 13:43:46			
PACER Login:	RobertAndrews	Client Code:	
Description:	Docket Report	Search Criteria:	1:21-cr-10274-LTS
Billable Pages:	14	Cost:	1.40
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	Criminal No. 21cr10274
)	
v.)	Violations:
)	
CODY MERCURE,)	<u>Count One:</u> Sexual Exploitation of Children
)	(18 U.S.C. §§ 2251(a) and (e))
)	
Defendant)	<u>Count Two:</u> Distribution of Child Pornography
)	(18 U.S.C. § 2252A(a)(2)(A))
)	
)	<u>Forfeiture Allegation:</u>
)	(18 U.S.C. § 2253)

INDICTMENT

COUNT ONE

Sexual Exploitation of Children
(18 U.S.C. §§ 2251(a) and (e))

The Grand Jury charges:

Between on or about December 29, 2020 and April 3, 2021, in the District of Massachusetts, and elsewhere, the defendant,

CODY MERCURE,

employed, used, persuaded, induced, enticed, and coerced a minor, “Minor A” (YOB 2019), to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, and attempted to do so, and knew and had reason to know that such visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce, and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce, by any means, including by computer, and the visual depiction was actually transported and transmitted using any means and facility of interstate and

foreign commerce and in and affecting interstate and foreign commerce.

All in violation of Title 18, United States Code, Sections 2251(a) and (e).

COUNT TWO
Distribution of Child Pornography
(18 U.S.C. § 2252A(a)(2)(A))

The Grand Jury further charges:

On or about January 16, 2021, in the District of Massachusetts, and elsewhere, the defendant,

CODY MERCURE,

knowingly distributed, and attempted to distribute, any child pornography, as defined in Title 18, United States Code, Section 2256(8), that had been mailed, and using any means and facility of interstate and foreign commerce, and had been shipped and transported in and affecting interstate and foreign commerce by any means, including by computer.

All in violation of Title 18, United States Code, Section 2252A(a)(2)(A).

CHILD PORNOGRAPHY FORFEITURE ALLEGATION
(18 U.S.C. § 2253)

The Grand Jury further finds:

1. Upon conviction of one or more of the offenses in violation of Title 18, United States Code, Sections 2251 and 2252A, set forth in Counts One and Two, the defendant,

CODY MERCURE,

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 2253, (i) any visual depiction described in sections 2251, 2251A, 2252, 2252A, 2252B, or 2260 of Chapter 110 of Title 18, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of Chapter 110 of Title 18; (ii) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offenses; and (iii) any property, real or personal, used or intended to be used to commit or to promote the commission of such offenses or any property traceable to such property. The property to be forfeited includes, but is not limited to, the following:

- a. a Motorola Moto G Stylus with IMEI 355539113738353; and
- b. a TCL REVVL 4+ Model 5062Z with IMEI 015727001428995.

2. If any of the property described in Paragraph 1, above, as being forfeitable pursuant to Title 18, United States Code, Section 2253, as a result of any act or omission of the defendant—

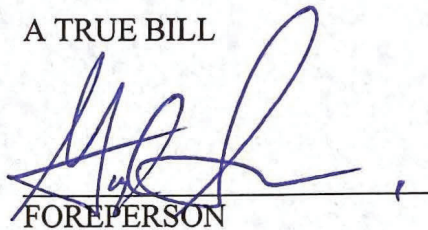
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or

- e. has been commingled with other property which cannot be divided without difficulty;

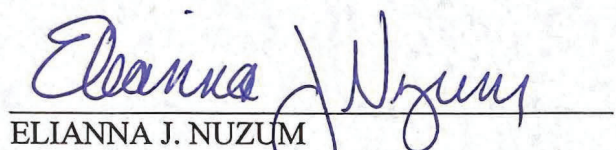
it is the intention of the United States of America, pursuant to Title 18, United States Code, Section 2253(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property described in Paragraph 1 above.

All pursuant to Title 18, United States Code, Section 2253.

A TRUE BILL



FOREPERSON



ELIANNA J. NUZUM
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF MASSACHUSETTS

District of Massachusetts: September 15, 2021
Returned into the District Court by the Grand Jurors and filed.

/s/ Lisa Belpedio at 3:04 pm
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action No.
1:21-cr-10274-LTS

v.

CODY MERCURE,

Defendant.

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

SENTENCING
REDACTED

Tuesday, April 25, 2023
2:01 p.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufr@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE - MASSACHUSETTS
BY: ELIANNA J. NUZUM
John Joseph Moakley Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3100
elianna.nuzum@usdoj.gov

On behalf of the Defendant:

LAW OFFICES OF JOHN L. CALCAGNI
BY: JOHN L. CALCAGNI, III
72 Clifford Street
Suite 300
Providence, Rhode Island 02903
(401) 351-5100
jc@calcagnilaw.com

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

THE DEPUTY CLERK: Today is Tuesday, April 25, 2023, and we are on the record in criminal case number 21-10274, the United States versus Cody Mercure.

And would counsel please identify themselves for the record.

MS. NUZUM: Good afternoon, Your Honor, Elianna Nuzum for the United States.

THE COURT: Good afternoon.

MR. CALCAGNI: Good afternoon, Your Honor, John Calcagni on behalf of Cody Mercure.

THE COURT: Good afternoon.

Good afternoon, Mr. Mercure.

MR. MERCURE: Good afternoon, Your Honor.

THE COURT: So I have before me the presentence report, revised as of April 18th.

I have the government's sentencing memorandum.

I have the victim impact statement letters, both from the mother of the child and from each of the identified -- maybe not identified by name, but by other

1 name, of each of the child pornography victims.

2 I have the defendant's sentencing memorandum with
3 exhibits, and I have the defendant's psychological report
4 that you submitted.

5 And then I have two binders of restitution
6 requests, which, also, again had the victim impact letters.

7 And is that everything?

8 MS. NUZUM: Yes, Your Honor. The government did
9 also forward to the Court under seal a letter that was
10 received by another individual who was actually Mr. Mercure's
11 stepfather. That was directed to the US Attorney's Office.
12 We redirected it to the Court for it to determine whether it
13 wanted to consider that.

14 THE COURT: Is this the one that begins, "On behalf
15 of [REDACTED]?"

16 MS. NUZUM: Yes, Your Honor.

17 THE COURT: I'm sorry, I have that letter, as well,
18 and I've read that. My view is that anybody who writes to me
19 about a sentencing, then I'll make it -- it's available to
20 both of you. But if someone wrote to me -- it rarely, but
21 occasionally happens; people write a letter to me about a
22 case, then I will make it available to all of you. And I
23 will read it and consider it for whatever weight it has.

24 So it's before me, and unless somebody thinks I
25 should strike it from the record -- but it doesn't seem like

1 it's appropriate to strike from the record. I have it, and
2 it is what it is.

3 MS. NUZUM: Thank you, Your Honor. With that
4 addition, there are no other materials the government is
5 aware of.

6 MR. CALCAGNI: Your Honor, there are no materials
7 that I'm aware of. But for the record, I just want everyone
8 to know that I have not seen that letter.

9 THE COURT: Oh.

10 MR. CALCAGNI: And if it would be possible to
11 allow --

12 THE COURT: Yes. Then why don't you take a moment.
13 Here's a copy.

14 MR. CALCAGNI: Thank you.

15 MS. NUZUM: I also have a copy here, Your Honor.

16 MR. CALCAGNI: Thank you very much.

17 May I take a minute, Your Honor?

18 THE COURT: Of course. Take a minute.

19 I'm sorry, I didn't realize -- I saw that it was
20 sealed, but I didn't realize that you didn't have a copy.

21 MS. NUZUM: I thought I had provided one,
22 Your Honor, but if not, I apologize.

23 THE COURT: No problem.

24 (Counsel reviews document.)

25 MR. CALCAGNI: Thank you, Your Honor. This is very

1 similar to the statement that I reference in my sentencing
2 memo that was made in the state court system. So the general
3 content of that letter was previously disclosed to us.

4 THE COURT: Fine. All right.

5 So there are no objections to presentence report
6 that I need to resolve; is that right?

7 MS. NUZUM: Correct.

8 MR. CALCAGNI: That's correct, Your Honor.

9 THE COURT: There's one tiny correction that I
10 thought should be made. It's not substantive, but I think it
11 could potentially affect visitation so I wanted to correct
12 it. Paragraphs 78 -- paragraph 78 refers to somebody with
13 whom the defendant is having some sort of relationship, and
14 the person's name I think is incorrectly spelled. I came to
15 that conclusion when I saw the letter that you submitted from
16 that person. So I think the -- that person's last name
17 begins with a "P," not a "T." So I think I'm just going to
18 ask --

19 I don't think you need to note it in the statement
20 of reasons, Kellyann.

21 But I think probation should just correct that, so
22 if that if communication or something while Mr. Mercure's in
23 prison, at least they would know who the person is. They
24 won't get confused.

25 THE PROBATION OFFICER: Yes, of course, Your Honor.

1 I can amend the report.

2 THE COURT: Thank you.

3 I am correct about that, right? That's just a
4 typo.

5 MR. MERCURE: Yes, Your Honor.

6 THE COURT: Fine. So then let me just briefly
7 review the calculation of the sentencing guidelines to make
8 sure we're all on the same page. So since there are no
9 objections, I'll run through it rather quickly.

10 Mr. Mercure has two counts of conviction, and
11 therefore, two, as they say, groups under the sentencing
12 guidelines. The first count, sexual exploitation of
13 children, is the first guideline group. It results in a base
14 offense level of 32; a four-point enhancement because it
15 involved a minor who had not attained the age of 12; a
16 two-point enhancement because it involved the commission of a
17 sexual act or sexual content; a further four-point
18 enhancement because the offense involved material that
19 portrays an infant or toddler; a two-point enhancement after
20 that because the defendant was a parent, relative, or legal
21 guardian of the minor involved in the offense. All of that
22 leads to an adjusted offense level of group one of 44.

23 Count 2 is distribution of child pornography. It
24 is a base offense level of 22; a two-point enhancement for
25 involving a prepubescent minor, or minor under the age of 12;

1 a two-point enhancement for knowingly engaging in
2 distribution; four-point enhancement if it involved material
3 that portrays either sado- -- sadistic or masochistic conduct
4 or other depiction of violence or sexual abuse or
5 exploitation of an infant or toddler; a two-point enhancement
6 for the use of a computer or interactive computer service;
7 and a five-point enhancement based on the number of images,
8 which has to do with also how videos are converted into a
9 number of images and so forth. All of that for group two
10 leads to an adjusted offense level of 37.

11 Under the grouping rules, as you both know, you
12 take the higher offense level, add a certain amount. Under
13 the circumstances here, one offense level and then disregard
14 the lower offense level. So all of that leads to a level 45.
15 And then there's three-point reduction, to a final offense
16 level of 42, based on his timely acceptance of
17 responsibility.

18 He has two criminal history points, which puts him
19 in criminal history category II.

20 You all agree with all of that? Both on the
21 offense level and criminal history category.

22 MS. NUZUM: Yes, Your Honor.

23 MR. CALCAGNI: Yes, Your Honor.

24 THE COURT: So that leads to a guideline sentencing
25 range of 360 to 600 months; five years to life of supervised

1 release; a \$50,000 to \$500,000 fine, if he can afford to pay
2 a fine; a mandatory special assessment of -- totaling \$200;
3 and a mandatory, if not indigent, special assessments under
4 the AVAA Act, up to \$35,000 for Count 2, and under the JVT
5 Act for up to \$5,000 -- or \$5,000, not up to five, for
6 Counts 1 and 2, again, if not indigent.

7 And then there's the mandatory minimums. The
8 mandatory minimums are 15 years on Count 1, five years on
9 Count 2, and five -- minimum five years of supervised
10 release.

11 You both agree with all of that?

12 MS. NUZUM: Yes, Your Honor.

13 MR. CALCAGNI: Yes, Your Honor.

14 THE COURT: Okay. Maybe just to take one issue
15 first, before I hear from all of you. With respect to
16 restitution, which is somewhat -- is there an agreement of
17 restitution, or are you seeking restitution determinations
18 today? Or are you asking me to defer restitution to a later
19 date?

20 MS. NUZUM: The government is asking you to order
21 restitution in an amount to be determined at a later date.
22 We do think that we'll be able to come to agreement, but we
23 just haven't gotten to it today with the substantial volume
24 of the requests.

25 THE COURT: So you agree with that, Mr. Calcagni?

1 MR. CALCAGNI: Yes, Your Honor. I had spoken to
2 counsel before you took the bench, and the materials are
3 quite voluminous. And if you looked at all the restitution
4 requests, some of them appear to be in one range, and then
5 there's a significant outlier. So I wanted some time to
6 speak with Mr. Mercure about them.

7 THE COURT: That's fine. I did review them, and
8 they are -- I don't have them right here on the bench, but
9 they're at least a foot to two-feet thick to read all of
10 them. And it's somewhat complicated and I imagine a bit of a
11 different determination factually and legally as to each
12 person, so that's fine.

13 So what I will do is then order restitution with an
14 amount to be determined later. And why don't I set -- we
15 don't --

16 We might need a further hearing, but we might not.
17 Would that be fair?

18 MS. NUZUM: Yes, Your Honor. I'm hoping we will
19 not.

20 THE COURT: So should I say that you should file a
21 restitution status report, either reflecting your agreement,
22 or, if not your agreement, then where you are and how far
23 along, in 15 days, 30 days? You tell me.

24 MS. NUZUM: 30 days would be preferable.

25 MR. CALCAGNI: Agreed.

1 THE COURT: 30 days. Fine. So then file a
2 restitution status report on May 25th.

3 Is May 25th a workday?

4 THE DEPUTY CLERK: It is.

5 THE COURT: May 25th, a further status report -- a
6 status report on restitution. Either reflect an agreement on
7 what you propose, or if you have disagreements and need a
8 hearing. Or if you need a little more time, then you can say
9 so.

10 Okay. And would that apply to both of the awards
11 under the AVAA and the JVTa, as well?

12 MS. NUZUM: Your Honor, the government had not been
13 seeking --

14 THE COURT: You're not seeking those.

15 MS. NUZUM: Just because there is a restitution
16 request by the individual victims, the government would
17 prefer to see the money go there, given his financial status.
18 I don't think we'll do both.

19 THE COURT: That is fine. That makes sense.

20 So then today, the only possible monetary awards
21 would be the special assessment, obviously, which is
22 required.

23 And you're not seeking a fine.

24 MS. NUZUM: Correct, Your Honor, just the \$200
25 special assessment.

1 THE COURT: Okay. Fine.

2 MR. CALCAGNI: Does the Court require anything from
3 the defense related to a showing of indigency to make a
4 finding that those special assessments not be imposed?

5 THE COURT: You're retained?

6 MR. CALCAGNI: I am. But not directly by
7 Mr. Mercure. So individually, he has no assets.

8 THE COURT: Right. Did he --

9 Hold on one second.

10 MR. CALCAGNI: If you're wondering if he filled out
11 an affidavit in this case, I'd say no, because the state case
12 hit first prior to his initial appearance and indictment
13 before this Court, and I had previously been retained.

14 THE COURT: Right. I see that. So that's what I
15 was looking to see. So I think what he should do is -- I
16 will accept, for the moment, your representation that you
17 were retained not by him, but by people -- other people with
18 resources. And -- but I think you should file under seal --
19 you could file the financial affidavit that a defendant would
20 file at an initial appearance to seek appointed counsel. I
21 think that would suffice.

22 Do you agree with that?

23 MS. NUZUM: Yes, Your Honor. I do note the PSR
24 paragraphs 105 to 107 do have a little bit of analysis of his
25 financial ability, and based on that information, the

1 government was prepared to say that he did not --

2 THE COURT: I agree, but I think for the record, I
3 think it would be best to fill out the under oath affidavit.

4 And so do that, and why don't I say -- file it
5 within a week.

6 MR. CALCAGNI: Very well.

7 THE COURT: Okay. Fine. All right. And if you
8 want Ms. Belmont to print a blank one so you have it after
9 the sentencing, we can do that for you.

10 All right. Do you have -- I'll hear first from the
11 government, then the defense, and then Mr. Mercure if he
12 wishes to allocute.

13 Is there any victims who wish to speak today or
14 not?

15 MS. NUZUM: No, Your Honor, there's not a victim
16 present to speak. We're going to rely on the victim impact
17 statements that were submitted.

18 THE COURT: That's fine. All right. That's fine.
19 Go ahead.

20 MS. NUZUM: So Your Honor, as you know from the
21 government's sentencing memorandum, the government is seeking
22 a sentence of 30 years in prison, five years of supervised
23 release, with the conditions recommended by probation, as
24 well as the restitution, forfeiture, and special assessment.

25 I am knowledge that this request is quite high.

1 The guidelines are quite high in this case, and I note that
2 they would be a lifetime but for the statutory maximum which
3 caps it at that 30- to 50-year range. This reflects the --

4 THE COURT: "Lifetime" in the sense that 600 months
5 would be the equivalent of a life sentence?

6 MS. NUZUM: No, just the table, based on the total
7 offense level of 42, it would have been a lifetime
8 recommendation, but for the statutory maximum.

9 THE COURT: I see. The guidelines range gets
10 reduced to 600 months, because that's the statutory max of
11 the two offenses combined.

12 MS. NUZUM: Correct, Your Honor. And I only point
13 this out to point out that this reflects the congressional
14 and sentencing commission assessment of the seriousness of
15 this type of offense with these types of characteristics.

16 The government's request reflects the seriousness
17 of this offense and the need to provide just punishment.
18 This case, involving this type of abuse and this type of
19 relationship, is one of the most serious that comes before
20 this Court. Obviously, in every case, sexual exploitation of
21 children is extremely serious. It involves the sexual abuse
22 of children, vulnerable children, being recorded for other
23 people's sexual gratification and pleasure.

24 Here it is made worse by the defendant's
25 relationship with the child, the fact that the child was in

1 his care. It's made worse by the age of the child. She was
2 a baby. She was 18 months old. Her diaper and onesie footed
3 pajamas needed to be removed in order for him to abuse her.

4 It's made worse by the fact that he admitted to
5 watching this video that he created for sexual gratification,
6 although he also claimed that he watched it as a reminder not
7 to do it.

8 It's made worse by the fact that although there's
9 only evidence of the one date of sexual assault in that one
10 video, there were other photos in his cloud account depicting
11 Minor A with her vagina exposed on other dates, including
12 December of 2020. So there's some indication that there was
13 some repetition of at least some of the behavior.

14 THE COURT: Did I read that the mother of the
15 minor -- the mother of [REDACTED] reported that she
16 had been observing irritation on her daughter's vagina or
17 thighs and reluctance to have her diaper changed or screaming
18 when that happened or aversion in some way, prior to learning
19 of the offense, but didn't put it together until after the
20 law enforcement came to her?

21 MS. NUZUM: Yes, Your Honor, she did say that.

22 THE COURT: I see. Okay.

23 MS. NUZUM: And then here, Your Honor, not only --
24 so it might not have been a one-time lapse. Again, we only
25 have evidence of that one sexual assault, but we have this

1 other image from December 29th.

2 And then here there's also the distribution of
3 child sexual abuse material not pertaining to Minor A. I do
4 not have evidence of that.

5 THE COURT: So there's no evidence that the --
6 there is not only the admission of the sexual molestation of
7 the child, but there is evidence of the video of that
8 occurring.

9 MS. NUZUM: Yes, Your Honor.

10 THE COURT: With [REDACTED]. But there's not any
11 evidence that suggests that that video was distributed to
12 anyone else.

13 MS. NUZUM: Correct, Your Honor. It was found in
14 his Google account, which was linked to his phone. So it
15 could have been uploaded that way.

16 THE COURT: Right.

17 MS. NUZUM: He did state in an interview that he
18 had previously had a Google account that other people had
19 access to and that he did share child pornography through
20 that account. But he stated that that was a different
21 account, and that he had not given access to these videos.
22 And the government does not have any evidence of him sharing
23 this video.

24 THE COURT: And is there any forensic evaluation of
25 that account or any way to forensically determine whether it

1 was ever distributed?

2 MS. NUZUM: Your Honor, all I can say is the agents
3 did what they could do, and we do not have any evidence that
4 it was shared. So that's all I could tell you.

5 THE COURT: So you can't say conclusively, like, to
6 a mathematical certainty that it was never distributed. On
7 the other hand, some forensic analysis was done, and that
8 forensic analysis might have yielded evidence of distribution
9 if it had been. It didn't.

10 MS. NUZUM: Correct, Your Honor.

11 THE COURT: Would that be fair? And you can't say
12 it doesn't mean that they can't rule it out, but at least
13 they did some measure of analysis, and that measure of
14 analysis didn't reveal anything.

15 MS. NUZUM: Correct, Your Honor.

16 THE COURT: Okay. Fine.

17 MS. NUZUM: So we do have evidence of him
18 distributing other images and videos. He admitted to doing
19 so through the dark web. We have him doing it through a
20 messaging service. And we described some of those very
21 distributing videos, again, which include children being
22 penetrated by objects, by adult's body parts, children being
23 tied down related to the sexual torture of children. So
24 under the 3553(a) factors, the seriousness of this offense
25 and the need for just punishment needs to be considered.

1 The seriousness of the offense is also reflected in
2 the victim impact statements that Your Honor has read.
3 Minor A right now is three years old, but at some point, she
4 will learn what happened to her and who did it to her. And
5 for a glimpse of what she is going to suffer when she
6 understands that, you have the victim impacts statements
7 submitted by the eleven serious victims in this case, the
8 victims whose sexual abuse was depicted in the child
9 pornography that Mr. Mercure had on his devices.

10 They described what they suffered as a result of
11 the initial sexual exploitation, as well as the later
12 distribution of those images that keep following them. One
13 of these victims I believe is 30 or 33 years old and is still
14 getting these notifications about their abuse being viewed by
15 others.

16 And importantly, Your Honor, the defendant knows
17 the effects of this behavior, because he is a victim himself.
18 He knows the long-lasting impacts of this behavior. So in
19 some ways, although he offers that as a mitigating factor, in
20 some ways it's an aggravating factor.

21 The government's recommendation also reflects the
22 need to protect the community, and particularly the
23 vulnerable members of the community, the children, from the
24 defendant and future crimes. And here, the defendant in his
25 interview with law enforcement expressed what he called his

1 own sexual deviancy and his sexual interest in children. And
2 this was confirmed by the psychosexual evaluation that he
3 submitted. It reflects his sexual attraction to prepubescent
4 children all the way back to the age of infants.

5 I note that the psychosexual evaluation actually
6 does not refer to the other alleged sexual assault that was
7 described in the PSR, so in some ways it's incomplete and
8 doesn't give --

9 THE COURT: Which other sexual assault?

10 MS. NUZUM: That was paragraph 61 of the PSR,
11 Your Honor, describing an incident that occurred in high
12 school.

13 THE COURT: Yes. Okay.

14 MS. NUZUM: So that was not reported by
15 Mr. Mercure, and that was not considered in the evaluation.

16 But even without considering that, that evaluator
17 found that he is at above-average risk of re-offending. And
18 above-average, when the average is convicted sex offenders.
19 So the estimate was twice the rate of the average. And he
20 met the criteria for pedophilic disorder and hypersexual
21 disorder. So there's a real concern about the safety of the
22 community if he is released, when he is released.

23 And I'll note that the untreated substance abuse
24 issues and mental health issues, again, while in some ways
25 mitigating and some ways increase that danger.

1 The government's recommendation reflects the
2 interest in avoiding unwarranted sentencing disparities. I
3 did list in my memorandum a number of decisions in this court
4 and cases that are somewhat factually similar. Obviously,
5 each case has to be considered on its own.

6 I particularly note for the Court the case of
7 Nieves. That was a 21-year-old transgendered defendant,
8 significant history of abuse, self-harm. So again, similarly
9 traumatic background, with no criminal record whatsoever.
10 They were sentenced to 30 years for producing and
11 distributing child pornography, depicting their hands-on
12 abuse of a child known to them.

13 That case similarly involved the distribution. It
14 did have more images. It did seem, in that case, the abuse
15 was a little bit more ongoing, but I found that comparable,
16 significantly comparable to this case. I note that in that
17 case, the guideline sentencing range was 27 to 33 years.

18 The government's recommendation does also reflect
19 and consider the mitigating circumstances that the defendant
20 raises. We specifically considered his abuse as a child,
21 although the literature does not support that being sexually
22 abused as a child leads to sexual abusing later. We did
23 consider that fact.

24 We give credit for his prompt admissions, for
25 giving the interview to law enforcement, for consenting to

1 the search of his device. We acknowledge, again, the only
2 evidence that we have is of this one sexual assault, and we
3 acknowledge that there is no evidence that he distributed the
4 images of this assault.

5 So all of that was taken into consideration in
6 formulating this recommendation. It is a true
7 recommendation. It is not a real estate transaction, where
8 the government is asking for more than it believes is
9 appropriate.

10 THE COURT: Yes.

11 MS. NUZUM: I wanted to just very briefly respond
12 to some of the materials that the defendant has submitted in
13 this case. I would submit that his mother's letter certainly
14 demonstrates her love for him and happy memories from his
15 childhood, but it doesn't really help the Court because it
16 doesn't really reconcile or acknowledge the other aspects of
17 his childhood and what went on there. It really sounded like
18 a very different childhood than was described in the PSR and
19 by Mr. Mercure himself.

20 And then the other letters submitted by the
21 defendant, Your Honor, I have concerns about, because he was
22 not forthcoming about his relationship with the defendant.
23 You read the entire letter, and it sounds like a paternal
24 male father figure standing in and officering advice to this
25 young man, and then you read Mr. Mercure's interview and you

1 learn that he's actually in a dating relationship. And so I
2 think that has to be taken with a significant grain of salt
3 as a result.

4 I do note that child pornography was uploaded to
5 Mr. Mercure's Google account at that individual's address, on
6 December 29, 2020. The IP information from that resulted to
7 his house. There was evidence of Mr. Mercure staying there
8 frequently. So I just wanted to point that information out
9 to the Court.

10 I noted the information about his educational
11 background, his Cub Scout badges. That does not, in any way,
12 excuse or justify or explain or mitigate what he did here.
13 They demonstrate that he was a child once, but he has taken
14 the childhood away from his victim in this case, before it
15 had barely started.

16 So the government is recommending five years of
17 supervised release. The defense was recommending life. I
18 think that reflects the difference in our recommendations as
19 to prison. I think -- so I leave that to the Court to arrive
20 at the right balance there.

21 THE COURT: Why wouldn't I -- even if I agree with
22 you, why wouldn't I want more than five years?

23 MS. NUZUM: You very well may, Your Honor. I
24 recognize that the 30 years that I was asking for was a very
25 immense amount.

1 THE COURT: Sure. It is a form of punishment to
2 supervised release, as well. It's not just rehabilitation.
3 It's punishment. And to some degree, it's a restriction on
4 liberty. I'm just thinking --

5 MS. NUZUM: Considering his age a little bit, as
6 well, if he's 25 now and serves 30 years, comes out and does
7 five years, he's around the age of 60. At what point would
8 we be comfortable. But certainly, if the Court is inclined
9 to a longer period of supervised release, I don't think that
10 would be a bad idea to make sure that he continues getting
11 the treatment that he needs and the supervision that would be
12 helpful.

13 And the government defers to probation's
14 recommendations in the PSR as to terms. They seemed
15 appropriate, given all of the information in the PSR.

16 Again, we've deferred restitution.

17 We've already talked about the assessments.

18 And I know the Court has already ordered the
19 preliminary order of forfeiture of the devices. The
20 government would ask that that be incorporated in the oral
21 and written judgment.

22 THE COURT: All right. Mr. Calcagni?

23 MR. CALCAGNI: Thank you.

24 THE COURT: I take it you're not contesting
25 forfeiture.

1 MR. CALCAGNI: I'm not, Your Honor. You may enter
2 the order with our consent.

3 THE COURT: Okay. Fine. Go ahead.

4 MR. CALCAGNI: I don't think words can truly
5 capture how challenging of a sentencing this is. I mean, the
6 facts of the case are reprehensible by any objective
7 standard. And the simplest, and, perhaps, most accurate
8 adjective to really describe all facets of this matter is
9 just tragic; tragic for all of the victims involved, not only
10 [REDACTED], but his mom; the collateral victims
11 being the family members; the children who were depicted in
12 the photographs and videos, some of whom are known, some of
13 whom aren't.

14 And then I truly think that objectively there's
15 tragedy to Mr. Mercure. I mean, what you have before the
16 Court is a 25-year-old man, perhaps the age of your average
17 law clerk. And instead, you have a man that's essentially
18 shattered his entire life, stands before you today looking
19 down the barrel of a heavy sentence, regardless of the
20 number, it's two digits, and in June is going to get
21 something similar, if not more severe, in the state court.

22 That's my perspective.

23 Seeing it from your perspective, Your Honor, I
24 think it's equally difficult day for the Court, because you
25 have these constructs that Congress has given in 18, 3553,

1 you've got the guidelines. But your job is to do justice,
2 justice for the victims in the case, justice for society as a
3 whole, and justice for Mr. Mercure.

4 Justice for the victims and justice for society is
5 easily reached. It's a heavy jail number. Everybody knows
6 that, even me. But justice for Mr. Mercure is where I think
7 the Court requires a greater analysis.

8 I'm not a psychologist, and we don't have any
9 expert testimony before the Court; and I am not an expert on
10 the literature as to the correlation between being a sexual
11 abuse victim and becoming a sexual abuse offender. And I'm
12 quite certain there are many victims in society who have
13 never offended. I'm quite certain there are people in
14 society who are not victims but, yet, have offended. And I'm
15 quite certain that there are victims in society who have.

16 Nobody is born to be a sex offender. Each and
17 every one of us in this courtroom is a product of our
18 environment and our experiences. Now, along the way, some
19 people handle adverse environmental conditions and
20 experiences better than others.

21 Mr. Mercure's environment and experiences have been
22 less than desirable. His childhood was nothing close to
23 ideal. Like many others, grew up without a dad, but then
24 found himself in an environment where he was a victim of
25 verbal abuse, physical abuse, and then sexual abuse at the

1 hands of four perpetrators over time. And when his parents
2 learned about it, mom wanted to do the right thing and get
3 him treatment, but his drug addict father thought that was a
4 bad idea, "This is a topic that we shouldn't talk about."

5 So I think it's confirmed that Cody never received
6 the treatment that he should have gotten back then. And
7 whatever trauma he endured, we'll never know. We can't
8 measure and quantify. But whatever that trauma was at an
9 early age, clearly has affected him over the years. It
10 affected his behavior at school. It affected his behavior at
11 home. It affected his choices, the people he hung out with,
12 the activities he engaged in, the substances that he abused
13 at a young age, and arguably contributed and laid the pathway
14 to what bringing him before the Court today.

15 Cody owes a heavy debt to society, and whatever
16 Your Honor decides today he's going to take like a man. But
17 before you decide the appropriate punishment, I want to
18 remind you of a few things.

19 First, he's young. That's a significant factor.

20 Second, he's never been to jail before. 15 years
21 is a long time, as is 20, 25 to 30, and the scale goes up and
22 up. The question for the Court is how much additional
23 rehabilitation and satisfaction of the 3553 factors occurs
24 through each additional year beyond the mandatory minimum? I
25 don't know. That's something the Court has to grapple with.

1 But if I were a judge and I was sitting in your
2 shoes, I've got to ask myself: Is this the kind of person
3 that I need to warehouse and impose a sentence that
4 effectively removes him from society forever? Or can I
5 fashion a sentence that will get him the treatment he needs,
6 if I believe he has rehabilitative potential?

7 And I think that's the real issue in today's
8 sentencing. Does Cody Mercure have rehabilitative potential?
9 And I suggested to the Court, yes, not just because of his
10 age and his lack of meaningful record, but because of the way
11 he conducted himself in the beginning of this case.

12 Sure, lots of people get caught. They commit
13 crimes. They waive their rights. They give confessions.
14 But that doesn't happen often with sex offenders who live a
15 life of denial. And when this young man got arrested, he not
16 only owned up to his misconduct, but he described it.

17 It's listed in the presentence report, in the
18 government's memo. Cody talks about the sexual urges that he
19 felt, which caused him to act the way he did, consistent with
20 his pedophilia diagnosis and his hypersexual arousal
21 diagnosis. Cody embraced it from day one and gave the police
22 the evidence in support of his prosecutions.

23 As the case, first the state and then the federal
24 matter, moved their way down the line, Cody wasn't interested
25 in mounting legal defenses at every turn. Cody was

1 interested in, carte blanche, accepting responsibility for
2 everything.

3 There's no plea agreement here. He doesn't have
4 any promises in the state court. This gives the Court -- or
5 should -- insight into this man's true and quality acceptance
6 of responsibility, the fact that he has insight in
7 understanding of what he did, how horrible it is, how
8 horrific the impact is on others, and his need and desire for
9 treatment. That's what sex offenders need.

10 They engage in horrible acts, but those acts aren't
11 motivated by violence or financial gain. They're not
12 motivated by retribution. They're propelled by --

13 THE COURT: The act itself is violent.

14 MR. CALCAGNI: What I mean to suggest is we're not
15 talking about guns and knives and maiming. We're talking
16 about acts that are prompted by psychology and inner-workings
17 of the human mind, uncontrollable sexual urges. And that's
18 what this case is about.

19 Cody said to me the other day, and he's going to
20 say to you in a few moments, that no one in this courtroom
21 hates him more than he hates himself. The Court knows, he's
22 had multiple suicide attempts throughout his adolescence.
23 Upon his arrest, he was on suicide watch twice, in April and
24 December of 2021. All of these things, the medications, the
25 counseling, the suicide attempts, the pattern of behavior

1 over the year are all red flags that this man needs help.

2 And if we can get help -- and that was my purpose
3 of having the evaluation done, to show the Court what his
4 conditions truly are. He wasn't trying to minimize or hide
5 the ball, but suggesting that, according to a professional,
6 he can benefit from treatment. And if he wants it, and if
7 the professionals say he can benefit from it, I suggest to
8 the Court he has rehabilitative potential; and therefore, the
9 sentence that you dispense today should afford him the
10 opportunity to overcome the horrors that he's caused through
11 his actions. And for that, I offer a much less sentencing
12 recommendation to the Court.

13 Thank you.

14 THE COURT: All right. Thank you, Mr. Calcagni.

15 Mr. Mercure, you have the right, if you wish, to
16 speak on your own behalf before I impose sentence. This is
17 what's called an allocution. You're not required to speak,
18 and if you choose to remain silent, I will not hold it
19 against you. But if you wish to say something, now is the
20 time to do so.

21 MR. MERCURE: I have prepared a statement,
22 Your Honor, but I don't feel emotionally capable of reading
23 it myself right now so I would ask if you would allow my
24 attorney to read it for me.

25 THE COURT: That would be fine, yes.

1 MR. MERCURE: Thank you, Your Honor.

2 MR. CALCAGNI: Are you sure?

3 MR. MERCURE: Yes.

4 MR. CALCAGNI: "Your Honor, I apologize to each and
5 every victim of my actions, both known and unknown to me, and
6 the people in this courtroom. I want to specifically offer
7 my deepest apology to [REDACTED] and her mother for the pain
8 and suffering I inflicted on them and for the many years of
9 pain and suffering that I know they will endure in the
10 future.

11 "I also want to apologize to my family and loved
12 ones for the pain and actions that I have caused them. I
13 know that my conduct has ripped apart and destroyed the lives
14 of many people, the victims of my actions, my family members,
15 my friends, and all the people who I know I let down.

16 "No one inside this courtroom or elsewhere hates me
17 more than I hate myself. I am keenly aware of the damage
18 that I have inflicted on others, and how the damage inflicted
19 is irreversible. I hold myself accountable for my actions,
20 and I accept full responsibility for everything. I do not
21 ask anyone for forgiveness, because I am not deserving of it.

22 "My hope for the victims in this case is that they
23 will one day be able to move past the suffering that I've
24 caused, in order to live a happy, peaceful, and fulfilling
25 life. I am quite certain that I've destroyed the entirety of

1 my life, but I do hope I have not destroyed their lives
2 forever. I pray that it is possible for those negatively
3 impacted by me to one day recover.

4 "As for myself, the only thing that I ask for is
5 for proper treatment for my illnesses. I know I must pay a
6 heavy punishment, both to be imposed by you today and soon to
7 be imposed by another judge in the state court system. I
8 will accept whatever punishment I receive; however, I am a
9 relatively young man, and I hope that with the proper
10 attitude and motivation, the offering and commitment to
11 treatment, that I may overcome the many demons that have
12 caused me to come before this Court so that I may never
13 reoffend or hurt anyone else ever again.

14 "I ask that you have some mercy on me today.

15 "Thank you. Cody Mercure."

16 THE COURT: Thank you, Mr. Mercure.

17 MR. MERCURE: Thank you for hearing me, Your Honor.

18 THE COURT: You're welcome.

19 So the family is not here, right? I would
20 specifically address them if they are.

21 MS. NUZUM: No, Your Honor, they are not present.

22 THE COURT: Okay. Fine. I have something to say,
23 but if they were specifically here, I would speak more
24 directly to them.

25 So you know, Mr. Mercure, in a way, you have

1 said -- you've identified some of the things that are most --
2 most material or important about your case. First thing that
3 I think about in a case like this is who's been harmed. And
4 of course, the first person who was harmed is [REDACTED].
5 And then I think about how is that person harmed. And deeply
6 it's incomprehensibly -- perhaps not incomprehensibly to you,
7 given what the presentence report said about your childhood,
8 but still incomprehensibly.

9 [REDACTED] was 18 months old, and what you did
10 to her was violent and wrong. And she may not -- I doubt,
11 then, she had words to express what happened to her. And she
12 maybe still, as a very young child, unlikely to have the
13 words to give voice to what occurred. But there is no doubt
14 that she knows what happened to herself, inside herself, both
15 figuratively and literally, and she will carry that with her
16 forever.

17 And so the -- the harm and destruction to her life,
18 the difficulty that you have caused are not measurable now.
19 The -- if there is a positive, it's not positive, but it's
20 hopeful, I guess, in these circumstances, is the letter from
21 the mother of [REDACTED], who spoke of certain things that
22 [REDACTED] is doing as a very young child that are just
23 normal. One wouldn't take great notice of them in the
24 ordinary course if one read about those -- a three-year-old
25 doing those things, or four-year-old. But they are quite

1 hopeful for this three- or four-year-old, just that she's
2 happy, that she smiles, that she engages with other people.
3 Those are all positive things.

4 But that doesn't erase what happened to her. And
5 it will never -- what happened, happened, and it will be with
6 her.

7 And I think about all the other -- the victims,
8 the -- the children who were depicted in the child
9 pornography images and videos that you had and that you
10 distributed, not only the harm they suffered when they were
11 physically abused, but the recurring, repetitive, the boom,
12 boom, boom, boom every time they hear from the
13 government that somebody else is convicted of looking at them
14 when they were children.

15 And just the fact that you looked at them and the
16 reasons that you looked at it, for sexual gratification, and
17 what that says to those people and to the individuals who are
18 depicted, whether they're young children still or whether
19 they're 30-something-year-old adults, that everywhere they
20 go, they must wonder if this person that they see in the
21 grocery store or this person they see when they walk down the
22 sidewalk or this person that they meet online or this person
23 that they meet in class or this person that they work with,
24 whether that person unknowingly is looking at them as a child
25 and obtaining gratification, or knowingly looking at them and

1 realizing it's that person. And they live with that.

2 So these are two different kinds of crimes that are
3 related, but they're different. And they're -- they're --
4 you know, you spoke about it in your statement, but they're
5 really harmful. And there's no words that can express the
6 harm, and especially the ongoing and deep harm both to a
7 young child -- it's not even a child. She's an infant, [REDACTED]
8 [REDACTED] was.

9 So I think about what they need, and they need
10 protection. They need for you to stop. They need to do what
11 they can to get help and try to recover. That's for them to
12 do, for whatever the Court can do to help them.

13 And from you, what they need is for you to repair
14 yourself. Right? And you need to do that, first, not for
15 you; you actually need to do it first for them. Because you
16 owe them that, that this won't happen again. It won't happen
17 in prison, and it won't happen outside prison. And in any
18 event, that's for you to think about and figure out.

19 In terms of a sentence, I've considered the
20 guidelines. I've considered the -- the submissions.

21 I hear what you're saying. I understand what
22 you're saying, Mr. Calcagni. I have no doubt that, as a
23 general proposition, treatment can be helpful to people,
24 generally. And treatment could be helpful -- can be helpful
25 to Mr. Mercure. And I'm hopeful that he obtains treatment in

1 prison. And I know the Bureau of Prisons has sex offender
2 treatment, and I'm confident that he'll receive that
3 treatment at some point in his period of time in prison.

4 I don't think that the fact that he can receive
5 treatment in prison and the fact that the treatment could be
6 helpful and that he appears to want treatment, which I accept
7 sincerely that he does, is sufficient under the circumstances
8 to warrant me imposing a 15-year sentence.

9 It's a -- it's a long sentence. I'm not -- I won't
10 pretend it isn't. It is. 15 years is a long sentence for
11 any human being, and perhaps more so for somebody of
12 Mr. Mercure's young age, who's never been to prison before.

13 But the nature -- the nature of the crime, the
14 harm, the deep harm that it caused forever, in all
15 likelihood, for [REDACTED], the nature of that violation of
16 that relationship, and the information before me, I don't
17 have sufficient confidence -- although I think treatment can
18 be helpful, I don't have sufficient confidence of how
19 effective it will be, given what the evaluation is with
20 respect to risk of recidivism, with respect to sex offenders,
21 as Ms. Nuzum points out. So for all those reasons, I just
22 think that there's not a world, I don't think in this case,
23 where I could impose 15 years, even though it's a very long
24 sentence.

25 And one of the questions that one reaches is, in

1 some sense: How much is enough?

2 And so I thought, Ms. Nuzum, your sentencing memo
3 was particularly thoughtful and nuanced, and I appreciated
4 that. You -- it was -- it was just that. It was thoughtful
5 and nuanced and respectful of every person and everybody.
6 And I was appreciative of that, and I thought it was very
7 helpful. I thought a lot about 30 years. It's a -- it's, I
8 think, a reasonable sentence here.

9 I'm imposing a slightly different sentence,
10 largely, I suppose, for one reason. I just think that -- I
11 don't know what the fact that Mr. Mercure was molested as a
12 child multiple times means about more likely to commit it or
13 less likely to commit it. In terms of that evidence, I
14 can't -- he's an individual. And even though I don't doubt
15 the literature that you cite, I don't cite this fact as
16 excuse or justification. There is none. But I think it --
17 it warrants some consideration in terms of the overall
18 punishment that Mr. Mercure faces.

19 So I also thought -- I'll tell both of you, that I
20 thought that [REDACTED] was entitled to a
21 sentence that ensured that even if he earns all the good
22 time, as I would anticipate, on the sentence that I impose,
23 is that she would be over the age of 21 when he was released
24 from prison. Not so much because I think that while under
25 the supervision of the probation office, it's just the

1 psychological freedom from the person who abused and molested
2 her when she was an infant.

3 So for those reasons --

4 If you'd stand, Mr. Mercure.

5 So for those -- pursuant to the Sentencing Reform
6 Act of 1984, and considering the factors at Section 3553(a),
7 I'm committing you to the custody of the Bureau of Prisons to
8 be imprisoned for a term of 300 months; that is, a term
9 consists of 300 months on Count 1, and 240 months on Count 2,
10 to run concurrently. That's 240 months on Count 2, because
11 that's the most that could be imposed.

12 I take it that you're both -- am I right, from
13 reading the submissions, you're both recommending that this
14 term of imprisonment should be concurrent to whatever he
15 receives in Bristol? That's what I understood from the
16 submissions, but I wanted to confirm that on the record.

17 MS. NUZUM: Yes, Your Honor. It's my understanding
18 that that is the guideline recommendation in this type of
19 case, where the other case is related conduct.

20 THE COURT: That's what I thought, too. Okay.

21 So then the terms of imprisonment imposed by this
22 judgment shall run concurrently to defendant's imprisonment
23 under any term of imprisonment that be imposed in Bristol
24 Superior Court, on Docket Number 2173-CR-0144.

25 I make three judicial recommendations: that the

1 defendant participate in substance abuse treatment while in
2 the Bureau of Prisons custody; that he participate in
3 psychological care for his mental health needs; and that he
4 be designated to an institution commensurate with security
5 where he can participate in sex offender treatment.

6 Was there an additional recommendation that you
7 wanted?

8 MR. CALCAGNI: I noted in my footnote that Devens
9 does offer that program, and it's close to family.

10 THE COURT: Right. And then, in addition, the
11 Court recommends Fort Devens both for sex offender treatment
12 and because it would facilitate contact with his family in
13 Massachusetts.

14 Upon release from imprisonment, the defendant shall
15 be placed on a term of supervised release for a term of 15
16 years as the -- as to each count, such terms to run
17 concurrently.

18 Within 72 hours of release from custody of the
19 Bureau of Prisons, the defendant shall report in person to
20 the district to which he's released.

21 I order that he make restitution to all of the
22 victims or to the victims, but restitution in an amount --
23 the amount to be determined later, pursuant to what we
24 discussed earlier.

25 I impose no fine, both because I find he does not

1 have the financial ability to pay a fine. And in addition --
2 in addition to restitution, I separately find that it would
3 be unjust to have Mr. Mercure pay a fine to the United States
4 before he satisfied any restitution obligation to the
5 victims.

6 Forfeiture, I allow. And I find the requisite
7 nexus between the property and the offenses for which
8 Mr. Mercure is being convicted.

9 Mr. Calcagni, have you reviewed the conditions of
10 supervision that appear on pages 27, 28, and 29 and 30 with
11 your client, such that you waive reading of them in their
12 entirety?

13 MR. CALCAGNI: Yes, Your Honor.

14 THE COURT: I impose the mandatory conditions of
15 supervision 1, 2, 3, 4, and 5, listed on page 27. The chief
16 one that I highlight for you, but they're all imposed, is, of
17 course, that you'll have to register -- you'll have to comply
18 with the requirements of the federal sex offender
19 registration notification act.

20 I impose the standard conditions that this Court
21 has adopted for supervision from the sentencing guideline
22 Section 5D1.3(c).

23 I impose special conditions 1 to 8, on page 29 --
24 I'm sorry, on page 28.

25 I impose number 9, which is another sex offender

1 registration requirement.

2 I impose condition 10, which requires participation
3 in sexual specific evaluation and sex offender specific
4 treatment as described therein.

5 I impose condition 11, which requires polygraph
6 testing.

7 I impose conditions 12, 13, 14, 15, and 16, which
8 govern access to computers and the Internet and what kind of
9 permissions you need to provide the probation and what
10 restrictions there are, which are substantial on your use of
11 those things.

12 I will note, just for the record, that given the
13 duration of the sentence and the likelihood of the evolution
14 of technology over the next 25 years, I think it's fair to
15 note that you're free to revisit those conditions, depending
16 on what the world looks like when you're released, because it
17 may be that you need -- that those conditions may need
18 tailoring at that point in time to whatever the circumstances
19 are, in terms of restrictions on Internet use and the like.

20 I impose condition 17 and 18, which impose, in more
21 specific language, the following:

22 First, you must not have knowingly direct contact
23 or contact through a third party with children under the age
24 of 18, unless approved by the probation office or in the
25 presence of a responsible adult who's been approved by

1 probation, whom is aware of the nature of your offense and
2 background.

3 And number 81, that you may not have any contact
4 with any of the victims without prior approval of probation.
5 This includes letters, communication devices, and a whole
6 range of different methods. But that includes [REDACTED].

7 And then 19, 20, and 21 I impose, which is with
8 respect to third-party risk of employment and notification.

9 Finally, I impose the mandatory special assessment
10 of \$100 on each count, for a total of \$200.

11 You have the right to appeal from the sentence and
12 possibly the conviction that I imposed. Any notice of appeal
13 is due within 14 days of today. If you cannot afford to file
14 a notice of appeal on your behalf, you can request that the
15 clerk prepare and file one on your behalf.

16 Is there anything else from probation?

17 THE PROBATION OFFICER: No, Your Honor. Thank you.

18 THE COURT: Anything else from the government?

19 MS. NUZUM: No, Your Honor. Thank you.

20 THE COURT: Anything else, Mr. Calcagni?

21 MR. MERCURE: No, Your Honor. We will fill out
22 that financial affidavit, if it's available now. Otherwise,
23 I'll do it in the future.

24 THE COURT: I think -- can you print that out?

25 THE DEPUTY CLERK: Yeah.

1 THE COURT: She'll print that out for you now, so
2 you can do it now.

3 So we stand in recess, and defendant is --

4 He's here on a habe, right? So then he's returned
5 on the writ for the state.

6 (Court in recess at 2:55 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 17th day of September, 2023.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

CODY MERCURE,

Defendant.

Criminal Action No.
1:21-cr-10274-LTS

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

RULE 11

Tuesday, January 24, 2023
3:10 p.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufr@gmail.com

A P P E A R A N C E S

On behalf of the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE - MASSACHUSETTS
BY: ELIANNA J. NUZUM
John Joseph Moakley Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3100
elianna.nuzum@usdoj.gov

On behalf of the Defendant:

LAW OFFICES OF JOHN L. CALCAGNI
BY: JOHN L. CALCAGNI, III
72 Clifford Street
Suite 300
Providence, Rhode Island 02903
(401) 351-5100
jc@calcagnilaw.com

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

THE DEPUTY CLERK: Today is Tuesday, January 24th, 2023, and we are on the record in criminal case number 21-10274, the United States versus Cody Mercure.

And would counsel please identify themselves for the record.

MS. NUZUM: Good afternoon, Your Honor, Elianna Nuzum for the United States.

MR. CALCAGNI: Good afternoon. John Calcagni for Cody Mercure.

THE COURT: Good afternoon.

And good afternoon, Mr. Mercure.

MR. MERCURE: Good afternoon, Your Honor.

THE COURT: So we're here, Mr. Calcagni, for a change of plea, correct?

MR. CALCAGNI: Correct. There is no written plea agreement.

THE COURT: Okay. Thank you.

So Mr. Mercure, you might remember from your first appearance in this court that the magistrate judge explained

1 to you that you had a right to remain silent under the United
2 States Constitution. And what that means, among other
3 things, is you don't have to say anything to anyone about the
4 charges set forth against you in the indictment.

5 However, for you to plead guilty, I need to
6 determine that you're doing so freely, voluntarily, and
7 you're, in fact, guilty. And the only way that I can
8 determine that is asking you questions which you answer. And
9 by answering my questions, you're speaking. And by speaking,
10 to the extent you speak, you're giving up your right to
11 remain silent because you're not silent anymore.

12 Do you understand that?

13 MR. MERCURE: Yes, Your Honor.

14 THE COURT: If at any time when I'm asking you
15 questions you wish to speak to your lawyer privately, you can
16 do that. You can speak to your lawyer privately before I ask
17 a question. You can pause and stop at any point in the
18 questioning, in the course of your answer to a question, or
19 after you've answered a question. So the bottom line, you
20 can speak to him whenever you want, as often as you want, for
21 as long as you want.

22 Do you understand that?

23 MR. MERCURE: Yes, Your Honor.

24 THE COURT: Ms. Belmont, if you'd administer the
25 oath.

1 (The defendant was duly sworn.)

2 THE COURT: Do you understand you're now under
3 oath, and if you answer any of my questions falsely, your
4 answers later may be used against you in another prosecution
5 for perjury or making a false statement?

6 MR. MERCURE: Yes, Your Honor.

7 THE COURT: What is your full name?

8 MR. MERCURE: Cody Richard Mercure.

9 THE COURT: How old are you?

10 MR. MERCURE: I'm 25.

11 THE COURT: How far did you go in school?

12 MR. MERCURE: I graduated high school.

13 THE COURT: From what high school?

14 MR. MERCURE: Dighton-Rehoboth Regional.

15 THE COURT: And are you a citizen of the United
16 States?

17 MR. MERCURE: Yes, I am, Your Honor.

18 THE COURT: Have you been treated for or diagnosed
19 with any mental illness or psychiatric or psychological
20 problem of any kind?

21 MR. MERCURE: Yes.

22 THE COURT: What?

23 MR. MERCURE: I have depression and anxiety
24 disorder, as well as ADHD and ADD combined type.

25 THE COURT: And does any of that make it difficult

1 for you to understand my questions?

2 MR. MERCURE: No, Your Honor.

3 THE COURT: Are you taking any medication for any
4 of that at the present time?

5 MR. MERCURE: Yes, I am. I'm taking Zoloft for the
6 depression and BuSpar for the anxiety.

7 THE COURT: And does that medication make it
8 difficult for you to understand any of my questions?

9 MR. MERCURE: No, Your Honor.

10 THE COURT: And does any of that make it difficult
11 for you to make important decisions in your life?

12 MR. MERCURE: No, Your Honor.

13 THE COURT: Have you been treated for or diagnosed
14 with any drug addiction, drug problem, or alcohol problem of
15 any kind?

16 MR. MERCURE: Yes, Your Honor.

17 THE COURT: What's that?

18 MR. MERCURE: I was -- at 16, I was sent to a
19 Bradley Hospital partial program for a marijuana substance
20 abuse. And then while on probation for a previous case, I
21 was in the Community Care Alliance substance abuse counseling
22 program for cocaine abuse.

23 THE COURT: And would it be fair to say that the
24 last time -- other than the prescription medication that you
25 described to me, would it be fair to say that the last time

1 that you've had any drugs or alcohol was prior to your
2 present detainment in jail or prison?

3 MR. MERCURE: Yes, Your Honor.

4 THE COURT: All right. So would it be fair to say
5 that, as you stand here today, you're not having any symptoms
6 of withdrawal or cravings that in any way interfere with your
7 ability to think clearly?

8 MR. MERCURE: That's correct, Your Honor.

9 THE COURT: Fair to say that, other than the
10 medications that you've already described for the mental
11 health issues or problems that you had, you're not under the
12 influence of any medication, drug, or alcoholic beverage of
13 any kind?

14 MR. MERCURE: No, Your Honor.

15 THE COURT: Have you received a copy of the
16 indictment pending against you, that is, the written charges
17 made against you in this case by the government?

18 MR. MERCURE: Yes, I have, Your Honor.

19 THE COURT: Have you fully discussed the charges
20 against you and the facts and circumstances of your case with
21 your lawyer, Mr. Calcagni?

22 MR. MERCURE: Yes, Your Honor.

23 THE COURT: Are you fully satisfied with the
24 counsel, representation, and advice given to you in this case
25 by your lawyer, Mr. Calcagni?

1 MR. MERCURE: Yes, Your Honor.

2 THE COURT: Do you understand you do not have any
3 kind of a plea agreement with the United States government?

4 MR. MERCURE: Yes, I do, Your Honor.

5 THE COURT: Has anyone made any promise or
6 assurance to you of any kind in an effort to get you to plead
7 guilty in this case?

8 MR. MERCURE: No, Your Honor.

9 THE COURT: Has anyone attempted in any way to
10 force you to plead guilty in this case?

11 MR. MERCURE: No, Your Honor.

12 THE COURT: Are you pleading guilty of your own
13 free will because you're, in fact, guilty?

14 MR. MERCURE: Yes, Your Honor.

15 THE COURT: Do you understand the two offenses to
16 which you are pleading guilty are felonies?

17 MR. MERCURE: Yes, Your Honor.

18 THE COURT: Do you understand, if I accept your
19 plea, you'll be judged guilty of those offenses?

20 MR. MERCURE: Yes, Your Honor.

21 THE COURT: Do you understand that by being judged
22 guilty, you may lose valuable civil rights, including the
23 right to vote --

24 MR. MERCURE: Yes, Your Honor.

25 THE COURT: -- the right to hold public office, the

1 right to serve on a jury, and/or the right to possess a gun
2 or any kind of firearm?

3 MR. MERCURE: Yes, Your Honor.

4 THE COURT: Do you understand that by being judged
5 guilty, you may be required to register as a sex offender in
6 any state in which you live, work, or are present as a
7 student or as a resident, and/or to -- and to keep your
8 registration current?

9 MR. MERCURE: Yes, Your Honor.

10 THE COURT: Ms. Nuzum, would you state the maximum
11 possible penalties on each count, as well as any applicable
12 mandatory minimums.

13 MS. NUZUM: Yes, Your Honor. For Count 1, sexual
14 exploitation of children, in violation of 18, USC, Section
15 2251(a) and (e), there is a mandatory minimum of 15 years and
16 up to 30 years in prison; a mandatory minimum of five years,
17 and up to a lifetime of supervised release; as well as a fine
18 of up to \$250,000; a \$100 special assessment; restitution;
19 and forfeiture.

20 For Count 2, distribution of child pornography, in
21 violation of 18, United States Code, Section 2252, subsection
22 (a) (2) (A), there is a mandatory minimum sentence of five
23 years and up to 20 years in prison; a mandatory minimum of
24 five years and up to a lifetime of supervised release; and
25 the same fine, special assessment, restitution, and

1 forfeiture.

2 There's also a discretionary \$5,000 special
3 assessment, under 18, United States Code, Section 3014, and a
4 discretionary \$35,000 assessment for trafficking in child
5 pornography on each count.

6 THE COURT: The second -- the third \$35,000 is a
7 special assessment?

8 MS. NUZUM: Yes, Your Honor.

9 THE COURT: And the mandatories can be consecutive
10 or concurrent?

11 MS. NUZUM: Yes, Your Honor.

12 THE COURT: Okay. So do you understand that I'll
13 have the power to give you a term of imprisonment of up to 50
14 years?

15 MR. MERCURE: Yes, Your Honor.

16 THE COURT: And do you understand that I'll be
17 required to give you a mandatory minimum term of imprisonment
18 of at least ten years?

19 MR. MERCURE: Yes, Your Honor.

20 MR. CALCAGNI: 15, Your Honor.

21 MS. NUZUM: 15.

22 THE COURT: I'm sorry, yes. 15. Thank you.

23 So do you understand that in addition to -- I'll
24 have the power to give you a term of imprisonment of up to 50
25 years. Right?

1 MR. MERCURE: Yes.

2 THE COURT: And do you understand that I'll be
3 required, as a matter of law, to give you a sentence of at
4 least 15 years?

5 MR. MERCURE: Yes, Your Honor.

6 THE COURT: That's the mandatory minimum. I have
7 no authority to go below that, no matter what.

8 Do you understand that?

9 MR. MERCURE: Yes, Your Honor.

10 THE COURT: Do you understand that, in addition to
11 the prison term, I'll have the power to give you a term of
12 supervised release for up to the rest of your life?

13 MR. MERCURE: Yes, Your Honor.

14 THE COURT: And do you know what supervised release
15 is?

16 MR. MERCURE: Yes.

17 THE COURT: All right. It's essentially probation
18 after prison.

19 And do you understand that I'll be required to give
20 a term of supervised release of at least five years?

21 MR. MERCURE: Yes, Your Honor.

22 THE COURT: And do you understand that if you
23 violate the conditions of your supervised release at that
24 time in the future, that you can be given additional time in
25 prison then?

1 MR. MERCURE: Yes, Your Honor.

2 THE COURT: Do you understand I'll have the power
3 to fine you up to \$250,000 on each of the two charges, for a
4 total of \$500,000?

5 MR. MERCURE: Yes, Your Honor.

6 THE COURT: Do you --

7 Is there forfeiture here?

8 MS. NUZUM: Yes, Your Honor. Forfeiture was
9 alleged in the indictment. It's the two phones that contain
10 child pornography.

11 THE COURT: I see.

12 Do you understand that by pleading guilty, there
13 may be forfeiture consequences as charged in the indictment,
14 including, for example, the phones or other equipment that
15 were used?

16 MR. MERCURE: Yes, Your Honor.

17 THE COURT: And do you understand that I may order
18 you to pay restitution to any victim of your offense; that
19 is, I could order you to pay money to any victim to
20 compensate him or her for any harm you caused?

21 MR. MERCURE: Yes, Your Honor.

22 THE COURT: And do you understand, in addition to
23 everything else, there will be three possible special
24 assessments. There will be a mandatory special assessment of
25 \$100 on each count, for a total of 200. That's the first.

1 That's mandatory.

2 Do you understand that?

3 MR. MERCURE: Yes, Your Honor.

4 THE COURT: Second, there's a discretionary special
5 assessment of \$5,000; and third, there's a separate
6 discretionary special assessment of \$35,000.

7 And "discretionary" means that I'll have -- I have
8 the authority to impose it, but I'm not legally required to
9 impose it, depending on the circumstances.

10 Do you understand all of that?

11 MR. MERCURE: Yes, Your Honor.

12 THE COURT: Have you talked to -- do you understand
13 that there are sentencing guidelines that might affect your
14 sentence, and that these guidelines have been issued by the
15 United States Sentencing Commission; that they're not
16 mandatory, but that they are, nonetheless, important?

17 MR. MERCURE: Yes, Your Honor.

18 THE COURT: Have you and Mr. Calcagni, your lawyer,
19 talked about the guidelines and how they might apply in your
20 case?

21 MR. MERCURE: Yes, we have, Your Honor.

22 THE COURT: Do you understand that I cannot
23 determine what sentence the guidelines suggest for you until
24 after the probation office has prepared a presentence report?

25 MR. MERCURE: Yes, Your Honor.

1 THE COURT: And do you understand the guidelines
2 will make a suggestion somewhere between the mandatory
3 minimum of 15 years and the maximum of 50?

4 MR. MERCURE: Yes, Your Honor.

5 THE COURT: Do you understand that both you and the
6 government will have the opportunity to read the report, to
7 challenge any facts reported in it, and to challenge the
8 application of the sentencing guidelines as recommended by
9 the probation office?

10 MR. MERCURE: Yes, Your Honor.

11 THE COURT: Do you understand that report will
12 contain information about you, your criminal history, if any,
13 and the crimes to which you are pleading guilty today?

14 MR. MERCURE: Yes, Your Honor.

15 THE COURT: Do you understand that I'm not required
16 to follow the sentencing guidelines? I am required to
17 consider what sentence the guidelines suggest for you.

18 MR. MERCURE: Yes, Your Honor.

19 THE COURT: Do you understand that because I'm not
20 required to follow the sentencing guidelines at all, I have
21 the legal authority to sentence you anywhere up to the
22 maximum sentence, as long as my sentence is at or above the
23 mandatory minimum and as long as the sentence that I impose
24 is reasonable under the circumstances?

25 MR. MERCURE: Yes, Your Honor.

1 THE COURT: Do you understand that you will not be
2 permitted to withdraw your plea of guilty if your sentence is
3 longer than you expected or if you're unhappy with your
4 sentence, or if it's different from any sentence that your
5 lawyer might have predicted?

6 MR. MERCURE: Yes, Your Honor.

7 THE COURT: Do you understand that any victim of
8 either of your crimes has the right to participate in the
9 sentencing proceeding, either in writing, in person, or both?

10 MR. MERCURE: Yes, Your Honor.

11 THE COURT: Do you understand that, under some
12 circumstances, you or the government or both may have the
13 right to appeal to a higher court any sentence that I impose?

14 MR. MERCURE: Yes, Your Honor.

15 THE COURT: Do you understand you have the right to
16 plead not guilty to any crime charged against you and to go
17 to trial?

18 MR. MERCURE: Yes, Your Honor.

19 THE COURT: Do you understand you have the right to
20 a trial by jury?

21 MR. MERCURE: Yes, Your Honor.

22 THE COURT: Do you understand, at the trial, you'd
23 be presumed to be innocent, and the government would have to
24 prove your guilty beyond a reasonable doubt?

25 MR. MERCURE: Yes, Your Honor.

1 THE COURT: Do you understand, at the trial, you'd
2 have the right to the assistance of counsel for your defense?

3 MR. MERCURE: Yes, Your Honor.

4 THE COURT: Do you understand you'd have the right
5 to see and to hear all of the witnesses against you and to
6 have them cross-examined in your defense?

7 MR. MERCURE: Yes, Your Honor.

8 THE COURT: Do you understand you'd have the right,
9 if you chose to exercise it, to testify and/or to put on
10 evidence in your defense?

11 MR. MERCURE: Yes, Your Honor.

12 THE COURT: Do you understand you'd have the right
13 to invoke the Court's authority to compel witnesses to come
14 to court to testify in your defense?

15 MR. MERCURE: Yes, Your Honor.

16 THE COURT: Do you understand you'd have the right
17 to refuse to testify and/or to refuse to put on evidence,
18 unless you voluntarily elected to do so?

19 MR. MERCURE: Yes, Your Honor.

20 THE COURT: Do you understand, if you decided not
21 to testify or not to put on any evidence, those facts could
22 not be used against you?

23 MR. MERCURE: Yes, Your Honor.

24 THE COURT: Do you understand by entering a plea of
25 guilty here today, if I accept your plea, there will be no

1 trial, and you'll have waived or given up your right to
2 trial?

3 MR. MERCURE: Yes, Your Honor.

4 THE COURT: Ms. Nuzum, would you first state the
5 elements of each of the two offenses?

6 MS. NUZUM: Yes, Your Honor.

7 For Count 1, there are three elements:

8 First, an actual minor, that is a real person, who
9 was less than 18 years old, was depicted;

10 Second, the defendant employed, used, persuaded,
11 induced, enticed, or coerced the minor to engage in sexually
12 explicit conduct for the purpose of producing a visual
13 depiction of the conduct;

14 And third, the defendant knew or had reason to know
15 that the visual depiction would be mailed or transported in
16 interstate or foreign commerce or it was produced using
17 materials that had been mailed, shipped, or transported in
18 interstate or foreign commerce by any means, including by
19 computer, or the visual depiction was mailed or actually
20 transported in interstate or foreign commerce.

21 For Count 2, there are four elements:

22 First, the defendant knowingly distributed the
23 material;

24 Second, the material contained at least one image
25 of child pornography;

1 Third, the defendant knew the material contained an
2 image of child pornography;

3 And fourth, that the image of child pornography
4 moved in interstate or foreign commerce.

5 THE COURT: Do you understand that each of the
6 things, what we call elements, that Ms. Nuzum listed for
7 Count 1, the government would have to prove each of those
8 beyond a reasonable doubt in order to convict you of Count 1?

9 And then the elements or things that she listed for
10 Count 2, the government would have to prove each of those
11 beyond a reasonable doubt in order to convict you of Count 2.

12 MR. MERCURE: Yes, Your Honor.

13 THE COURT: All right.

14 Ms. Nuzum, would you state the factual basis for
15 the plea; that is, what the government would be prepared to
16 prove if this case went to trial.

17 MS. NUZUM: Yes, Your Honor.

18 If this matter were to proceed to trial, the
19 government would prove beyond a reasonable doubt that on
20 February 19th of 2021, the defendant, Cody Mercure, sexually
21 abused an 18-month old toddler, Minor A, who was known to him
22 and was in his care at a residence in Massachusetts, and
23 video recorded the abuse using his smartphone, which had been
24 transported in interstate or foreign commerce.

25 The videos were uploaded to his Google photos

1 account on February 19th, 2021, and April 3rd, 2021, again,
2 traveling in interstate commerce.

3 In early April of 2021, Google submitted multiple
4 cyber tipline reports to the National Center for Missing and
5 Exploited Children related to child pornography found in
6 Mr. Mercure's Google account. Following local law
7 enforcement's investigation of the cyber tips, on April 7th
8 of 2021, Mr. Mercure was arrested in Massachusetts on state
9 charges.

10 Two phones belonging to him, a Moto G Stylus and a
11 TCL REVVL 4+, were seized and later searched pursuant to a
12 warrant.

13 After being advised of his Miranda rights,
14 Mr. Mercure consented to an interview. He admitted to taking
15 video on his cell phone, depicting himself sexually abusing
16 Minor A, the child in his care, who was just over 18 months
17 old at the time. He admitted to recording himself touching
18 Minor A with his fingers, putting his mouth on her vagina,
19 and rubbing his penis against her vagina.

20 Mr. Mercure also told investigators that he
21 believed this video was saved on his phone. Two videos
22 matching the description of the abuse of Minor A were located
23 within the Keepsafe application, an encrypted application on
24 his Moto G Stylus phone, and they were also located in his
25 Google account.

1 The video files contained GPS information in the
2 metadata, which indicate that the videos were taken in
3 Massachusetts, on February 19th, 2021.

4 Mr. Mercure also admitted to obtaining child
5 pornography from dark web Internet forums and to posting
6 files containing child pornography through such forums.

7 Agents located over 100 images and videos depicting
8 child pornography stored on one of the phones. The Telegram
9 messaging application was installed on his phone. A Telegram
10 chat log documents a chat with another user, in which
11 Mr. Mercure sent and received, over the internet, videos
12 depicting child pornography.

13 Agents determined that of approximately 22 files,
14 whose exchange was detailed in that log, approximately 17 are
15 videos depicting child pornography. Of those, Mr. Mercure
16 sent 14 and received three. Mr. Mercure sent at least one of
17 these files on January 16, 2021, a date in which he was in
18 the District of Massachusetts.

19 Child pornography was found on both of
20 Mr. Mercure's phones, providing the nexus for forfeiture.

21 THE COURT: Thank you.

22 Mr. Mercure, is there anything in the government's
23 description of the facts with which you disagree?

24 MR. MERCURE: No, Your Honor.

25 THE COURT: Are you pleading guilty because you're,

1 in fact, guilty of each of the two offenses charged in the
2 indictment?

3 MR. MERCURE: Yes, Your Honor.

4 THE COURT: That is, you did what she said you did?

5 MR. MERCURE: What?

6 THE COURT: That is, you did what she said you did?

7 MR. MERCURE: Yes, Your Honor.

8 THE COURT: And you're doing so freely and
9 voluntarily?

10 MR. MERCURE: Yes, Your Honor.

11 THE COURT: Ms. Belmont, you can take the plea.

12 THE DEPUTY CLERK: Mr. Mercure, in a previous
13 appearance before this court, you pled not guilty to Counts 1
14 and 2 of the indictment.

15 Count 1 of the indictment charges you with sexual
16 exploitation of children, in violation of Title 18, United
17 States Code, Sections 2251(a) and (e); and Count 2 charges
18 you with distribution of child pornography, in violation of
19 Title 18, United States Code, Sections 2252A(a) (2) (A) .

20 Do you now wish to change your plea?

21 MR. MERCURE: Yes.

22 THE COURT: And as to Counts 1 and 2, how do you
23 now plea?

24 MR. MERCURE: Guilty.

25 THE DEPUTY CLERK: Thank you.

1 THE COURT: It's the finding of the Court, in the
2 case of United States v. Cody Mercure, that Mr. Mercure is
3 fully competent and capable of entering an informed plea;
4 he's aware of the nature of the charges and the consequences
5 of the plea, and the plea of guilty is a knowing and
6 voluntary plea, supported by an independent basis in fact,
7 containing each of the essential elements of each of the
8 offense charged. The plea is, therefore, accepted, and he is
9 now adjudged guilty of both of those offenses.

10 You can be seated, Mr. Mercure. Thank you.

11 I told you before, there will be a written
12 presentence report prepared by the probation office to assist
13 me in determining what sentence to impose in your case.
14 You'll be asked by the probation office to give information
15 for that report. They'll ask you this in the form of sitting
16 for an interview with the probation officer. Mr. Calcagni,
17 as he knows, may be present for that interview.

18 Mr. Calcagni, if you haven't done so, I'd ask you,
19 when you leave court, to go downstairs to probation and just
20 arrange and schedule the interview so it can be taken care of
21 promptly.

22 It's important, Mr. Mercure, for this report to be
23 accurate. It will not only effect what sentence for you to
24 receive, but what happens to you after you are sentenced.
25 For example, it will affect what prison you are sent to and

1 what happens to you when you get there. So even minor
2 mistakes in the report should be corrected, and you should
3 review it carefully with your lawyer, Mr. Calcagni.

4 As I said before, you'll have the chance to read
5 it, as will your lawyer, and to file objections to it before
6 the time of sentencing if there's anything in it that you
7 find objectionable.

8 At your sentencing, both you and Mr. Calcagni will
9 each have the opportunity to speak on your behalf, if you
10 wish.

11 There are two other quick matters. One is
12 confidential recommendation. The probation office prepares
13 confidential recommendations as to what sentence to impose.
14 It's my practice to tell you that. I will not accept the
15 recommendation if either one of you objects. You don't need
16 a reason. You can object now. You don't have to object now.
17 But if you don't object now, you must object in writing
18 letter. One sentence is enough. I don't need a brief. But
19 it has to be no later than one week after the draft report is
20 released. Just so that they don't write the recommendation
21 for no purpose.

22 Anything anybody want to say about that now?

23 MS. NUZUM: No.

24 THE COURT: No.

25 MS. NUZUM: Not at this time, thank you.

1 MR. CALCAGNI: Your Honor, I'll place an objection.

2 THE COURT: I can't hear.

3 MR. CALCAGNI: I'll place an objection.

4 THE COURT: You'll place an objection. Okay.

5 Fine.

6 So Kellyann, note that they object, and no
7 confidential recommendation.

8 The second is, I think as one or both of you know,
9 it's my practice to remind people that there's certain
10 principles of restorative justice, and some of those address
11 the fact that crime causes harm, something that seems fairly
12 obvious in this case. And so those principles ask, sort of,
13 who's been harmed; how have they been harmed; what might be
14 done to repair the harm.

15 So you can all think about those questions.
16 Sometimes those have significant bearing at sentencing, and
17 sometimes they have little bearing in particular on the
18 sentencing. But I raise them so people are aware of them.
19 And you can think about them to the extent you think it's
20 appropriate.

21 Second, Ms. Nuzum, it's my practice in cases where
22 there are identifiable victims to offer -- here I assume it
23 would be more like the parents or parent of the victim, but
24 if -- if those persons or any -- but I don't know who the
25 victims of the child pornography are, so that's a little bit

1 different. But if any of those people of either offense wish
2 to have a status conference between now and the sentencing in
3 order to ask questions about the process and have me -- I
4 think you're familiar with what I do.

5 But I typically explain, Mr. Calcagni, the
6 sentencing process, what happens at the hearing. And it's on
7 the record, and you and Mr. Mercure can come, as you wish.
8 It's totally fine if you do. And I just answer questions for
9 people, explain to them the process. And people have
10 questions, and I either answer their questions; or if they
11 are questions that I can't, I don't think it's proper for me
12 to answer, I'll just tell them why it's not proper for me to
13 answer.

14 So I just -- I'm not going to schedule anything.
15 I'll leave it to you. And just notify Ms. Belmont at some
16 reasonable point in time, either that you think the people
17 would not like that, and that's fine. They shouldn't -- I
18 think I've said this before to you, but they shouldn't feel
19 pressured from me that by offering it, that there's some
20 negative inference if they decline. There's no negative
21 inference; it's really just for them. If they wish it,
22 that's fine. And if they don't wish it, that's fine, too.
23 And it doesn't make any difference to me in terms of the
24 sentencing or anything else. And I don't draw any other
25 inferences from it.

1 And so if you want us to schedule it, we'll do it
2 at the time that is convenient. And if you don't, then
3 that's fine, too.

4 MS. NUZUM: Thank you, Your Honor. I'll pass that
5 on to the victim's mother, who would be the victim in this
6 case, or standing in for the victim.

7 THE COURT: Fine.

8 And sentencing would be Tuesday, April 25th, at
9 2 o'clock.

10 Anything else from the government?

11 MS. NUZUM: Not for the government. Thank you.

12 THE COURT: Anything else, Mr. Calcagni?

13 MR. CALCAGNI: No, Your Honor. Thank you.

14 THE COURT: Okay. Thank you very much.

15 And he's in state custody, right?

16 MS. NUZUM: Yes, Your Honor.

17 MR. CALCAGNI: Yeah.

18 THE COURT: Then he's remanded -- returned on the
19 habe.

20 And we're adjourned. Thank you.

21 (Court in recess at 3:32 p.m.)
22
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 21st day of September, 2023.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR
Official Court Reporter

ROBERT C. ANDREWS, ESQUIRE, P.C.

91 Auburn St. Suite J PMB 1155
Portland, Maine 04103
207-879-9850, 207-879-1883fax

rob.andrews.esq@gmail.com

March 15, 2024

Maria Hamilton, Clerk
U.S. Court of Appeals for the First Circuit
One Courthouse Way, Suite 2500
Boston, MA 02210

RE: United States v.
Cody Mercure
Docket No. 23-1414

CERTIFICATE OF SERVICE

This is to certify that an electronic copy of the redacted Brief and redacted Appendix was served this date, by first class, postage prepaid, to Mr. Donald Lockhart, AUSA, along with a copy to the Cody Mercure, at the following addresses:

Mr. Donald Lockhart, AUSA
One Courthouse Way
Ste 9200
Boston MA, 02210

Mr. Cody Mercure
Inmate No: 65792-509
Souza-Baranowski Correctional Center
Harvard Road
P.O. Box 8000
Shirley MA 01464

DATED: March 15, 2024

/S/ Robert C. Andrews
Robert C. Andrews
Attorney for Cody Mercure
Bar Number 88418
117 Auburn St Suite 201
Portland, Maine 04103
207-879-9850